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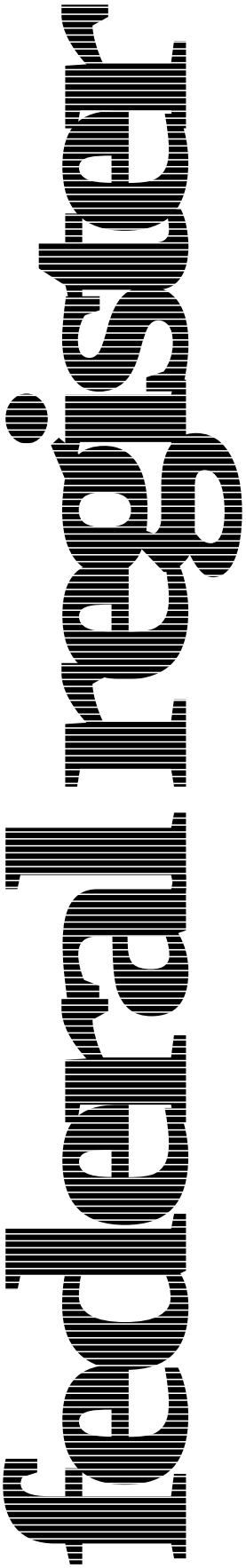
Monday
July 17, 1995



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WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 27 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 136
Monday, July 17, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV95–945–1IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1995–96 fiscal period. This rule also increases the level of authorized expenses for the 1993–94 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Authorization of the increase in the level of authorized expenses for the 1993–94 fiscal period in necessary because the Committee exceeded its budget for that period. Funds to administer this program are derived from assessments on handlers.

DATES: Section 945.248 is effective August 1, 1995 through July 31, 1996. The amendment to § 945.246 is effective August 1, 1993, through July 31, 1994. Comments received by August 16, 1995, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97205, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon potatoes are subject to assessments. Funds to administer the Idaho-Eastern Oregon potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1995–96 fiscal period, which begins August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 2,100 producers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing

anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 6, 1995, and unanimously recommended a 1995–96 budget of $111,732, $11,853 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Salaries, $63,232 ($55,479), meetings and miscellaneous, $2,500 ($2,000), Federal payroll taxes, $5,300 ($4,700), and reserve/auto purchase, $9,000 ($6,000). All other items are budgeted at least year's amounts.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 34,000,000 hundredweight, will yield $88,400 in assessment income. This, along with $23,332 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1995–96 fiscal period, estimated at about $80,000, will be within the maximum permitted by the order of one fiscal period's expenses.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on July 16, 1993 (58 FR 38274) and finalized on October 28, 1993 (58 FR 57957). That rule authorized Committee expenses of $98,942. The Committee exceeded its authorized expenses by $713, for total expenses of $99,655. Funds to cover this increase were taken from the Committee's authorized reserve. The 1993–94 budget is amended to cover this increase.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations.

§ 945.246 [Amended]

2. Section 945.246 is amended by removing ''$98,942'' and adding in its place ''$99,655.''

3. A new § 945.248 is added to read as follows:

§ 945.248 Expenses and assessment rate.

Expenses of $111,732 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: July 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–17385 Filed 7–14–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–2]

Revocation of Class C and Class E Airspace Areas, Merced, Castle AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule revokes the Class C and Class E airspace areas at Merced, Castle Air Force Base (AFB), CA, as a result of the scheduled closure of the Castle AFB on September 5, 1995.

EFFECTIVE DATE: 0901 UTC, September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class C and Class E airspace areas at Merced, Castle AFB, CA. The FAA is revoking these airspace areas as a result of the scheduled closure of the Castle AFB on September 5, 1995, including the closure of the Castle AFB air traffic operations, and its weather reporting capabilities. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Class C and E airspace designations are published in paragraphs 4000 and 6003, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and Class E airspace designations listed in this document will be removed subsequently from the Order.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule will generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The final rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

The final rule is cost-relieving in nature. It will provide reduced navigation costs for pilots who navigate around the current Class C airspace area. Pilots will no longer face the operational requirements (i.e. communicating and complying with air traffic control) of Class C airspace in that area. In addition, since Castle AFB is being closed, the primary source of the aircraft traffic volume and complexity will be removed. This means that revoking the Class C and Class E airspace areas will not compromise safety. Therefore, the FAA finds the final rule to be cost-beneficial.

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 Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have ''a significant economic impact on a substantial number of small entities.'' The final rule is cost-relieving in nature and will not impose any costs on small entities. Thus, the final rule will not result in ''a significant economic impact on a substantial number of small entities.''

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States. The final rule will not impose costs on aircraft operators or aircraft manufacturers in the United States or foreign countries. The revocation of the Class C and Class E airspace areas will only affect U.S. terminal airspace operating procedures at and in the vicinity of Merced, Castle AFB, CA. The final rule will not have international trade ramifications because it is a domestic airspace matter that will not impose additional costs or requirements on affected entities.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AWP CA C Merced, Castle AFB, CA [Removed]

* * * * *

Paragraph 6003–Subpart E-Class E Airspace Areas Designated as an Extension to a Class C Surface Area.

* * * * *

AWP CA E3 Merced, Castle AFB, CA [Removed]

* * * * *

Issued in Washington, DC, on June 29, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–17405 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 95–ASW–05]

Revision of Class D Airspace; Kelly Air Force Base, San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revises the Class D airspace at Kelly Air Force Base (AFB), San Antonio, TX. This revision of Class D airspace results from an error made during reclassification of the airspace. During reclassification, the airspace was described by reference to the 159° radial off the Kelly Tactical Air Navigation (TACAN), rather than the correct 339° radial. This action is intended to correct the Class D airspace description by correcting the radial to be flown by aircraft executing the standard instrument approach procedures at Kelly AFB, San Antonio, TX.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

Comment Date: Comments must be received on or before September 7, 1995.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 95–ASW–05, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revision of Class D airspace at Kelly AFB, San Antonio, TX, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on September 14, 1995. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class D airspace, providing controlled airspace for terminal instrument operations at Kelly AFB, San Antonio, TX. The current Class D airspace was described by reference to the 159° radial off the Kelly TACAN, when the intent was to describe it by reference to the 339° radial. This rule corrects this mistake.

Since this action merely involves the revision of Class D airspace as a result of an incorrectly identified radial from the Kelly TACAN, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 24 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points,* dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ASW TX D San Antonio Kelly AFB, TX [Revised]

San Antonio, Kelly AFB, TX
(Lat. 29°22′49″N, long. 98°35′03″W)
San Antonio, Standard Airport, TX
(Lat. 29°20′29″N, long. 98°39′35″W)
Kelly TACAN
(Lat. 29°18′31″N, long. 98°32′58″W)
San Antonio, Stinson Municipal Airport, TX
(Lat. 29°20′13″N, long. 98°28′16″W).

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.5-mile radius of Kelly AFB and within 1.5 miles each side of the 339° radial of the Kelly TACAN extending from the 4.5-mile radius to 4.8 miles northwest of the airport excluding that airspace within a 1-mile radius of the Standard Airport and excluding that airspace southeast of a line between the intersection of the 4.5 mile radius of the Kelly AFB and the 4.1-mile radius of the Stinson Municipal Airport and excluding that airspace within the San Antonio International Airport, TX, Class C Airspace area.

* * * * *

Issued in Fort Worth, TX, on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17400 Filed 7–14–95; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–11]

Amendment to Class D and E Airspace Areas; Mountain View, CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and E airspace areas at Mountain View, CA. This action is necessary due to the renaming of Moffett Field Naval Air Station (NAS), CA, to Moffett Federal Air Field (AFLD), CA. This action revises the Class D airspace area at Mountain View, CA, to indicate when this airspace area is effective.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D and E airspace areas at Mountain View, CA (60 FR 24593). This action is necessary due to the renaming of Moffett Field NAS, CA, to Moffett Federal AFLD, CA. This action also revises the Class D airspace area at Mountain View, CA, to indicate when this airspace is effective.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D and E airspace designations are published in paragraphs 5000, 6002, and 6004 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D and E airspace areas at Mountain View, CA, by renaming Moffett Field NAS, CA, to Moffett Federal AFLD, CA, and revising the Class D airspace area at Mountain View, CA, to indicate when this airspace is effective.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Mountain View, CA [Revised]

Moffett Federal AFLD, CA
(Lat. 37°24′55″N, long. 122°02′54″W)
San Jose International Airport, CA
(Lat. 37°21′42″N, long. 121°55′43″W)
Palo Alto of Santa Clara County Airport, CA
(Lat. 37°27′40″N, long. 122°06′54″W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 4.3-mile radius of Moffett Federal AFLD, excluding that airspace within the San Jose, CA, Class C airspace area and excluding the portion within the Palo Alto of Santa Clara County Airport, CA, Class D airspace area during the specific dates and times it is effective. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6002 Class E airspace areas designate as a surface area for an airport

* * * * *

AWP CA E2 Mountain View, CA [Revised]

Moffett Federal AFLD, CA
(Lat. 37°24′55″ N, long. 122°02′54″ W)
San Jose International Airport, CA
(Lat. 37°21′42″ N, long. 121°55′43″ W)
Palo Alto of Santa Clara County Airport, CA
(Lat. 37°27′40″ N, long. 122°06′54″ W)

Within a 4.3-mile radius of Moffett Federal AFLD excluding that airspace within the San Jose, CA, Class C airspace area and excluding the portion within the Palo Alto of Santa Clara County Airport, CA, Class D airspace area during the specific dates and times it is effective. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CA E4 Mountain View, CA [Revised]

Moffett Federal AFLD, CA
(Lat. 37°24′55″ N, long. 122°02′54″ W)
San Jose VOR/DME
(Lat. 37°22′29″ N, long. 121°56′41″ W)
Moffett TACAN
(Lat. 37°25′57″ N, long. 122°03′26″ W)

That airspace extending upward from the surface within 2.2 miles southwest and 1.8 miles northeast of the Moffett TACAN 158° radial, extending from the 4.3-mile radius of Moffett Federal AFLD to 7 miles southeast of the TACAN and within 1.8 miles each side of the San Jose VOR 320° radial, extending from the San Jose VOR/DME to 7 miles northwest of the San Jose VOR/DME, excluding the portion within the San Jose, CA, Class C airspace area during the specific dates and times it is effective. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 29, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–17404 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–1]

Modification of Class D Airspace and Removal of Class E Airspace, Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace area and removes the Class E2 airspace area at Greater Rockford Airport, Rockford, IL. The Rockford Air Traffic Control Tower (ATCT) is a continuous (24 Hour a day) operation. The Class D airspace area's effective hours are hereby amended to coincide with the associated control tower's hours of operation, by changing the Class D airspace from part-time to full-time. The Class E2 airspace was previously needed to clarify when two-way radio communication with the ATCT was required and to provide adequate Class E airspace for instrument approach procedures when the control tower was closed. The airspace is no longer needed since the ATCT is now a continuous operation; therefore, this action removes the part-time Class E2 airspace.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace and remove the Class E2 airspace at Greater Rockford Airport, Rockford, IL (60 FR 21473).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations and Class E airspace designated as a surface area for an airport are published in paragraphs 5000 and 6002 respectively of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area and removes the Class E2 airspace area at Greater Rockford Airport, Rockford, IL. The Rockford ATCT is a continuous (24 Hour a day) operation. The Class D airspace area's effective hours are hereby amended to coincide with the associated control tower's hours of operation, by changing the Class D airspace from part-time to full-time. The Class E2 airspace was previously needed to clarify when two-way radio communication with the ATCT was required and to provide adequate Class E airspace for instrument approach procedures when the control tower was closed. The airspace is no longer needed since the ATCT is now a continuous operation; therefore, this action removes the part-time Class E2 airspace. The appropriate publications will be modified to provide the aviation public with updated information.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

AGL IL D Rockford, IL [Revised]

Rockford, Greater Rockford Airport, IL
(Lat. 42°11′46″N, long. 89°05′36″W)
Greater Rockford ILS Localizer
(Lat. 42°12′36″N, long. 89°05′17″W)
GILMY LOM
(Lat. 42°06′52″N, long. 89°05′55″W).

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

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AGL IL E2 Rockford, IL [Removed]

* * * * *

Issued in Des Plaines, Illinois on June 26, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–17394 Filed 7–14–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–57]

Modification of Class D and Class E Airspace; Altus, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Altus, OK, by deleting the 4-mile circle that surrounds Altus Municipal Airport, deletes the Class E airspace extension associated with Altus Municipal Airport, and establishes a Class E airspace extension necessary for instrument flight rule (IFR) operations at Altus Air Force Base (AFB). The Class D airspace at Altus Municipal Airport and the Class E airspace upward from the surface as an extension of the Class D airspace at Altus Municipal Airport are no longer required for IFR flight activities at Altus, OK. The intended effect of this action is to remove the Class D airspace beyond a 5-mile radius of Altus, AFB, OK that encompasses Altus Municipal Airport, remove the Class E airspace that is an extension of the Class D at Altus Municipal Airport, and to establish Class E airspace as an extension of the Class D surface airspace at Altus AFB, Altus, OK.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On August 23, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Altus, OK was published in the **Federal Register** (59 FR 43306).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The Notice of Proposed Rulemaking described extensions to the Class D airspace 5-mile radius as ''within 2 miles each side of the Altus AFB ILS Localizer south course extending from the 5-mile radius to 6.6 miles south of Altus, AFB, and within 2 miles each side of the Altus AFB Localizer north course extending from the 5.0-mile radius to 7.6 miles north of Altus AFB''. If any extensions to a Class D airspace extends beyond 2 miles, all extensions for the Class D airspace area will be classified as Class E airspace. The airspace extensions as described in the NPRM would have lead to an incorrect classification of the airspace extensions as Class D airspace instead of Class E airspace. The proposal should not have included the extension within the Class Description. Therefore, the narrative description of the Class D airspace has been corrected to exclude these extensions, and a separate Class E description has been added for this airspace. Other than these changes, this amendment is the same as that proposed in the notice. The FAA has determined that these changes will not increase the scope of this rule since they are relieving in nature, i.e., redesignating proposed Class D airspace to less restrictive Class E airspace.

The coordinates for this airspace docket are based on North American Datum 84. Class D airspace designations are published in paragraph 5000, and Class E extensions to a Class D surface area are published in paragraph 6004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 7.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace at Altus, OK, removes the existing Class E extension to the Altus, OK Class D airspace, and establishes Class E airspace upward from the surface as extensions to the Altus AFB Class D airspace at Altus, OK.

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

will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp. p., 289; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ASW OK D Altus, OK [Revised]

Altus AFB, OK
(Lat. 34°39′50″ N, long. 99°16′26″ W).

That airspace extending upward from the surface to and including 3,900 feet MSL within a 5-mile radius of Altus AFB.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

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ASW OK E4 Altus, OK [Revised]

Altus AFB, OK
(Lat. 34°39′50″ N, long. 99°16′26″ W)
Altus AFB ILS Localizer
(Lat. 34°38′31″ N, long. 99°16′24″ W).

That airspace extending upward from the surface within 2 miles each side of the Altus AFB ILS Localizer south course extending from the 5-mile radius to 6.6 miles south of Altus, AFB, and within 2 miles each side of the Altus AFB ILS Localizer north course extending from the 5.0-mile radius to 7.6 miles north of Altus AFB.

* * * * *

Issued in Fort Worth, TX, on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17397 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AWP–10]

Amendment of Class E Airspace Area at Salinas, CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Salinas, CA. This action is necessary due to the closure of Fort Ord Fritzche Army Air Field (AAF), CA. This amendment deletes Fort Ord Fritzche AAF, CA, from the Class E airspace area at Salinas, CA.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Salinas, CA (60 FR 24594). This amendment is necessary due to the closure of Fort Ord Fritzche AAF, CA. This action will remove Fort Ord Fritzche AAF, CA, Class D airspace area from the Class E airspace description at Salinas, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6004 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Salinas, CA, by removing Fort Ord Fritzche AAF, CA, Class D airspace area from the Class E airspace description at Salinas, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CA E4 Salinas, CA [Revised]

Salinas Municipal Airport, CA
(Lat. 36°39′48″N, long. 121°36′23″W)
Salinas VORTAC
(Lat. 36°39′50″N, long. 121°36′12″W)
Salinas Localizer
(Lat. 36°40′18″N, long. 121°36′45″W)
Monterey Peninsula Airport, CA
(Lat. 36°35′13″N, long. 121°50′35″W)

That airspace extending upward from the surface within 1.8 miles northeast and 2.6 miles southwest of the Salinas VORTAC 318° radial, extending from the 4.3-mile radius of Salinas Municipal Airport to 5.2 miles northwest of the VORTAC, and within 1.8 miles each side of the Salinas localizer extending from the 4.3-mile radius to 10 miles southeast of the Salinas VORTAC, excluding that portion within the Monterey Peninsula Airport, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on June 28, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–17403 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–11]

Removal of Class E Airspace; El Campo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the Class E airspace at El Campo, TX. This removal of Class E airspace results from the permanent closing of the El Campo Metro Airport, El Campo, TX. As a result of the permanent closing of the airport, Class E airspace is no longer required for instrument flight rule (IFR) operations at this airport. This action removes the Class E airspace at El Campo Metro Airport, El Campo, TX.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

Comment Date: Comments must be received on or before September 10, 1995.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 95–ASW–11, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the removal of Class E airspace at El Campo, TX, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on November 9, 1995. However, after the review of any comments, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the Class E airspace providing controlled airspace for IFR operations at El Campo, TX. The permanent closing of the El Campo Metro Airport, El Campo, TX removes the need to have designated Class E airspace for IFR operations at the airport. The Class E airspace at El Campo, TX, will be removed by this final rule, effective on November 9, 1995.

Since this action merely involes the removal of Class E airspace as a result of the permanent closing of El Campo Metro Airport, El Campo, TX, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet Above the Surface

* * * * *

ASW TX E5 El Campo, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17401 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28265; Amdt. No. 1673]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. the FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permenant (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as listed above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated PDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on June 30, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 24 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
06/14/95	WI.	Minocqua-Woodruff	Lakeland/Noble F. Lee Memorial Field.	FDC 5/2692	NDB OR GPS RWY 18 AMDT 12...
06/14/95	WI.	Minocqua-Woodruff	Lakeland/Noble F. Lee Memorial Field.	FDC 5/2693	NDB OR GPS RWY 28 AMDT 11...
06/14/95	WI.	Minocqua-Woodruff	Lakeland/Noble F. Lee Memorial Field.	FDC 5/2694	NDB OR GPS RWY 36 AMDT 9...
06/15/95	MD.	Baltimore	Martin State	FDC 5/2720	NDB OR GPS RWY 33 AMDT 7A...
06/15/95	MD.	Baltimore	Martin State	FDC 5/2723	NDB OR GPS RWY 15 AMDT 7A...
06/20/95	GA.	Atlanta	DeKalb-Peachtree	FDC 5/2805	VOR/DME OR GPS RWY 20L AMDT 1...
06/20/95	GA.	Atlanta	DeKalb-Peachtree	FDC 5/2806	VOR/DME OR GPS RWY 27 AMDT 1...
06/20/95	GA.	Atlanta	DeKalb-Peachtree	FDC 5/2807	ILS RWY 20L AMDT 7...
06/20/95	GA.	Savannah	Savannah Intl	FDC 5/2828	ILS RWY 36, AMDT 6...
06/20/95	MD.	Baltimore	Martin State	FDC 5/2740	LOC RWY 15 ORIG–A...
06/20/95	MD.	Cumberland	Greater Cumberland Regional	FDC 5/2808	LOC/DME RWY 23 AMDT 5...
06/20/95	MD.	Cumberland	Greater Cumberland Regional	FDC 5/2809	LOC–A AMDT 3...
06/20/95	WY.	Worland	Worland Muni	FDC 5/2823	VOR OR GPS RWY 16 AMDT 5...
06/22/95	WI.	Juneau	Dodge County	FDC 5/2863	LOC RWY 26 ORIG...
06/23/95	AL.	Birmingham	Birmingham Intl	FDC 5/2894	ILS RWY 5 AMDT 41...
06/23/95	DE.	Wilmington	New Castle County	FDC 5/2892	ILS RWY 1 AMDT 20...
06/23/95	TX.	Port Isabel	Port Isabel-Cameron Co.	FDC 5/2889	VOR OR GPS–A AMDT 5...
06/23/95	TX.	Port Isabel	Port Isabel-Cameron Co.	FDC 5/2890	VOR/DME OR GPS–B AMDT 2...
06/26/95	PA.	Philadelphia	Philadelphia Intl	FDC 5/2962	CONVERGING ILS RWY 9R AMDT 3...

Birmingham

Birmingham Intl
Alabama
ILS RWY 5 AMDT 41...
FDC Date: 06/23/95

FDC 5/2894/BHM/ FI/P BIRMINGHAM INTL, BIRMINGHAM, AL. ILS RWY 5 AMDT 41...MISSED APPROACH INSTRUCTIONS... CLIMB TO 3000 DIRECT ROEBY LOM AND HOLD NE, RT, 236 INBOUND OR WHEN DIRECTED BY ATC CLIMB TO 3600 VIA HEADING 056 AND GAD R–231 TO SPATT INTERSECTION AND HOLD, NE, RT, 231 INBOUND. THIS BECOMES ILS RWY 5 AMDT 41A.

Wilmington

New Castle County
Delaware
ILS RWY 1 AMDT 20...
FDC Date: 06/23/95

FDC 5/2892/ILG/ FI/P NEW CASTLE COUNTY, WILMINGTON, DE. ILS RWY 1 AMDT 20...MIDDLE MARKER REMOVED FROM SERVICE. CASTL INT MNMS... CIRLCING CAT C MDA/HAA 600/520. THIS IS ILS RWY 1 AMDT 20A.

Atlanta

Dekalb-Peachtree
Georgia
VOR/DME OR GPS RWY 20L AMDT 1...
FDC Date: 06/20/95

FDC 5/2805/PDK/ FI/P DEKALB-PEACHTREE, ATLANTA, GA. VOR/DME OR GPS RWY 20L AMDT 1...ADD TERMINAL ROUTE... ATL VORTAC TO PDK VOR/DME COURSE 024.74/16.26NM MINIMUM ALTITUDE 4000. THIS BECOMES VOR/DME OR GPS RWY 20L AMDT 1A.

Atlanta

Dekalb-Peachtree
Georgia
VOR/DME OR GPS RWY 27 AMDT 1...
FDC Date: 06/20/95

FDC 5/2806/PDK/ FI/P DEKALB-PEACHTREE, ATLANTA, GA. VOR/DME OR GPS RWY 27 AMDT 1...ADD TERMINAL ROUTE... ATL VORTAC TO PDK VOR/DME COURSE 024.74/16.26NM MINIMUM ALTITUDE 4000. THIS BECOMES VOR/DME OR GPS RWY 27 AMDT 1A.

Atlanta

Dekalb-Peachtree
Georgia
ILS RWY 20L AMDT 7...
FDC Date: 06/20/95

FDC 5/2807/PDK/ FI/P DEKALB-PEACHTREE, ATLANTA, GA. ILS RWY 20L AMDT 7...ADD TERMINAL ROUTE...ATL VORTAC TO PDK VOR/DME COURSE 024.74/16.26NM MINIMUM ALTITUDE 4000. THIS BECOMES ILS RWY 20L AMDT 7A.

Savannah

Savannah Intl
Georgia
ILS RWY 36, AMDT 6...
FDC Date: 06/20/95

FDC 5/2828/SAV/ FI/P SAVANNAH INTL, SAVANNAH, GA. ILS RWY 36, AMDT 6...DELETE... MNM ALT DANA 1600* *LOC ONLY. ADD... MNM ALT DANNA 1600. CHANGE MNM GLIDE SLOPE INTERCEPT ALT TO READ...2000* *1600 WHEN AUTHORIZED BY ATC. THIS BECOMES ILS RWY 36, AMDT 6A.

Baltimore

Martin State
Maryland
NDB OR GPS RWY 33 AMDT 7A...
FDC Date: 06/15/95

FDC 5/2720/MTN/ FI/P MARTIN STATE, BALTIMORE, MD. NDB OR GPS RWY 33 AMDT 7A...MISSED APPROACH... CLIMB TO 2500 ON 326 DEG BEARING FROM MTN NDB TO ODORS INT/I–MTN 6.8 DME AND HOLD. THIS IS NDB OR GPS RWY 33 AMDT 7B.

Baltimore

Martin State
Maryland
NDB OR GPS RWY 15 AMDT 7A...
FDC Date: 06/15/95

FDC 5/2723/MTN/ FI/P MARTIN STATE, BALTIMORE, MD. NDB OR GPS RWY 15 AMDT 7A...MNM ALT AT ODORS INT/I–BQG 6.8 DME 2500 FOR HOLDING PATTERN IN LIEU OF PROCEDURE TURN. RAISE ODORS INT/I–BQG 6.8 DME/FAF ALT TO 2200. CHANGE MISSED APPROACH TO CLIMBING RIGHT TURN TO 2500 VIA MTN BEARING 326 DEG TO ODORS

INT/I–BQG 6.8 DME AND HOLD. FEEDER BAL VORTAC TO ODORS INT/I–BQG 6.8 DME 2500. THIS IS NDB OR GPS RWY 15 AMDT 7B.

Baltimore

Martin State
Maryland
LOC RWY 15 ORIG–A...
FDC Date: 06/20/95

FDC 5/2740/MTN/ FI/P MARTIN STATE, BALTIMORE, MD. LOC RWY 15 ORIG–A...MNM ALT AT MEHAN INT/I–BQG 14.4 DME 2500 FOR HOLDING PATTERN IN LIEU OF PROCEDURE TURN. CHANGE MISSED APPROACH TO CLIMBING RIGHT TURN TO 2500 FVIA HEADING OF 312 DEG AND BAL R–012 TO MEHAN INT/I–BQG 14.4 DME AND HOLD. FEEDER EMI VORTAC TO MEHAN INT/I–BQG 14.4 DME 2600. FEEDER TAFFI INT TO MEHAN INT/IBQG 14.4 DME 2600. THIS IS LOC RWY 15 ORIG–B.

Cumberland

Greater Cumberland Regional
Maryland
LOC/DME RWY 23 AMDT 5...
FDC Date: 06/20/95

FDC 5/2808/CBE/ FI/P GREATER CUMBERLAND REGIONAL, CUMBERLAND, MD. LOC/DME RWY 23 AMDT 5...CIRCLING MDA/HAA CATS A/B/C 2060/1284, CAT D 2340/1564. VIS CAT A 1 1/4, CAT B 1 1/2, CATS C/D 3. THIS BECOMES LOC/DME RWY 23 AMDT 5A.

Cumberland

Greater Cumberland Regional
Maryland
LOC–A AMDT 3...
FDC Date: 06/20/95

FDC 5/2809/CBE/ FI/P GREATER CUMBERLAND REGIONAL, CUMBERLAND, MD. LOC–A AMDT 3...CIRCLING MDA/HAA CATS A/B/C 2060/1284, CAT D 2340/1564. THIS BECOMES LOC/A AMDT 3A.

Philadelphia

Philadelphia Intl
Pennsylvania
CONVERGING ILS RWY 9R AMDT 3...
FDC Date: 06/26/95

FDC 5/2962/PHL/FI/P PHILADELPHIA INTL, PHILADELPHIA, PA. CONVERGING ILS RWY 9R AMDT 3...CHANGE FINAL APPROACH COURSE TO 087.44 DEG. CHANGE TERMINAL ROUTE INBOUND COURSE BWINE INT TO KELEE INT/GOONY OM TO 087.44 DEG. THIS IS CONVERGING ILS RWY 9R AMDT 3A.

Port Isabel

Port Isabel-Cameron Co.
Texas
VOR OR GPS–A AMDT 5...
FDC Date: 06/23/95

FDC 5/2889/T31/FI/P PORT ISABEL-CAMERON CO., PORT ISABEL, TX. VOR OR GPS–A AMDT 5...CIRCLING MDA CAT A 580, CAT B–C 640...HAA CAT A 561, CAT B–C 621. THIS IS VOR OR GPS–A AMDT 5A.

Port Isabel

Port Isabel-Cameron Co.
Texas
VOR/DME OR GPS–B AMDT 2...
FDC Date: 06/23/95

FDC 5/2890/T31/ FI/P PORT ISABEL–CAMERON CO., PORT ISABEL, TX. VOR/DME OR GPS–B AMDT 2...CIRCLING MDA CAT A 440, CAT B–C 640...HAA CAT A 421, CAT B–C 621. THIS IS VOR/DME OR GPS–B AMDT 2A.

Minocqua–Woodruff

Lakeland/Noble F. Lee Memorial Field
Wisconsin
NDB OR GPS RWY 18 AMDT 12...
FDC Date: 06/14/95

FDC5/2692/ARV/ FI/P LAKELAND/NOBLE F. LEE MEMORIAL FIELD, MINOCQUA–WOODRUFF, WI. NDB OR GPS RWY 18 AMDT 12...MNMS... S–18 HAT 550 ALL CATS, CIRCLING HAA 550 CATS A/B, 570 CATS C/D. WAUSAU ALSTG MNMS... S–18 HAT 750 ALL CATS, CIRCLING HAA 750 CATS A/B, 770 CATS C/D. THIS IS NDB OR GPS RWY 18 AMDT 12A.

Minocqua–Woodruff

Lakeland/Noble F. Lee Memorial Field
Wisconsin
NDB OR GPS RWY 28 AMDT 11...
FDC Date: 06/14/95

FDC 5/2693/ARV/ FI/P LAKELAND/NOBLE F. LEE MEMORIAL FIELD, MINOCQUA–WOODRUFF, WI. NDB OR GPS RWY 28 AMDT 11...MNMS... S–28 HAT 576 ALL CATS, CIRCLING HAA 570 ALL CATS. WAUSAU ALSTG MNMS... S–28 HAT 776 ALL CATS, CIRCLING HAA 770 ALL CATS. THIS IS NDB OR GPS RWY 28 AMDT 11A.

Minocqua–Woodruff

Lakeland/Noble F. Lee Memorial Field
Wisconsin
NDB OR GPS RWY 25 AMDT 9...
FDC Date: 06/14/95

FDC 5/2694/ARV/ FI/P LAKELAND/NOBLE F. LEE MEMORIAL FIELD, MINOCQUA–WOODRUFF, WI. NDB OR GPS RWY 36 AMDT 9...DIST FAF TO MAP 5.35 THLD 5.35. MNMS... CIRCLING HAA 450/ CATS A/B 570 CATS C/D. WAUSAU ALSTG MNMS...CIRCLING HAA 650 A/B, 770 CATS C/D. THIS IS NDB OR GPS RWY 36 AMDT 9A.

Juneau

Dodge County
Wisconsin
LOC RWY 26 ORIG...
FDC Date: 06/22/95

FDC 5/2863/UNU/ FI/P DODGE COUNTY, JUNEAU, WI. LOC RWY 26 ORIG...MINIMUMS... S–LOC 26 CATS A, B, C VIS 1. MADISON ALSTG MNMS...S–LOC 26 CATS A, B VIS 1. ADD NOTE... INOP TABLE DOES NOT APPLY. DELETE NOTE... INOP TABLE... THRU... MADISON ALSTG MNMS. THIS IS LOC RWY 26 ORIG–A.

Worland

Worland Muni
Wyoming
VOR OR GPS RWY 16 AMDT 5...
FDC Date: 06/20/95

FDC 5/2823/WRL/ FI/P WORLAND MUNI, WORLAND, WY. VOR OR GPS RWY 16 AMDT 5...CHANGE ALT MNMS NOTE TO READ...ALT MNMS NA WHEN LOCAL WEATHER NOT RECEIVED. THIS IS VOR OR GPS RWY 16 AMDT 5A.

[FR Doc. 95–17409 Filed 7–14–95; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28266; Amdt. No. 1674]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:
1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 30, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective SEPT 14, 1995*

Slidell, LA, Slidell, NDB or GPS RWY 36, Orig CANCELLED
Slidell, LA, Slidell, NDB RWY 36, Orig
The following are *correctred* procedure titles cancelling or adding ''or GPS'' published in Transmittal Letter 95–14
Orland, CA Haigh Field, VOR or GPS–A, Amdt 6
Oroville, CA, Oroville Muni, VOR or GPS–A, Amdt 5
Red Bluff, CA, Red Bluff Muni, VOR/DME or GPS RWY 15, Amdt 5
Red Bluff, CA, Red Bluff Muni, VOR or GPS RWY 33, Amdt 6

[FR Doc. 95–17406 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28264; Amdt. No. 1672]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace

System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 30, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows;

** * * Effective July 20, 1995*

Boston, MA, General Edward Lawrence Logan Intl, LOC 2 RWY 4R, Orig
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RNAV RWY 4R, Orig
St James, MN, St James Muni, NDB RWY 32, Orig
Portland, OR, Portland Intl, VOR/DME–C, Orig
Portland, OR, Portland Intl, ILS RWY 10L, Orig
Portland, OR, Portland Intl, LOC BC RWY 10L, Amdt 14, CANCELLED
Sheridan, WY, Sheridan County, VOR RWY 14, Orig
Sheridan, WY, Sheridan County, ILS/DME RWY 32, Orig

** * * Effective August 17, 1995*

Winamac, IN, Arens Field, NDB or GPS RWY 9, Amdt 1
Winamac, IN, Arens Field, VOR/DME or GPS–A, Amdt 5
Baton Rouge, LA, Baton Rouge Metropolitan/ Ryan Field, GPS RWY 31, Orig
Ruston, LA, Ruston Muni, NDB RWY 34, Amdt 2, CANCELLED
Sheridan, WY, Sheridan County, VOR OR GPS RWY 13, Amdt 5A, CANCELLED
Sheridan, WY, Sheridan County, VOR/DME OR GPS RWY 31, Amdt 6, CANCELLED

** * * Effective September 14, 1995*

Crescent City, CA, Jack McNamara Field, VOR RWY 11, Amdt 10
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 11, Amdt 12
Crescent City, CA, Jack McNamara Field, ILS/ DME RWY 11, Amdt 6
Gunnison, CO, Gunnison County, GPS–B, Orig
Mount Vernon, IL, Mount Vernon, VOR RWY 5, Amdt 15
Mount Vernon, IL, Mount Vernon, VOR or GPS RWY 23, Amdt 15
Mount Vernon, IL, Mount Vernon, ILS RWY 23, Amdt 10
Columbus, IN, Columbus Muni, NDB or GPS RWY 23, Amdt 10
Columbus, IN, Columbus Muni, ILS RWY 23, Amdt 7
Greensburg, IN, Greensburg-Decatur County, VOR or GPS–A, Amdt 2
Cheboygan, MI, Cheboygan City-County, VOR or GPS RWY 9, Amdt 7
Pellston, MI, Pellston Regional Airport of Emmet County, VOR/DME or GPS RWY 5, Amdt 11
Pellston, MI, Pellston Regional Airport of Emmet County, VOR or GPS RWY 23, Amdt 15
Pellston, MI, Pellston Regional Airport of Emmet County, ILS RWY 32, Amdt 10
Fremont, NE, Fremont Muni, VOR RWY 13, Orig
Fremont, NE, Fremont Muni, NDB OR GPS RWY 13, Amdt 2
Artesia, NM, Artesia Muni, GPS RWY 21, Orig
Ruidoso, NM, Sierra Blanca Regional, GPS RWY 24, Orig
Durant, OK, Eaker Field, GPS RWY 30, Orig
Guymon, OK, Guymon Muni, GPS RWY 36, Orig
Allendale, SC, Allendale County, VOR or GPS–A, Amdt 5
Loris, SC, Twin City, NDB Rwy 26, Amdt 2, CANCELLED
Seymour, TX, Seymour Minicipal, GPS RWY 17, Orig

Effective Upon Publication

Teterboro, NJ, Teterboro, ILS RWY 6, Amdt 28

[FR Doc. 95–17408 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–233; Amendment Number 69R]

Ohio Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning the filing of financial interest statements, acceptance of gifts and gratuities, appeal procedures for remedial actions regarding prohibited financial interests, and the submittal of yield data with requests for phase III bond release on areas reclaimed to pasture or grazing land.

EFFECTIVE DATE: July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly C. Brock, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 69 by letter dated September 22, 1994 (Administrative Record No. OH–2059). In this amendment, Ohio proposed to revise two rules at Ohio Administrative Code (OAC) sections 1501:13–1–03 and 13–7–05 to make the Ohio program as effective as the corresponding Federal regulations concerning financial interest statements, appeal procedures for remedial actions regarding prohibited financial interests, and yield data for pasture and grazing land.

OSM announced receipt of PA 69 in the October 21, 1994, **Federal Register** (59 FR 53122), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 21, 1994.

OSM and Ohio staff met on February 6, 1995, to discuss OSM's questions and concerns about PA 69 (Administrative Record No. OH–2098). In response to OSM's February 6, 1995, questions and comments, Ohio provided Revised Program Amendment Number 69 (PA 69R) by letter dated March 8, 1995 (Administrative Record No. OH–2099). In PA 69R, Ohio proposed further revisions to one rule at OAC section 1501:13–1–03 to include hearing officers of the Ohio Reclamation Board of Review under that rule's definition of ''employee,'' to delete separate references to those hearing officers, and to prohibit the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review.

OSM announced receipt of PA 69R in the March 17, 1995, **Federal Register** (60 FR 14401), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 3, 1995.

On April 19, 1995 (Administrative Record No. OH–2114), OSM notified Ohio that OSM had made an error in its February 6, 1995, questions and comments on PA 69 and had omitted one necessary change to OAC 1501:13–1–03 paragraph (L)(1). By letter dated May 3, 1995 (Administrative Record No. OH–2115), Ohio submitted a final revised version of PA 69R.

OSM announced receipt of revised PA 69R in the May 12, 1995, **Federal Register** (60 FR 25660), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public

comment period closed on May 30, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Only substantive changes to Ohio's rules are discussed below. Rule revisions which are not discussed below concern editorial changes intended to improve the clarity and readability of the rules.

A. Financial Interest Statements (OAC Section 1501:13–1–03)

1. Definition of ''Employee''

Ohio is revising paragraph (D)(2) to provide that members of the Ohio Board on Unreclaimed Strip Mined Lands are included under the definition of ''employee.'' Ohio is also revising this paragraph to provide that, for the purposes of OAC section 1501:13–1–03, hearing officers for the Ohio Reclamation Board of Review shall also be included within the definition of ''employee''. Ohio is also revising paragraphs (L) (1) and (2) to delete separate references to the Reclamation Board of Review's hearing officers because those hearing officers are to be included under the definition of ''employee'' in this rule.

The corresponding Federal rule at 30 CFR 705.5 defines ''employee'' to mean any person employed by the State Regulatory Authority who performs any function or duty under SMCRA and members of advisory boards who perform any function or duty under SMCRA if they perform decision-making functions for the State Regulatory Authority under State law or regulations. The Ohio Board on Unreclaimed Strip Mined Lands is a decision-making advisory board of this type and the hearing officers for the Ohio Reclamation Board of Review are employed by and perform functions for the State Regulatory Authority. Therefore, the Director finds that Ohio's inclusion of these persons under the State definition of ''employee'' is appropriate and no less effective than the corresponding Federal definition.

2. Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review

Ohio is revising paragraph (I)(1) to require that employees and members of the Ohio Reclamation Board of Review report all required information concerning employment and financial interests on Form OSM–23.

The corresponding Federal rule at 30 CFR 705.11 requires that employees of the State Regulatory Authority and members of advisory boards established in accordance with State law to represent multiple interests who perform a function or duty under SMCRA must file a statement of employment and financial interest. The Ohio Reclamation Board of Review is an advisory board of this type. The Federal regulation at 30 CFR 705.10 requires that the required employment and financial interest information be collected on OSM Form 23. The Director therefore finds that Ohio's requirement that its employees and members of the Ohio Reclamation Board of Review file employment and financial interest statements using OSM Form 23 is no less effective than the corresponding Federal regulations at 30 CFR 705.10 and 705.11.

3. Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review

Ohio is revising paragraph (J)(1) to prohibit, with certain exceptions, the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty.

30 CFR 705.18 prohibits employees from soliciting or accepting gifts and gratuities from coal companies with interests that may be substantially affected by the employee's performance of the employee's official duty. Although there is no corresponding Federal regulation prohibiting acceptance of gifts and gratuities by members of advisory boards established in accordance with State law to represent multiple interests who perform a function or duty under SMCRA, the Director finds that the State requirement regarding members of the Ohio Reclamation Board of Review is not inconsistent with the Federal regulations at 30 CFR 705.18 or with the revisions which Ohio is making elsewhere in this rule.

4. Appeal of Remedial Actions

Ohio is revising paragraph (L)(1) to specify that nothing in OAC section 1501:13–1–03 modifies any right of appeal that any employee may have under State law of a decision by the Chief of the Division of Reclamation, Ohio Department of Natural Resources, on an employee's appeal of remedial action for prohibited financial interests.

Although there are no corresponding Federal regulations to this new provision proposed in paragraph (L)(1), the Director finds that this provision is not inconsistent with the Federal rule at 30 CFR 705.21(a) which allows employees to file an appeal through established procedures within their State.

Ohio is also revising paragraphs (L)(2) to provide that only the Chief of the Division of Reclamation may appeal a remedial action to the Director of OSM. The corresponding Federal rule at 30 CFR 705.21(b) allows that the Head of the State Regulatory Authority may file an appeal of remedial action concerning a prohibited financial interest with the Director of OSM who will refer the appeal to the Conflict of Interest Appeals Board within the U.S. Department of the Interior. The Director finds that Ohio's proposed paragraph (L)(2) is not less effective than 30 CFR 705.21(b).

Ohio is also adding paragraph (L)(3) to provide that members of the Ohio Reclamation Board of Review may request advisory opinions from the Director of the Office of Surface Mining Reclamation and Enforcement on issues pertaining to an apparent prohibited financial interest. However, resolution of conflicts is governed by section 1513.05 and 1513.29 of the Ohio Revised Code.

Although there is no corresponding Federal regulation concerning appeals by members of advisory boards, the Director finds that the appeal provision proposed in paragraph (L)(3) is not inconsistent with the Federal regulations at 30 CFR 705.21 or with the revisions which Ohio is making elsewhere in this rule.

B. Yield Data for Pasture or Grazing Land (OAC Section 1501:13–7–05)

1. Ohio is adding the requirement in paragraph (A)(2)(c)(ii) that requests for approval of phase III reclamation on acreage reclaimed as pasture or grazing land (as well as acreage reclaimed to cropland or prime farmland) must include yield data.

The Federal regulations at 30 CFR 816/817.116(b)(1) require that, for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area shall be at least equal to success standards approved by the regulatory authority. Ohio's revegetation standards for pasture and grazing land at OAC 1501:13–9–15 paragraph (G)(3)(a) require that the planted species equal or exceed the county average yield for hay for any two years of the period of extended responsibility except the first year. In order to satisfy this requirement, requests for approval of

phase III reclamation must therefore include the required yield data. The Director therefore finds that the proposed requirement in paragraph (A)(2)(c)(ii) is necessary for consistency within Ohio's regulations and is not consistent with the Federal regulations at 30 CFR 816/817.116(b)(1).

IV. Summary and Disposition of Comments

Public Comments

On October 21, 1994; March 17, 1995; and May 12, 1995, the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. OSM received the following three comments on the amendment dated April 1, 1995, from the Ohio Mining and Reclamation Association (OMRA).

(1) Ohio Has Not Held a Hearing on the Proposed Rule Changes

The Director believes that this comment is not immediately relevant to his decision on this amendment. The public hearing mentioned in the comment is part of Ohio's internal rule-filing process. If further rule changes become necessary as a result of comments received during Ohio's rule filing, Ohio will resubmit those proposed changes to OSM for review under the program amendment process.

(2) The Requirement at OAC 1501:13–1–03 for Members of the Ohio Board of Unreclaimed Strip Mined Land To File Financial Interest Statements Duplicates Requirements Already in Effect for Those Members of the Board Who Are Also Members of the Ohio Legislature

The Director agrees with the comment that there may be some duplication in these filings. However, OSM and the Division of Reclamation, Ohio Department of Natural Resources, have no control over the nature of the financial information required by other Ohio laws from members of the State legislature. That required information may or may not satisfy the reporting requirements of OAC 1501:13–1–03(I) and the corresponding Federal regulations at 30 CFR 705.17. OSM and Ohio must therefore maintain separate reporting requirements specific to the provisions of SMCRA, the accompanying Federal regulations, and the approved State regulatory program.

(3) The Division of Reclamation, Ohio Department of Natural Resources, May Not Have the Authority To Request the Indicated Financial Information From Members of the Ohio Board on Unreclaimed Strip Mined Land

The Director does not agree with this comment. As discussed above, OSM concurs with the appropriateness of including those board members under the State's definition of ''employee.'' Ohio Revised Code section 1513.04(D) prohibits State employees from having a direct or indirect financial interest in any coal mining or reclamation operation. Ohio's proposed reporting regulations at OAC 1501:13–1–03 are therefore a reasonable extension of its legislated authority to prohibit financial conflicts of interest by its employees.

No other public comments were received. No public hearings were held as no one requested the opportunity to provide testimony.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Regional Director of the U.S. Environmental Protection Agency (EPA) and from the heads of four other Federal agencies and one State agency with an actual or potential interest in the Ohio program. Nonsubstantive comments were received from the EPA, the Soil Conservation Service, the Mine Safety and Health Administration, and the Ohio Historic Preservation Office. No other agency comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on September 22, 1994, and revised on March 8, and May 3, 1995.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alternation of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (xxx) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(xxx) The following amendment (Program Amendment 69R) pertaining to the Ohio regulatory program, as submitted to OSM on September 22, 1994, and revised on March 8 and May 3, 1995, is approved, effective July 17, 1995: OAC 1501:13–1–03(D)(2), (I)(1), (J)(1), and (L)(1)–(3) (Financial interest statements) and OAC 1501:13–7–05(A)(2)(b)(ii), (A)(2)(c)(ii) and (B)(2)(c) (Yield data for phase III bond release).

[FR Doc. 95–17379 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13–95–024]

Special Local Regulations for Marine Events; Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.1303.

SUMMARY: This notice implements 33 CFR 100.1303 for the annual Kennewick, Washington, Columbia Unlimited Hydroplane Races, to be held July 28, 1995, through July 30, 1995, on the Columbia River in Kennewick, Washington, These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of race participants, spectators, and other vessel traffic transiting the area.

EFFECTIVE DATE: The regulations in 33 CFR 100.1303 will be in effect from 8:30 a.m. (PDT) to 7:30 p.m. (PDT) on Friday, July 28, 1995, and on Saturday, July 29, 1995. On Sunday, July 30, 1995, the regulations will be in effect from 8:30 a.m. (PDT) to 9 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG C. A. Roskam, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG C. A. Roskam, Project Manager for the Captain of the Port, and LCDR J.C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Discussion of Regulations

The race sponsor, Tri-City Water Follies, submitted an application to hold this year's race on July 28, 29, and 30, 1995. The event is the 30th Annual Kennewick, Washington, Columbia Unlimited Hydroplane Race. Fifty formula one unlimited hydroplanes will participate in the races which will consist of several five-boat heats traveling around an oval course. The location of the race is midstream on the Columbia River, between the western end of Hydro Island, river mile 332, and the western end of Clover Island, river mile 329. Because this is the type of event contemplated by the regulations, and the safety of the participants, spectators, and vessels transiting the area would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.1303 are being implemented.

Dated: June 23, 1995.

C.E. Bills,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–17490 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD07–95–008]

RIN 2115–AE46

Special Local Regulations: City of Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Miami Super Boat National Championship. The event will be held on September 10, 1995, from 12 p.m. EDT (Eastern Daylight Time) until 3:30 p.m. EDT. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective on September 10, 1995 at 11:30 a.m. EDT and terminate at 4:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 11, 1995 is established with these same times.

ADDRESSES: Documents referred to in this preamble are available for inspection or copying from at the offices of Coast Guard Group Miami, FL, 100 Macarthur Causeway, Miami Beach, FL 33139 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG B.E. Dailey, Coast Guard Group Miami, Florida at (305) 535–4492.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of these regulations are LTJG Bryan E. Dailey, Project Officer, USCG Group Miami, and LT Jacqueline Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

Super Boat Racing, Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The race will take place in the Atlantic Ocean 1,000 feet off the Miami Beach shore from Miami Beach Clock Tower to Atlantic Heights. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

Regulatory Evaluation

This regulation 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 been exempted from review 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying from the office listed in the ''ADDRESSES'' section above. As a condition to the permit, the applicant is required to educate the event participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–008 is added to read as follows:

§ 100.35T07–008 City of Miami Beach, FL

(a) *Regulated Area:*

(1) A regulated area is established by a line joining the following points:

25° 45′.5N, 080° 07′.8W; thence to,
25° 45′.3N, 080° 06′.4W; thence to,
25° 51′.2N, 080° 05′.7W; thence to,
25° 51′.35N, 080° 07′.1W; thence along the shoreline to the starting point.

(2) A spectator area is established in the regulated area for spectator traffic and is defined by a line joining the following points, starting from:

25° 46′.35N, 080° 06′.8W; thence to,
25° 45′.3N, 080° 06′.4W; thence to,
25° 51′.2N, 080° 05′.7W; thence to,
25° 51′.3N, 080° 06′.2W; and back to the starting point.

(3) A buffer zone of 300 feet separates the race course and the spectator areas. [NAD 83]

(b) *Special local regulations:*

(1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the race course at all times.

(c) *Effective dates:* This section is effective on September 10, 1995 at 11:30 a.m. EDT and terminate on 4:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 11, 1995 is established with these same times.

Dated: June 8, 1995.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 95–17492 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–95–037]

Special Local Regulations for Marine Events; Washington Summer Festival; Tar River, Washington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for Washington Summer Festival. This special local regulation is necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: This regulation is effective from 1 p.m. to 4 p.m. July 30, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Fort Macon Operations (919) 247–4545.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until May 23, 1995, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and CDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Washington Beaufort County Chamber of Commerce submitted an

application to hold the Washington Summer Festival on July 30, 1955, on the Tar River. The event consists of a water ski show involving approximately four ski boats. The boats will make several passes in both directions with different skiing formations.

Discussion of Regulations

These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event. Since the main channel will not be closed for an extended period of time, commercial traffic should no be severely disrupted.

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 been exempted from review 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 proposal to be so minimal that a fully Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for three hours, and the impacts on routine navigation are expected to be minimal.

Small Entities

Because it expects the impact of this rule to be minimal, 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.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raised sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal, and consistent with Section 2.B of Commandant Instruction M16475.1B has conducted an environmental assessment of the proposed action, and has determined that the actions to be taken under this regulation will have no significant impact on the environment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), reporting and recordkeeping requirements, waterways.

Proposed Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 1090.35.

2. A temporary Section 100.35–537 is added to read as follows:

§ 100.35T05–037 Tar River, Washington, North Carolina.

(a) *Regulated area:* The waters of the Tar River bounded to the North by the Highway 17 Bridge, center point at latitude 35°32′33″ North, longitude 77°03′42″ West; and bounded to the South by the Tar River Railroad Bridge, center point at latitude 35°32′08″ North, longitude 77°03′12″ West. [NAD 83]

(b) *Definitions:* Coast Guard Patrol Commander. The Coast Guard Patrol Commander is any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon to act on his behalf.

(c) *Special Local Regulations:*

(1) Except for participants of Washington Summer Festival and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective dates:* This section is effective from 1 p.m. to 4 p.m. July 30, 1995.

Dated: June 14, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 95–17493 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–95–052]

RIN 2115–AE47

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the operating regulations that govern the Manchester Amtrak Bridge (formerly the Boston and Maine Railroad Bridge), at mile 1.0 in Manchester, Massachusetts. This change will require the bridge to be crewed for three additional hours each day during the 1995 boating season. This rule is based upon satisfactory experience with a temporary deviation from the operating regulations that was in effect for the 1994 boating season. Comment letters supporting the deviation were received in March 1995, well after the end of the comment period for the deviation had ended in October, 1994. Since those comment letters were received at such a late date, it was not possible to make a permanent change to the regulations in time for the 1995 boating season. The Coast Guard determined that in order to implement desired changes to the operating regulations in time for the 1995 boating season, a temporary final rule would be required, with a comment period ending after the boating season. This change may be proposed as a permanent change as a result of comments received.

EFFECTIVE DATE: This rule is effective from July 17, 1995 through September 30, 1995. Comments must be received on or before October 31, 1995.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. Comments also may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by

submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–052), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″×11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Officer, Bridge Branch and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On June 14, 1994 a temporary deviation from the operating regulations for the Manchester Amtrak Bridge was published in the **Federal Register** (59 FR 30524; June 14, 1994). This deviation required that the bridge be crewed an additional 5 hours daily from 1 June through 30 September. Interested parties were given until October 31, 1994 to submit comments regarding the temporary deviation. The Coast Guard received only one letter during the comment period. The Massachusetts Bay Transportation Authority (MBTA), the bridge operator, opposed extending the operating hours of the bridge.

After the close of the comment period the Coast Guard received seven petition letters, as well as one letter representing 45 mariners located upstream of the bridge at the Manchester Harbor Marina, one letter from the Manchester Chief of Police and one letter from the Manchester Harbormaster. All of the letters were in favor of making the operating schedule of the temporary deviation a permanent change to the regulations. In response to these comments, the Coast Guard initiated this rulemaking.

Background and Purpose

The Manchester Amtrak Bridge was formerly owned and operated by the Boston and Maine Railroad (B&M), which is no longer in business. The current owner of the bridge is the National Railroad Passenger Corporation (Amtrak). The MBTA is the bridge operator.

The existing operating regulations require that the bridge be crewed from 1 April through 1 November from 9 a.m. to 6 p.m., with a one hour lunch closure between 1 p.m. and 2 p.m. daily.

The Coast Guard received a request in May, 1994, from the Manchester Chief of Police and several mariners located upstream of the bridge to extend the hours that the Manchester Amtrak Bridge is crewed during the peak boating season from June 1 through September 30.

In response, the First Coast Guard District Commander signed a temporary (90 day) deviation from the operating regulations to evaluate the following changes during the 1994 boating season.

The temporary deviation extended the hours that the bridge was crewed by an additional five hours a day, from June 1 through September 30. The operating hours implemented by the temporary deviation required the bridge to be crewed from 8 a.m. to 9 p.m. daily. It also eliminated the one hour lunch hour closure from 1 p.m. to 2 p.m. each day.

Following the expiration of the temporary deviation, the Coast Guard received seven petition letters from mariners, one letter representing forty-five boat owners located upstream of the bridge at the Manchester Harbor Marina, one letter from the Manchester Chief of Police and one letter from the Manchester Harbormaster. All the letters were in favor of the change to the operating hours and urged the Coast Guard to make them a permanent change to the regulations.

The Coast Guard received only one letter in opposition to the proposed changes to the regulations. The MBTA, the bridge operator, opposed the proposal to extend the operating hours of the bridge. Their objection was based upon the additional cost of crewing the bridge during the boating season.

The Coast Guard did not proceed with a permanent change to the regulations immediately after the temporary deviation expired because it received only one comment letter from the MBTA, in opposition, during the comment period that closed October 31, 1994.

The letters supporting the change were received March 15, 1995, well after the comment period for the temporary deviation had ended. The Coast Guard believes that based upon all the comment letters received and the safety issues involved, that a change to the regulations is justified.

The Coast Guard has decided that the hours the bridge is crewed during the boating season should be increased. In order to meet the reasonable needs of navigation and to not impose an unreasonable burden of expense on the bridge owner, the Coast Guard has determined has an increase of three hours a day from June 1 through September 30, 6 p.m. to 9 p.m., is a reasonable compromise.

The Coast Guard determined that in order to implement the requested changes to the operating regulations in time for the 1995 boating season, a temporary final rule would be required, with a comment period ending after the boating season. A permanent change if appropriate, would then be proposed to make the changes to the operating regulations permanent.

Discussion of Proposed Amendments

This rule will require that the bridge be crewed an extra 3 hours a day during the 1995 boating season. The operating hours will be extended from 6 p.m. until 9 p.m. each day.

The hours that the bridge is crewed from April 1 through May 31 and from October 1 through November 1 would remain 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m. These changes should allow the mariners to enjoy the prime boating season and also enhance public safety.

Previously, mariners were forced either to return early after sailing or tie up at locations outside of the bridge (and the inner harbor where their moorings are located) if they returned after 6 p.m. The harbormaster indicated that the increased operating hours would be a safety advantage in the event of an emergency situation. Planned and emergency patrols would be able to transmit through the bridge to the inner harbor on a more frequent basis in the event of a vessel in distress or a vessel on fire.

The bridge owner will be required by this rule to post and maintain clearance gauges to assist mariners in transiting the bridge during periods when the draw is not crewed or to reduce unnecessary openings.

The advance notice request telephone number has been changed because Boston and Maine, the former bridge owner, has gone out of business and no longer operates the bridge.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. If has been exempted from review 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 to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation and that this change will provide longer operating hours which were requested by mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ''**ADDRESSES**''.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.603 is suspended and a new section 117.604 is added to read as follows:

§ 117.604 Manchester Harbor.

The Manchester Amtrak Bridge at mile 1.0, in Manchester, shall operate as follows:

(a) The draw shall open on signal from April 1 through May 31 from 9 a.m. to 1 p.m. and from 2 p.m. to 6 p.m.; from June 1 through September 30 from 9 a.m. to 1 p.m. and from 2 p.m. to 9 p.m.; from October 1 through November 1 from 9 a.m. to 1 p.m. and from 2 p.m. to 6 p.m.

(b) At all other times, at least two hours notice is required from 6:45 a.m. to 3:45 p.m. and at least five hours notice is required from 3:45 p.m. to 6:45 a.m. by calling the number posted at the bridge.

Dated: July 6, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–17487 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD01–95–092]

RIN 2115–AE47

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: At the request of the New Jersey Department of Transportation (NJDOT), the Coast Guard is implementing temporary regulations for the Route 35 drawbridge across the New Jersey Intracoastal Waterway (ICW), Manasquan River, mile 1.1, between Brielle and Point Pleasant Beach, New Jersey. This temporary rule will extend the hour and half hour opening schedule on weekends and holidays from 9 a.m. to 10 p.m. It will also require that during evening rush hours Monday through Thursday, from 4 p.m. to 7 p.m. and on Fridays from noon to 7 p.m., the draw need only open 15 minutes before and 15 minutes after the hour. This temporary change to the regulations is being implemented to examine its effect on vehicular and marine traffic during the above periods. This action should still provide for the reasonable needs of navigation.

EFFECTIVE DATES: This temporary rule is effective on July 17, 1995 and terminates on September 4, 1995. Comments must be received on or before September 30, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governor Island, New York, 10004–5073, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. The telephone number is (212) 668–7170. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Chief, Bridge Branch, First Coast Guard District, (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–092), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr) First Coast Guard District at the address listed under **ADDRESSES.** The request should include reasons why a hearing would be

beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this notice are Mr. J. Arca, Project Officer, Bridge Branch and Lieutenant Commander Samuel R. Watkins, Project Attorney, District Legal Office.

Background and Purpose

Two bridges cross the Mansaquan River between Brielle and Point Pleasant Beach, New Jersey. The first is the Brielle Point Pleasant (NJTRO) Bridge at mile 0.9, owned and operated by New Jersey Transit Rail Operations (NJTRO). It has a horizontal clearance of 48 feet and a vertical clearance of 3 feet as mean high water (MHW) and 6 feet at mean low water (MLW). The narrow horizontal clearance normally permits the passage of only one boat at a time through the draw in either direction. During the period Memorial Day to Labor Day, the Brielle Point Pleasant (NJTRO) bridge is normally maintained in the open position and closed 4 to 5 minutes before the arrival of a train.

The second bridge is the Route 35 bridge located at mile 1.1. It has a horizontal clerarance of 90 feet and a vertical clearance of 30 feet at MHW and 33 feet at MLW. The Route 35 Bridge opens for commercial vessels, sailboats, and recreational power vessels with tuna towers and outriggers.

During the recreational boating season the daily weekday volume of marine traffic transiting through the Route 35 Bridge between 6 a.m. and 2 p.m. is greater than 200 vessels, and between 2 p.m. and 10 p.m. is more than 400 vessels. The volume of marine traffic increase on weekends. The number of daily vessel transits on weekends between 6 a.m. and 2 p.m. is greater than 600 vessels, and between 2 p.m. and 10 p.m. is more than 1000 vessels.

Train schedules limit the times vessels can transit the waterway. Monday through Friday, 14 trains cross the NJTRO bridge between 1 a.m. and 12 noon; 21 trains cross the bridge between 12 noon and 11 p.m.

Statistics provided by NJDOT show that the number of bridge openings for vessels during the past seven years remained relatively constant, averaging 2300 to 2400 openings a year. The duration of openings average approximately seven minutes. Occasional back to back bridge openings have interrupted vehicular traffic for extended periods of time. The proposed temporary regulation was requested to evaluate the benefits and problems to both vehicular and marine traffic.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after Federal Register publication. Publishing a Notice of Proposed Rulemaking and delaying the effective date of the temporary rule would be contrary to the public interest since implementation of these regulations would not permit evaluation during the prime recreational boating season when the greatest measurable impacts and benefits occur.

The current regulation provides that the draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle, shall open on signal, except that from Memorial Day through Labor Day on Saturdays, Sundays, and Federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw opens at all times as soon as possible for passage of public vessels used for public safety, commercial vessels and vessels in distress.

The NJDOT is also conducting a study of highway traffic patterns both north and south of the route 35 bridge to determine what additional corrective measures are needed to help reduce traffic congestion.

Discussion of Regulation

This temporary rule will require openings 15 minutes before and 15 minutes after the hour from 4 p.m. to 7 p.m. Monday through Thursday and 12 noon through 7 p.m. on Fridays.

It is expected that this will alleviate some vehicular traffic congestion as well as safety problems for recreational and commercial vessels that are caused when they must hold or maneuver between the Route 35 and Brielle Point Pleasant NJTRO bridge while awaiting bridge openings.

This temporary final regulation is being published to evaluate suggested changes to the drawbridge regulation during the prime recreational boating season.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review 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 is based upon the fact that commercial vessels will not be affected by this rule and that this rule will not prevent recreational boaters from transiting the bridge. Rather it will only require them to adjust their time of arrival for openings to 15 minutes before and 15 minutes after the hour.

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'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994) this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection and copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is temporarily amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.733 is temporarily amended by suspending paragraph (b) and adding a new paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle, shall open on signal from July 17, 1995 through September 4, 1995, except as follows:

(1) From 9 a.m. to 10 p.m., Saturdays, Sundays and Federal holidays, the draw need only open on the hour and half hour.

(2) From 4 p.m. to 7 p.m., Mondays through Thursdays except Federal holidays, and on Fridays from 12 noon to 7 p.m. the draw need only open 15 minutes before and 15 minutes after the hour.

Dated: July 6, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–17488 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–5–1–6958a; FRL–5250–4]

Approval and Promulgation of Implementation Plans and Section 112(l) Program for the Issuance of Federally Enforceable State Operating Permits; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves a revision to the State Implementation Plan (SIP) submitted by Kansas. The state's revision includes the creation of a class II operating permit program, and revisions and additions to existing SIP rules. The approval of the class II permitting program authorizes Kansas to issue Federally enforceable state operating permits addressing both criteria pollutants (regulated under section 110 of the Clean Air Act) and hazardous air pollutants (regulated under section 112).

DATES: This final rule is effective September 15, 1995 unless by August 16, 1995 adverse or critical comments are received.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Kansas recently restructured its air program rules as a result of the need to develop a major source operating permit program consistent with the requirements of 40 CFR part 70. Consequently, the state created a three-tiered permit program: class I, class II, and class III. Class I permits will be issued to part 70 major sources, class II permits to nonmajor sources and to those willing to take Federally enforceable operating restrictions to limit their potential-to-emit to nonmajor source levels, and class III permits for all other emission sources (i.e., sources with emission levels lower than the class II cutoff levels). This SIP revision includes revisions to existing SIP rules, including the definitions rule and construction permits rules, and new rules which create general permits and class II operating permits, including permits-by-rule. These rule revisions are the result of three state rulemakings, effective in 1993, 1994, and 1995.

On February 17, 1995, the Secretary of the Kansas Department of Health and Environment (designee of the Governor) submitted the SIP revision and supporting information to the EPA Region VII Administrator. In a supplemental letter dated March 8, 1995, the state also requested that EPA approve the class II permitting rules under the authority of section 112(l) for the purpose of conferring Federally enforceable limitations on hazardous air pollutants (HAP). EPA's review and analysis of the entire state submittal is discussed below.

For a more detailed discussion, please refer to the Technical Support Document (TSD) prepared for this document, which is available from the contact listed above.

II. Review of State Submittal

A. Rule Revisions

K.A.R. 28–19–7, Definitions. Over 30 definitions were revised or added. New definitions were necessary due to the adoption of the Title V permitting rules and the related class II permitting rules. Some definitions were simply moved from existing rules to the definitions rule for the purpose of consolidating all definitions in one rule. Other revisions were nonsubstantive grammatical or clarifying revisions. A detailed discussion of each revision to this rule is contained in the TSD.

K.A.R. 28–19–8, Reporting required. This regulation formerly described emission levels which triggered requirements to obtain construction and operating permits and approvals. Revisions were required to remove those provisions relating to operating permits that now appear in regulations relating specifically to the new class I and class II operating permits programs.

K.A.R. 28–19–14, –14a, –14b, pertaining to permits and fees. These were revised because most of these provisions are now contained in new rules. Rule K.A.R. 28–19–14b was revoked in the 1994 revision, and –14a was revised in 1994 and revoked in 1995.

K.A.R. 28–19–204, General provisions, permit issuance and modification; public participation. This new regulation includes general requirements for public participation in the permitting process, including construction permits and class II operating permits.

K.A.R. 28–19–212, General provisions; approved test methods and emission compliance determination procedures. This rule includes most test methods required by other rules, including adoption by reference of methods in 40 CFR parts 51, 60, 61, and 63. In 58 FR 54677 (October 22, 1993), the EPA announced that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the monitoring requirements of section 114(a)(3), including the periodic monitoring requirements for operating permits pursuant to sections 502(b)(2) and 504. This SIP call is required, because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On May 6, 1994, the EPA notified the Governor of Kansas that an SIP revision was necessary to meet the

aforementioned requirements of the Act. Submission of this rule revision fulfills this requirement. This revision provides that any credible evidence may be used for the purpose of establishing whether a violation has occurred at the source.

K.A.R. 28–19–300 through 304. These regulations establish the procedures applicable to the issuance of permits and approvals to construct or modify new air sources. Major portions of these provisions were formerly contained in K.A.R. 28–19–8 and K.A.R. 28–19–14. The threshold criteria pollutant emission levels for obtaining a construction permit (K.A.R. 28–19–300(a)(1)) have been increased to make them consistent with prevention of significant deterioration (PSD) levels. Changing these threshold emission levels will not threaten maintenance of the ambient air quality standards in the state. Air quality modeling for criteria pollutants has been performed in connection with new and modified source permit applications over the past 10 years. The modeling results demonstrate that sources with a potential-to-emit of less than the PSD significance levels have not threatened the maintenance of air quality in Kansas.

K.A.R. 28–19–300(b)(1) establishes the emissions thresholds for a construction approval. These thresholds are unchanged from K.A.R. 28–19–8 with the exception of particulate matter for nonagricultural operations. That threshold has been changed from one or more pounds of particulate matter, including but not limited to PM_{10}, during any one hour of operation, to the potential-to-emit either five pounds per hour of particulate matter or two pounds per hour of PM_{10}. Based on prior modeling of sources of this size, Kansas has determined that this change does not threaten maintenance of the National Ambient Air Quality Standards.

K.A.R. 28–19–302 provides for a construction permit to include a Federally enforceable operational restriction or permit conditions regarding air pollution control equipment in order to reduce the potential-to-emit. This allows sources to take Federally enforceable permit restrictions to reduce their potential-to-emit at the construction stage. The restrictions must meet the state's requirements for Federally enforceable operating permits in K.A.R. 28–19–501(b), discussed below.

K.A.R. 28–19–400 through 404. These regulations establish procedures and conditions for the state to develop and issue general construction permits and class II general operating permits covering numerous similar sources. Sources that qualify for a general permit would then apply for coverage under the terms of the general permit. Under the Kansas regulations, general construction permits must be approved by EPA as SIP revisions before any source may construct under the permit.

K.A.R. 28–19–500 through 502. These rules establish the general framework for eligibility of a source for a class I or class II operating permit.

K.A.R. 28–19–540 through 546. These rules establish the class II operating permit procedures available for sources that would otherwise be required to obtain a class I permit.

K.A.R. 28–19–561 through 563. These rules establish the conditions for issuance of a permit-by-rule to specific source categories. These source categories may limit their potential-to-emit to a level that removes them from the class I program, provided that the source meets the criteria established in these regulations and complies with the recordkeeping and reporting provisions, if applicable. The three source categories for which permit-by-rule are available are: reciprocating engines, organic solvent evaporative sources, and hot mix asphalt facilities.

B. Class II Operating Permit Program

For many years, Kansas has been issuing permits for major new sources and for major modifications of existing sources. Throughout this time, Kansas has also been issuing permits establishing limitations on the potential emissions from new sources so as to avoid major source permitting requirements. This latter type of permitting has been the subject of various guidance from EPA, most notably the memorandum entitled ''Guidance on Limiting Potential to Emit in New Source Permitting'' dated June 13, 1989.

The operating permit provisions in Title V of the Clean Air Act Amendments of 1990 have created interest in mechanisms for limiting sources' potential-to-emit, thereby allowing the sources to avoid being defined as ''major'' with respect to Title V operating permit programs. A key mechanism for such limitations is the use of Federally enforceable state operating permits (FESOP). EPA issued guidance on FESOPs in the **Federal Register** of June 28, 1989 (54 FR 27274). On February 17, 1995, Kansas submitted its newly adopted class II permitting rules to provide for FESOPs in Kansas. This rule would supplement the preexisting mechanism for establishing Federally enforceable limitations on potential-to-emit (i.e., new source permits). This rulemaking evaluates whether Kansas has satisfied the requirements for this type of Federally enforceable limitation on potential-to-emit.

As specified in the **Federal Register** of June 28, 1989, there are five criteria that a state must meet in order to achieve a Federally enforceable operating permit program which is approved into the SIP. These criteria apply to both the class II program and to the request for approval under section 112(l), discussed below. The state of Kansas has met this criteria by: (1) Submitting this program for approval; (2) imposing a legal obligation that operating permit holders adhere to the terms and limitations of their permits (K.A.R. 28–19–501); (3) requiring that all emissions limitations, controls, and other requirements imposed by permits will be at least as stringent as any other applicable limitations and requirements contained in or enforceable under the SIP (K.A.R. 28–19–501(b)(1) and (2); (4) further requiring the limitations, controls, and requirements of the permits to be permanent, quantifiable, and otherwise enforceable as a practical matter (K.A.R. 28–19–501(b)(3)); and (5) providing that the permits issued are subject to public participation and EPA review (K.A.R. 28–19–501(e)).

The June 28, 1989, **Federal Register** document also states that EPA may deem permit restrictions not to be Federally enforceable if the criteria are not met. Although the Kansas regulation does not expressly provide for this, EPA is including a provision in the rulemaking portion of this document clarifying that nonconforming permit requirements may be deemed not Federally enforceable.

The reader may consult the TSD for a fuller description of how the state has met these criteria.

C. Section 112(l) Authority

Kansas has also requested that EPA authorize Federally enforceable limitations on potential-to-emit both pollutants regulated under section 110 of the Act (''criteria pollutants'') and pollutants regulated under section 112 (HAPs). As discussed above, the June 28, 1989, **Federal Register** document provided five specific criteria for approval of state operating permit programs for the purpose of establishing Federally enforceable limits on a source's potential-to-emit. This 1989 document, because it was written prior to the 1990 Amendments, addressed only SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (especially volatile organic compounds (VOC) and

particulate matter) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as an HAP is also classified as a criteria pollutant (e.g., benzene).[1] As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized for this purpose.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAPs because it was written prior to the 1990 Amendments to section 112, and not because it establishes requirements unique to criteria pollutants. Hence, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989, document, an FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). This section allows EPA to approve a program only if it: (1) Contains adequate authority to ensure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for ensuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential-to-emit HAPs in subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. EPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document, with the addition that the state's authority must extend to HAPs instead of, or in addition to, VOCs and particulate matter. EPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria and, hence, will not be subject to any further approval action.

EPA believes it has authority under section 112(l) to approve programs to limit potential-to-emit HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy this requirement. Given the severe timing problems posed by impending deadlines under section 112 and Title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential-to-emit prior to issuance of a rule specifically addressing this issue.

Kansas' satisfaction of the criteria published in the **Federal Register** of June 28, 1989, has been discussed above. In addition, Kansas' FESOP program meets the statutory criteria for approval under section 112(l)(5). EPA believes that Kansas has adequate authority to ensure compliance with section 112 requirements since the third criteria of the June 28, 1989, document is met (that is, since the program does not provide for waiving any section 112 requirement). Nonmajor sources would still be required to meet applicable section 112 requirements.

Regarding adequate resources, Kansas has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program, which will be obtained from fees collected under Title V. EPA believes that this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the state's implementation of the program to ensure that adequate resources continue to be available.

Kansas' FESOP program also meets the requirement for an expeditious schedule for ensuring compliance. A source seeking a voluntary limit on potential-to-emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate Federally enforceable limit by the relevant deadline.

Finally, Kansas' FESOP program is consistent with the objectives of the section 112 program, since its purpose is to enable sources to obtain Federally enforceable limits on potential-to-emit to avoid major source classification under section 112. EPA believes this purpose is consistent with the overall intent of section 112. Accordingly, EPA finds that Kansas' program satisfies applicable criteria for establishing Federally enforceable limitations on potential to emit both criteria and hazardous air pollutants.

III. Rulemaking Action

EPA finds that the criteria for Kansas to be able to issue FESOPs are essentially met, and is today approving its rules pertaining to its class II permitting program, as well as approving those rules under the authority of section 112(l). EPA is also approving the additional rules submitted for approval in the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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

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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a

[1] EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential-to-emit of HAPs to below section 112 major source levels.

significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state and any affected local governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 21, 1995.

Dennis Grams,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(30) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(30) On February 17, 1995, the Secretary of the Kansas Department of Health and Environment (KDHE) submitted for approval numerous rule revisions which add and revise definitions, revise the Kansas construction permit program, and create a class II operating permit program.

(i) Incorporation by reference.

(A) Revised rules K.A.R. 28–19–7 effective November 22, 1993; K.A.R. 28–19–8 effective January 23, 1995; K.A.R. 28–19–14 effective January 24, 1994; and the revocation of K.A.R. 28–19–14a effective January 23, 1995; and the revocation of K.A.R. 28–19–14b effective January 24, 1994.

(B) New rules K.A.R. 28–19–204, 212, 300, 301, 302, 303, 304, 400, 401, 402, 403, 404, 500, 501, 502, 540, 541, 542, 543, 544, 545, 546, 561, 562, and 563 effective January 23, 1995.

3. Section 52.872 is added to read as follows:

§ 52.872 Operating permits.

Emission limitations and related provisions which are established in Kansas operating permits as Federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem permit conditions not Federally enforceable. Such a determination will be made according to appropriate procedures and be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements or the requirements of EPA underlying regulations.

[FR Doc. 95–17214 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 071095H]

Pacific Halibut Fisheries; Central Oregon Sport Fishery; Southwest Washington Sport Fishery; and Non-treaty Area 2A Commercial Fishery

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

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATES: Closures: 11:59 p.m., July 4, 1995, through December 31, 1995. Opening: 8 a.m. July 5, 1995, through 6 p.m. July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of their effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 8

Central Oregon Sport Fishery Closes July 4, 1995

The preliminary catch estimate for the 1995 sport halibut fishery inside the 30-

fathom curve nearest to the coastline from Cape Falcon (45°46′00″ N. lat.) to the Florence North Jetty (Siuslaw River, 44°01′08″ N. lat.) indicates the 3,314 lb (1.50 metric ton (mt)) catch limit will be reached on July 4. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on July 4, 1995, through December 31, 1995.

Southwest Washington Sport Fishery Closes July 4, 1995

The preliminary catch estimate for the 1995 sport halibut fishery in southwest Washington waters from the Queets River (47°31′42″ N. lat.) south to Leadbetter Point (46°38′10″ N. lat.) indicates the 15,222 lb (6.90 mt) catch limit will be reached on July 4. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on July 4, 1995, through December 31, 1995.

Nontreaty Area 2A Commercial Opening

The directed commercial Area 2A fishery has fishing period limits and is restricted to waters that are south of Point Chehalis, WA (46°53′18″ N. lat.) under regulations promulgated by NMFS and published in the **Federal Register**. The fishing period limits were announced in Halibut Landing Report Number 2. The fishery on July 5, 1995, shall begin at 8 a.m. and end at 6 p.m. local time.

Dated: July 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17464 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 136
Monday, July 17, 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.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 95–145]

RIN 1550–AA62

Operations—Suspicious Activity Reports and Other Reports and Statements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulations to implement a new interagency suspicious activity referral process and to update and clarify the underlying reporting regulation. The proposal reduces substantially the burden on savings associations and service corporations in reporting suspicious activities while enhancing access to such information by the Federal law enforcement agencies, the Federal financial institutions supervisory agencies, and the Department of the Treasury.

DATES: Comments must be received by September 15, 1995.

ADDRESSES: Comments should be sent to: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 95–145. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Richard Stearns, Deputy Chief Counsel, Enforcement Division, (202) 906–7966, or Karen Osterloh Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–6639, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions supervisory agencies (Agencies)[1] and the Department of the Treasury (Treasury)[2] are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any known or suspected violation of a Federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions (which will be the subject of regulations and other guidance to be issued by Treasury) can include transactions that a savings association or service corporation suspects involved funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, otherwise violated the money laundering statutes,[3] were potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (the BSA),[4] and transactions that the savings association or service corporation believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money laundering, and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry. The Agencies and Federal law enforcement agencies need to receive timely and detailed information regarding suspected criminal activity to determine whether investigations, administrative actions, or criminal prosecutions are warranted.

An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many Federal agencies, including the Agencies and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and Federal and State law enforcement agencies, and improves the Federal government's response to white collar crime in financial institutions. Today's revisions to this regulation and the reporting requirements are being made under the auspices of the BFWG.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on financial institutions, and to eliminate confusion associated with the current duplicative reporting of suspicious financial transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to implement the procedures for reporting suspicious financial transactions by financial organizations following the enactment of the Annuzio-Wylie Anti-Money Laundering Act of 1992. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious financial transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and FinCEN developed a new report form for reporting known or suspected Federal criminal law violations and suspicious financial transactions. The new form is designated the Suspicious Activity Report (SAR).[5] The SAR is a simplified and shortened version of its predecessors.

The new referral process and the SAR reduce the burden on savings associations and service corporations for reporting known or suspected violations and suspicious financial transactions. The agencies anticipate that the new process will be instituted by October, 1995.

Proposal

The OTS proposes to revise 12 CFR 563.180 by updating and clarifying the current rule governing the filing of criminal referral reports, implementing the new SAR, and eliminating current

[1] The Federal financial institutions supervisory agencies are the OTS, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

[2] Through its Financial Crimes Enforcement Network (FinCEN).

[3] 18 U.S.C. 1956 and 1957.

[4] 31 U.S.C. 5311 through 5330.

[5] The reporting requirements contained in the SAR will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and the OTS will seek comments on the SAR in a separate notice.

confusing and overly burdensome reporting requirements. This action should improve reporting of known or suspected violations and suspicious financial transactions relating to Federally insured financial institutions while providing uniform data for entry into the new interagency computer database. The OTS expects that each of the other Agencies will be making substantially similar changes contemporaneously.

The proposed changes to the current OTS rules are discussed below. The principal changes include: (1) raising the mandatory reporting thresholds for criminal offenses, thereby reducing unnecessary reporting burdens; (2) requiring the filing of only one form with a single repository, rather than multiple filings to several Federal law enforcement agencies and the Agencies, thereby further reducing reporting burdens; and (3) clarifying the criminal referral and suspicious financial transaction reporting requirements of the Agencies and Treasury, thereby eliminating duplicative referrals.

Section 563.180(d)(1) Purpose and Scope

The proposal clarifies the scope of the current rule. Under the proposal, the SAR will replace the various criminal referral forms that the Agencies currently require institutions to file. The purpose of the proposed rule is to ensure that savings associations or service corporations file a SAR when they detect known or suspected violations of Federal criminal law or suspicious financial transactions.[6]

The proposed rule continues to require reporting by savings associations and by service corporations. It does not, however, impose a separate reporting obligation on operating subsidiaries established by savings associations. OTS regulations provide that all Federal laws and regulations governing the operation of savings associations apply to operating subsidiaries, unless otherwise provided by statute, regulations or policies of the OTS. The OTS general policy is to consolidate regulatory requirements for the operating subsidiary with the parent. Accordingly, the reporting obligation of parent savings associations under § 563.180 will be deemed to include the duty to report events or conduct occurring at the operating subsidiary level, as well as the parent level.

Under the current regulation, savings association holding companies are not required to file reports. Holding companies are encouraged to do so when actions have a substantial impact on the depository institutions that they own. The OTS solicits comment on whether to amend the rule so that it expressly requires savings association holding companies to file SARs regarding known or suspected criminal violations or suspicious financial transactions that affect their depository institution subsidiaries.

Section 563.180(d)(2) Definitions

Proposed § 563.180(d)(2) defines the following terms: ''FinCEN,'' ''institution-affiliated party,'' ''instructions,'' ''known or suspected violation,'' and ''SAR.'' The definitions should make the rule easier to interpret and apply.

In particular, the definition of ''known or suspected violation'' refers to any matter for which a savings association or service corporation has a basis to believe that a violation of any Federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, coupled with a basis to believe that a savings association or service corporation was an actual or potential victim of the criminal violation or was involved in or was used to facilitate the criminal violation. This definition supplants the definition of suspected crimes, the illustrative listing of crimes requiring reporting, and other descriptions of known or suspected crimes in the existing rule at 12 CFR 563.180(d) (1) and (2) (1995).

Section 563.180(d)(3) Reports Required

The proposal clarifies the categories of violations that are subject to the reporting obligation. In addition, the proposal reduces the regulatory burden on savings associations and service corporations by increasing applicable dollar thresholds for two categories of violations, and by eliminating the requirement for duplicative filings with multiple Federal agencies.

Proposed § 563.180(d)(3)(i) requires a savings association or service corporation to file a SAR, regardless of the dollar amount involved, whenever it has a substantial basis for believing that a director, officer, employee, agent or other institution-affiliated party (as defined in the regulation, which cross references section 3(u) of the FDIA) committed or aided in the commission of a Federal crime. This provision is substantially identical to the existing rule at 12 CFR 563.180(d)(1)(i)(1995), with one exception. The existing rule applies to violations involving ''affiliated parties,'' as defined in 12 CFR 561.5(1995). Unfortunately, the cited definition is both too narrow and too broad. For example, ''affiliated persons'' under 12 CFR 561.5 does not include all shareholders who may participate in the conduct of the affairs of the institution, but does include members of a director's or officer's immediate family who have no connection to the institution. The OTS believes that the proposed rule describes relevant insiders with greater precision.

OTS's current rules further require savings associations and service corporations to report known or suspected criminal acts that involve actual or anticipated losses of: (1) $1,000 or more where there is a basis for identifying a non-insider suspect; or (2) $5,000 or more regardless of whether a suspect has been identified.[7] The proposed rule at §§ 563.180(d)(3) (ii) and (iii) would reduce this reporting burden by increasing the $1,000 and $5,000 thresholds to $5,000 and $25,000, respectively. Moreover, the proposed rule clarifies that threshold amounts are based on actual or potential losses to the savings association or service corporation, without regard to possible reimbursement or recovery.

Proposed § 563.180(d)(3)(iv) requires a savings association or service corporation to report any financial transaction, regardless of the dollar amount if: (1) the institution suspects the transaction involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes;[8] (2) the institution suspects the transaction was potentially designed to evade the reporting or recordkeeping requirements of the BSA;[9] or (3) the institution believes the transaction to be suspicious for any reason. This revision makes minor clarifying changes to the existing requirements at 12 CFR 563.180(d)(1)(iv) (1995).

The current rules require savings associations and service corporations to file a criminal referral report with

[6] As noted above, there has been some confusion regarding filing of criminal referrals and CTRs for suspicious cash transactions. The BSA requires all financial institutions to file CTRs in accordance with Treasury's implementing regulations (31 CFR part 103). Part 103 requires financial institutions to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution, under these new requirements, will file both a CTR (reporting the currency transaction) and a SAR (reporting the suspicious criminal aspect of the transaction). If a currency transaction equals or is below $10,000 but is suspicious, the institution will only file a SAR.

[7] 12 CFR 563.180(d)(1) (ii) and (iii) (1995).

[8] 18 U.S.C. 1956 and 1957.

[9] 31 U.S.C. 5311 through 5330.

appropriate Federal law enforcement authorities. Because this process results in multiple filings with several agencies, the Agencies propose to reduce the filing burden by permitting institutions to file a single SAR at one location. Accordingly, under proposed § 563.180(d)(3), a savings association or service corporation will file a SAR with all appropriate Federal law enforcement agencies by sending a single copy of the SAR to the FinCEN, whose address will be printed on the SAR.

FinCEN will input the information contained on the SARs into a newly created database that FinCEN will maintain. This process will fulfill the regulatory requirement that a savings association or service corporation refer any known or suspected criminal violation to appropriate Federal law enforcement agencies. The database will enhance Federal law enforcement and supervisory agencies' ability to track, investigate and prosecute individuals suspected of violating Federal criminal law. This change will ensure that all SARs are placed in the database at FinCEN and that the information is made available on computer to the appropriate law enforcement and supervisory agencies as quickly as possible.

To further reduce the reporting burden, the Agencies are modifying the manner in which financial institutions file a SAR. In following the Instructions on a SAR, a savings association or service corporation may file the referral form in several ways, including submitting an original form or a photocopy, and filing a SAR by magnetic means, such as by a computer disk.[10] In the future, the OTS and the other Agencies anticipate that a financial institution will be able to file a SAR electronically.

The Agencies, working with FinCEN, are developing computer software to assist financial institutions in preparing and filing SARs. The software will allow an institution to complete a SAR, to save the SAR on its computers, and to print a hard copy of the SAR for its own records. The computer software will also enable an institution to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The OTS will make the software available to all savings associations and service corporations. A savings association or service corporation, of course, may complete and file a SAR using printed forms without using this software, if it so desires. The Instructions to the SAR will address new permissible filing methods as the methods are developed.

Section 563.180(d)(4) Service Corporations

When a service corporation must file a report under the current rule, the required filing may be made either by the service corporation or by a saving association that wholly or partially owns the service corporation. This provision is retained in the proposed rule at 12 CFR 563.180(d)(4).

Section 563.180(d)(5) Time for Reporting

Proposed § 563.180(d)(5) requires a savings association or service corporation to file the SAR within 30 calendar days after the date of detection of the act triggering the reporting requirement. If no suspect is identified on that date, the savings association or service corporation may delay the filing of a SAR for an additional 30 calendar days after the identification of a suspect. Filings, however, may not be delayed for more than 60 calendar days after detection. The proposal substantially modifies the current regulation at § 563.180(d)(2) which requires the savings association or service corporation to file within 14 business days after discovery of the activity.

Section 563.180(d)(6) Reports to State and Local Authorities

The proposed rule includes a new provision encouraging savings associations and service corporations to file SARs with State and local law enforcement agencies where appropriate.

Section 563.180(d)(7) Retention of Records

Existing OTS rules require savings associations and service corporations to retain a copy of the criminal referral report and related records for a period of ten years.[11] This requirement is retained in the proposed rules at § 563.180(d)(7).

The current instructions to the criminal referral form require savings associations and service corporations to submit copies of all related documentation when a criminal referral is filed. The new SAR reduces the regulatory burdens on the industry by eliminating this requirement altogether. Instead, the proposal requires that the documentation be identified and treated as filed with the SAR and that the savings association or service corporation maintain the documentation, along with a copy of the SAR, for ten years from the submission date. This approach ensures that Federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue administrative action by requiring the preservation of the underlying documentation for ten years.

Section 563.180(d)(8) Exemptions

The proposed rule would exempt robberies and burglaries and attempted robberies and burglaries that are reported to the appropriate local law enforcement authorities. This exemption is substantially similar to the existing exemption at 12 CFR 563.180(d)(2)(1995).

Section 563.180(d)(9) Notification of the Board of Directors

Proposed § 563.180(d)(9) requires the management of a savings association to promptly notify the board of directors (or a committee of directors or executive officers designated by the board to receive notice) whenever the savings association or a service corporation in which the savings association has an ownership interest has filed a SAR. Where an executive officer or director is a suspect, the proposal requires management to notify the entire board of directors, except the suspect.

This proposed rule generally incorporates the requirements of the existing rules at § 563.180(d)(4) (1995), but includes several modifications designed to provide savings associations with greater flexibility. These modifications: (1) permit notification to a designated committee in lieu of the entire board; (2) require ''prompt'' notification, rather than notification at the first regularly scheduled board meeting after the filing of the SAR; and (3) assign notification responsibility to management of the savings association rather than the chief executive officer. The OTS expects each savings association to maintain appropriate mechanisms to ensure that the board of directors will be informed promptly of SAR filings.

Section 563.180(d)(10) Compliance

The proposed rule includes a new provision stating that the failure to file a SAR in accordance with the regulation and the Instructions may result in supervisory actions, including enforcement actions.

[10] FinCEN, however, will not be able to receive SARs by facsimile machine.

[11] 12 CFR 563.180(d)(5) (1995). This time frame corresponds with the statute of limitations for most Federal criminal statutes involving financial institutions.

Section 563.180(d)(11) Obtaining the SAR

Proposed § 563.180(d)(11) states that savings associations and service corporations may obtain the SAR form from the appropriate OTS Regional Office at the address listed in 12 CFR 516.1(b) (1995). The current rule does not contain a comparable instruction.

Section 563.180(d)(12) Confidentiality of SARs

The proposed rule contains a new provision preserving the confidentiality of SARs and the information contained in SARs.

Comments

The OTS invites public comment on all aspects of this proposal.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for reporting crimes and suspicious activities and has no material impact on savings associations and service corporations, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OTS has determined that this document is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in one year. If the budgetary impact statement is required, section 205 of the Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This proposal reorganizes the process for reporting crimes and suspicious activities by savings associations and service corporations to Federal agencies. The OTS has determined that the final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the Unfunded Mandates Reform Act does not apply.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, part 563 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

2. Section 563.180 is amended by revising the section heading and paragraph (d) to read as follows:

§ 563.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(d) *Suspicious Activity Reports.*—(1) *Purpose and scope.* This paragraph (d) ensures that savings associations and service corporations file a Suspicious Activity Report when they detect a known or suspected violation or a suspicious transaction.

(2) *Definitions.* For the purposes of this paragraph (d):

(i) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(ii) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(8)).

(iii) *Instructions* means the instructions on the SAR.

(iv) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a Federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a savings association or service corporation was an actual or potential victim of the criminal violation or was involved in or was used to facilitate the criminal violation.

(v) *SAR* means a Suspicious Activity Report.

(3) *SARs required.* A savings association or service corporation shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury, in accordance with the Instructions, by sending a completed SAR to FinCEN, in the following circumstances:

(i) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(ii) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the savings association or service corporation (before reimbursement or recovery) aggregating $5,000 or more, and the savings association or service corporation has a substantial basis for identifying a possible suspect or group of suspects, where none of the suspects are included in paragraph (d)(3)(i) of this section;

(iii) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the savings association or service corporation (before reimbursement or recovery) aggregating $25,000 or more, and the savings association or service corporation has no substantial basis for identifying a possible suspect or group of suspects; or

(iv) Whenever a financial transaction is conducted, or attempted, at the savings association or service corporation and:

(A) The savings association or service corporation suspects that the transaction involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957);

(B) The savings association or service corporation suspects that the transaction was potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (31 U.S.C. 5311 through 5330) or regulations issued thereunder; or

(C) The savings association or service corporation believes that the transaction was suspicious for any reason.

(4) *Service corporations.* When a service corporation is required to file a SAR under paragraph (d)(3) of this section, either the service corporation or a savings association that wholly or partially owns the service corporation, may file the SAR.

(5) *Time for reporting.*—(i) *Generally.* A savings association or service corporation shall file the SAR required

by paragraph (d)(3) of this section within 30 calendar days after the date of initial detection of an act described in paragraph (d)(3) of this section. In situations involving violations that require immediate attention, such as when a reportable violation is on-going, the savings association or service corporation shall immediately notify, by telephone, the appropriate law enforcement authority in addition to filing a timely SAR.

(ii) *No suspect identified.* If no suspect was identified on the date of detection of an act described in paragraph (d)(3) of this section, the savings association or service corporation may delay filing the SAR for an additional 30 calendar days after the identification of a suspect, but in no case may savings association or service corporation delay filing a SAR for more than 60 calendar days after the date of detection of an act described in paragraph (d)(3) of this section.

(6) *Reports to State and local authorities.* A savings association or service corporation is encouraged to file a copy of the SAR with State and local law enforcement agencies where appropriate.

(7) *Retention of records.* A savings association or service corporation shall maintain a copy of any SAR filed and the original of any related documentation for a period of ten years from the date of filing the SAR, unless the OTS informs the savings association or service corporation in writing that it may discard the materials sooner. A savings association or service corporation must make all supporting documentation available to appropriate law enforcement agencies upon request. Supporting documentation shall be identified and treated as filed with the SAR.

(8) *Exemptions.* A savings association or service corporation need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(9) *Notification to board of directors.*—(i) *Generally.* Whenever a savings association (or a service corporation in which the savings association has an ownership interest) files a SAR pursuant to this paragraph (d), the management of the savings association shall promptly notify its board of directors or a committee of directors or executive officers designated by the board of directors to receive such notice.

(ii) *Suspect is a director or officer.* If the savings association or service corporation files a SAR pursuant to paragraph (d)(3) of this section and the suspect is a director or executive officer of the savings association, the savings association must not notify the suspect in accordance with 31 U.S.C. 5318, but must notify all directors who are not suspects.

(10) *Compliance.* Failure to file a SAR in accordance with this paragraph (d) and the Instructions may subject the savings association or service corporation, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory actions including enforcement actions.

(11) *Obtaining SARs.* A savings association or service corporation may obtain SARs and the Instructions from the appropriate OTS Regional Office listed in 12 CFR 516.1(b).

(12) *Confidentiality of SARs.* SARs are confidential. Any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the information citing these regulations, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both.

* * * * *

Dated: July 12, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–17485 Filed 7–14–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–13]

Proposed Amendment to Class E Airspace; Brewton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Brewton, AL. A VOR RWY 6 Standard Instrument Approach Procedure (SIAP) has been developed for the Brewton Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 27, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–13, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The Official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ASO–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing

list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Brewton, AL. A VOR RWY 6 SIAP has been developed for the Brewton Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 60005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Brewton, AL

Brewton Municipal Airport, AL
(Lat. 31°03′05″ N, long. 87°04′05″ W)
Crestview, FL, VORTAC
(Lat. 30°49′34″ N, long. 86°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Brewton Municipal Airport and within 4 miles each side of the Crestview, FL, VORTAC 304° radial, extending from the 7-mile radius to 15 miles northwest of the VORTAC.

* * * * *

Issued in College Park, Georgia, on June 29, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–17395 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–07]

Proposed Establishment of Class E Airspace: Sonora, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Canyon Ranch Airport, Sonora, TX. The development of a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) standard instrument approach procedure (SIAP) to Runway (RWY) 32 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR/DME SIAP to RWY 16–34 at Canyon Ranch Airport, Sonora, Texas.

DATES: Comments must be received on or before September 1, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–07, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–07.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL at Canyon Ranch Airport, Sonora, TX. The development of a VOR/DME SIAP to RWY 32 has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR/DME SIAP to RWY 32 at Canyon Ranch Airport, Sonora, TX. The coordinates for this airspace docket are based on North American Datum 83.

Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Sonora, TX [New]

Canyon Ranch Airport, TX
(Lat. 30°18′06″N., long. 100°28′19″W)
Rocksprings VOR
(Lat. 30°00′53″N., long. 100°17′59″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Canyon Ranch Airport, and within 1.8 miles each side of the 333° bearing from the Rocksprings VOR extending from the 6.6-mile radius to 7.6 miles southeast of the airport, excluding that airspace which overlies the Sonora Municipal Airport Class E area.

* * * * *

Issued in Fort Worth, TX, on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17396 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–37]

Proposed Revision of Class E Airspace; Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) that proposed to revise the Class E airspace at Venice, LA. The proposal was to revise the controlled airspace extending upward from 700 feet above the ground (AGL) needed for aircraft executing a Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) at Tiger Pass Seaplane Base. Since the publication of the NPRM, the Tiger Pass NDB has been decommissioned and the SIAP has been canceled. Therefore, the proposal is withdrawn.

DATES: July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

On November 24, 1993, an NPRM was published in the **Federal Register** (58 FR 62061) to revise the Class E airspace at Venice, LA. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB SIAP at Tiger Pass Seaplane Base, Venice, LA. After publication of the NPRM, the Tiger Pass NDB, a non-Federal navaid, was abandoned and the SIAP was canceled. Therefore, no need exists to revise the existing Class E airspace at Tiger Pass Seaplane Base, Venice, LA. Accordingly, the proposed rule is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 93–ASW–37, as published in the **Federal Register** on November 24, 1993 (58 FR 62061), is withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Fort Worth, TX on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17398 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–22]

Proposed Establishment of Class E Airspace; Placerville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at

Placerville Airport, Placerville, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Placerville Airport, Placerville, CA.

DATES: Comments must be received on or before August 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–22, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace area at Placerville, CA. The development of GPS SIAP at Placerville Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for IFR operations at Placerville Airport, Placerville, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposal rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

AWP CA E5 Placerville, CA [New]

Placerville Airport, CA
(Lat. 38°43′27″N, long. 120°45′12″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Placerville Airport.

* * * * *

Issued in Los Angeles, California, on June 29, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–17402 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–08]

Proposed Amendment to Class E Airspace; Artesia, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace extending upward from 700 feet above ground level (AGL) at Artesia, NM. A new

Global Position Satellite (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 21 at Artesia Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 21 at Artesia, NM.

DATES: Comments must be received on or before September 1, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–08, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–08.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Guymon Municipal Airport, Guymon, OK. A new GPS SIAP to RWY 21 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASW NM E5 Artesia, NM [Revised]

Artesia Municipal Airport, NM
(Lat. 32°51′09″N, long. 104°28′04″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Artesia Municipal Airport and within 1.8 miles each side of the 035° bearing from the Artesia Municipal Airport extending from the 7-mile radius to 8.1 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX on July 5, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–17399 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD09–95–018]

Safety Zone; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add a new permanent safety zone in the Cuyahoga River in Cleveland, Ohio The new safety zone near the mouth of the river, would restrict the mooring of boats in the area from the Conrail No. 1 railroad bridge south for six hundred feet to the end of the parking lot adjacent Fagan's Restaurant.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Comments and supporting materials should be mailed or delivered to Lieutenant (junior grade) Nathan Knapp, Project Officer and Assistant Chief of the Port Operations Department, Coast Guard Captain of the Port Cleveland, 1055 E. Ninth Street, Cleveland, Ohio, 44114. Please reference the name of the proposal and the docket number in heading above. If you wish receipt of your mailed comment to be acknowledge, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 8 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Nathan Knapp, Project Officer and Assistant Chief of the Port Operations Department, Coast Guard Captain of the Port Cleveland, 1055 E. Ninth Street, Cleveland, Ohio 44114, (216) 522–4405.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments which may consist of data, views arguments, or proposals for amendments to the proposed regulations. The Coast Guard does not currently plan to have a public hearing. However, consideration will be given to holding a public hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written form. If it appears that a public hearing would substantially contribute to this rulemaking and there is sufficient time to publish a notice, the Coast Guard will announce such a hearing by a later notice in the **Federal Register**. The Coast Guard will consider all comments received before the closing date indicated above, and may amend or revoke this proposal in response to such comments.

Background and Purpose

The section of the Cuyahoga River in which these safety zones are located is a section of river heavily used by both large commercial vessels and small recreational traffic. Use of the river by large commercial vessels continues to increase, rising from 770 transits in 1982, 1,264 transits in 1987, to 1,624 transits in 1994. At the same time, businesses along the river continue to attract an increasing number of recreational vessels. During the boating season, large numbers of recreational vessels tend to raft together into the river near the many entertainment establishments and restaurants, thereby creating a hazard to themselves and to the large commercial vessels which also use this waterway, and creating an obstruction to the use of the river as a navigable channel. In 1987, a serious collision between a commercial and a recreational vessel highlighted the need to establish some rules for the protection of safe navigation in this increasingly congested waterway. After some experimentation with temporary safety zones and an extensive process of comment and consultation with the public, including a public hearing and a study by a local workgroup made up of representatives of both the commercial and recreational interests in the local area, along with representatives of the City of Cleveland and the State of Ohio, whose comments were incorporated in the formal regulatory comment process, the Coast Guard Captain of the Port in Cleveland, Ohio, established a set of ten permanent safety zones under the standing regulation at 33 CFR 165.903. (See the previous Notice of Proposed Rulemaking at 52 FR 45973, December 3, 1987, and the previous Notice of Final Rule at 54 FR 9776, March 8, 1989.) Since that time, it appears that the safety zones have been effective in protecting the safety of navigation without causing hardship to the local businesses along the river which serve customers from recreational vessels. However, continuing commercial development and use of the area has led to the same problem of recreational vessels rafted out into the channel and obstructing navigation in a location near the mouth of the river, around Fagan's Restaurant not previously covered by a safety zone. Using the same process of informal consultation with local interests and civic groups which contributed to the consideration of the prior regulations, the local Coast Guard Captain of the Port in Cleveland, Ohio, invited comments from a autonomous ad hoc working group, the Cuyahoga River Task Force 1995, which included representatives of the Flats Oxbow Association, a local civic group representing businesses in the area. The Cuyahoga River Task Force 1995 and the Flats Oxbow Association have also performed a valuable service in helping to coordinate markings, signs, and operational procedures used by the local businesses and the Coast Guard in order to make the existing regulations work in a safe, effective, and economical manner. The general consensus of the Cuyahoga River Task Force 1995 is that congestion of recreational vessels experienced around the area of Fagan's restaurant near the mouth of the river calls for the inclusion of this area in the standing regulations as an additional safety zone, under the same terms and conditions, including provisions for conditional waivers of the restrictions, as the other zones established for other businesses further up the river.

Although the recent study of the problem by the Cuyahoga River Task Force 1995 has provided valuable information for the use of the Coast Guard, this local group does not constitute a formal advisory committee to the Coast Guard, and the Coast Guard will independently review all public comment on the issue, through the formal process instituted by this notice, before deciding on a course of action. Therefore, the Coast Guard now invites formal comment from all members of the public, including participants in the Cuyahoga River Task Force 1995.

Drafting Information: The drafters of this regulation are, Lieutenant (junior grade) Nathan Knapp, Project Officer and Assistant Chief of the Port Operations Department, Coast Guard Captain of the Port Cleveland, and, Commander Eric Reeves, Chief of the Port & Environmental Safety Branch, Ninth Coast Guard District.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file. All of the area included in the proposed safety zones is developed property, with hard seawalls, and commercial construction, and does not include environmentally sensitive areas. There are other parts of the Cuyahoga and Old Rivers which do include environmentally sensitive areas, and which could be affected by a marine accident in the river. However, the sole purpose and effect of this regulation is to reduce the probability of such an accident occurring.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Safety of navigation is a matter of long-standing and well accepted Federal regulation. In addition, the Coast Guard has actively consulted with city and state officers with concurrent responsibilities for safety in this area in formulating this proposal.

Regulatory Evaluation

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). This is a matter of local concern, with no implications for national policy or economics.

Small Entities

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities. The new safety zone will have a minimal effect on three local businesses, none of which have so far entered objections to the proposal. The previous experience with the other safety zones and the local procedures worked out by local business for the management of the recreational vessels along their property in cooperation with the Flats Oxbow Association and the Coast Guard, demonstrates that the restrictions imposed for the benefit of safety can be accommodated with minimal if any effect on the local businesses. Also, it should be noted that a serious accident on the waterway could have a severely adverse affect on the same businesses.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing the Coast Guard proposes to amend part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In § 165.903, paragraphs (a)(1) through (a)(10) are redesignated as paragraphs (a)(2) through (a)(11), paragraph (a) introductory text is revised, a new paragraph (a)(1) is added to read as follows:

§ 165.903 Safety Zones: Cuyahoga River and Old River, Cleveland, Ohio.

(a) *Location:* The waters of the Cuyahoga River and the Old River extending ten feet into the river at the following eleven locations, including the adjacent shorelines, are safety zones, coordinates for which are based on NAD 83.

(1) From the point where the shoreline intersects longitude 81°42′31.5″ W, which is the southern side of the Conrail No. 1 railroad bridge, southeasterly along the shore for six hundred (600) feet to the point where the shoreline intersects longitude 81°42′24.5″ W, which is the end of the parking lot adjacent to Fagan's Restaurant.

* * * * *

Dated: July 5, 1995.

J.J. Davin, Jr.,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland.

[FR Doc. 95–17491 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards Concerning Physical Mailpiece Dimensions, Addressing, and Address Placement

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Postal Service withdraws the proposed rule to change several standards in the Domestic Mail Manual related to physical mailpiece dimensions and address placement, as published in the **Federal Register** on June 17, 1994 (59 FR 31178–31183).

DATES: July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On June 17, 1994, the Postal Service published for public comment several proposed changes to standards in the Domestic Mail Manual (DMM) related to physical mailpiece dimensions and address placement (59 FR 31178–31183). On July 21, 1994, in order to afford more opportunity for input, the Postal Service extended the comment period through September 16, 1994 (59 FR 37190). On October 11, 1994, in response to continued interest, the Postal Service further extended the comment period through October 31, 1994, and announced a public meeting to be held in Arlington, VA, on October 20, 1994, for oral comment on the proposed rule (59 FR 51397).

The proposed rule offered revisions to DMM C010 and C050 (with lesser changes to DMM A010, A200, and E312) concerning how the physical characteristics of a mailpiece would be used to determine which dimensions are its length, height, and thickness. In turn, this information would be used to determine correct address placement and the mailpiece's mailability, susceptibility to a nonstandard surcharge, processing category, and rate eligibility. The proposed rule sought to apply a consistent definition of length, height, and thickness to all mail, except for mail eligible for and claimed at a Barcoded rate for flats.

The proposed rule included these specific changes to the DMM:

1. Amend A010.1.0 to standardize address placement on all letter-size mail claimed at other than a single-piece rate (or, for pieces within a small dimensional range, at the Barcoded rate for flats) to require that the address be oriented parallel to the length of the piece (as defined in revised C010.1.1).

2. Revise A010.1.0 and A200.1.3 to add mandatory address placement standards for other than single-piece rate flat-size mail either prepared in an unattached sleeve or partial wrapper or otherwise not prepared in an envelope, polybag, or similar enclosure.

3. Amend C010.1.0 to reduce the role of address placement for determining which of a mailpiece's physical dimensions are its length, height, and thickness by establishing consistent definitions based on the physical characteristics of the mailpiece.

4. Amend C050.1.0 to provide consistency in assigning most mailpieces to a processing category based solely on their dimensions, as determined by revised C010.1.0.

5. Revise C050.5.0 to clarify that merchandise samples are not, by definition, always irregular parcels and that such samples may be categorized as letter-size or flat-size pieces, based on the usual criteria.

6. Revise A010.4.3 and 4.5 to mandate the use of a ZIP Code or ZIP+4 code in the return address on certain mail. (The standard for required use of a return address was not changed by these proposals.)

7. Add A010.5.3 to clarify the meaning and appropriate use of the terms ''post office box,'' ''P.O. Box,'' ''PO Box,'' ''POB,'' ''P.O.B.,'' and similar combinations.

8. Change A010.5.1 to prohibit dual addresses in both the delivery and return addresses on Express Mail and Priority Mail; on registered, certified, restricted delivery, and special delivery mail; and on any mail claimed at a bulk or presort rate.

Miscellaneous organizational and technical revisions were also proposed for clarity and consistency as well.

Over the total comment period, the Postal Service received 53 written responses from printers, mailer associations, publishers, a consultant, and other customers, all offering hundreds of individual comments on the several aspects of the proposed rule. Of the total responses, 47 opposed all or part of the proposed rule, and 6 mixed support for some aspects of the proposal with opposition to others. The public meeting was attended by 48 industry representatives, of whom 20 offered oral comments for the record. In addition, 22 representatives submitted written comments, including 13 of those who gave oral comments. Neither the oral nor the written comments raised issues not already exposed in the written comments described earlier.

The Postal Service concluded that, despite the merit of some elements of the proposed rule, the broad, general opposition expressed by commenters to the proposal argued strongly for its reconsideration. Moreover, the advent of classification reform was an opportunity, seen both by the Postal Service and the commenters, to enact more fundamental changes and thus render moot some issues in the proposed rule.

Therefore, in view of the comments received and the events that have occurred since the proposed rule was published, the Postal Service has determined to withdraw its proposal at this time. The Postal Service does so, however, with the caveat that elements of the proposed rule are likely to be republished at a later date for comment, separately or in combination, as part of classification reform rulemaking or otherwise.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–17472 Filed 7–14–95; 8:45 am]

BILLING CODE 7710–12–P

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–5–1–6958b; FRL–5250–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. The revision includes the creation of a class II operating permit program and revisions and additions to existing SIP rules. The approval of the class II permitting program authorizes Kansas to issue Federally enforceable state operating permits addressing both criteria pollutants (regulated under section 110 of the Clean Air Act) and hazardous air pollutants (regulated under section 112 of the Act). In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 16, 1995.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 21, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–17215 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 261, 271 and 302

[SWH–FRL–5259–3]

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) again is extending the comment period for the proposed listing determination on a number of wastes generated during the production of dyes and pigments, which appeared in the **Federal Register** on December 22, 1994 (see 59 FR 66072–66114). The public comment period for this proposed rule was to end on July 19, 1995. The purpose of this document is to extend the comment period an additional 90 days beyond that, to end on October 17, 1995. This extension of the comment period is provided in response to a request by a trade association representing the affected industry, due to outstanding confidential business information (CBI) issues.

DATES: EPA will accept public comments on this proposed listing determination until October 17, 1995. Comments postmarked after the close of the comment period will be stamped ''late''.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–DPLP–FFFFF, Room 2616, U.S. EPA, 401 M Street, SW, Washington, DC. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency,

401 M Street, SW, Washington, DC 20460, (202) 260–7458.

SUPPLEMENTARY INFORMATION: This proposed rule was issued under Section 3001(b) of RCRA. EPA proposed to list certain wastes generated during the production of dyes and pigments because these wastes may pose a substantial present or potential risk to human health or the environment when improperly managed. See 59 FR 66072–114 (December 22, 1994) for a more detailed explanation of the proposed rule.

These proposed hazardous waste listings were based in part upon data claimed as confidential by certain dye and pigment manufacturers. Although EPA intends to publish these data or information derived from these data claimed as confidential (to the extent relevant to the proposed listing), the Agency is unable to do so at the present time, pending a decision on current CBI litigation. EPA is pursuing avenues to allow publication of the information, and intends to supplement the public record prior to issuance of a final listing. In addition, the Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers (ETAD) requested an additional extension of the comment period for the same reason, *i.e.*, that the CBI issues have not been resolved yet.

Therefore, for these reasons, EPA is extending the comment period to provide sufficient time for the public to comment if and when additional data are published.

Dated: July 11, 1995.

Loretta Marzetti,

Acting Director, Office of Solid Waste.

[FR Doc. 95–17475 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–104, RM–8656]

Radio Broadcasting Services; Johannesburg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Jacqueline Lago requesting the allotment of Channel 265A to Johannesburg, California, as that community's second local FM service. Coordinates used for Channel 265A at Johannesburg are 35–22–24 and 117–38–06. Johannesburg is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before September 1, 1995, and reply comments on or before September 18, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Denise B. Moline, Esq., 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean, VA 22101.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–104, adopted June 29, 1995, and released July 11, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17377 Filed 7–14–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition from Koito Manufacturing Co., Ltd. for rulemaking to permit an alternative performance requirement (allowing permissible moisture presence) for certain types of headlamps after completion of the humidity test. The humidity test of Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, was shortened in duration in 1991 to accommodate another petition from Koito; thus, this petition is somewhat repetitive. The requirement of no visible moisture inside the headlamp has existed for replaceable bulb headlamps since their inception in 1983. The claim by Koito that the requirement is not a performance standard but a design standard is without merit. Koito's proposed supplementary corrosion test for headlamps with visible moisture present after a humidity test does not seem to support its claim of no long-term photometric degradation in these headlamps passing the test.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Rulemaking, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366-5276; FAX (202) 366-4329.

SUPPLEMENTARY INFORMATION: On April 19, 1995, Koito Manufacturing Co., Ltd. (Koito) petitioned for a change to the humidity test performance requirements for replaceable bulb, integral beam, and some types of combination headlighting systems. The present humidity performance requirement originated in 1983 and requires that no evidence of delamination or moisture, fogging or condensation be present to the eye (without magnification) upon completion of the humidity test sequence. Koito proposed an alternative requirement for those headlamps that cannot pass this requirement. Koito did not provide any test data to substantiate its claim that there is no long-term performance degradation in photometric

output from allowing moisture in headlamps over long periods. Koito claims that such headlamps perform adequately in Europe and Japan.

In 1991, the humidity test was changed as a result of a petition by Koito and Robert Bosch GmbH. The duration of the test was shortened from 20 consecutive 6-hour cycles to 24 consecutive 3-hour cycles; the photometric test immediately after the humidity test was deleted and other test details were changed. The sole remaining requirement was that ''the headlamp show no evidence of delamination or moisture, fogging or condensation visible without magnification.''

Now, Koito states that the requirement that no visible moisture be present inside the headlamp following the humidity test is a design restriction and that the criteria are excessively stringent ''design standards'' as opposed to ''performance standards.''

Koito also states that the present humidity test requirement causes it to design its headlamps with long vent tubes, which it states has increased the cost to the consumer. Koito furnished no data to support its claim of increased costs or burden.

Koito recommended that the new corrosion test set forth in Docket No. 93–57; Notice 2, (59 FR 59975 of November 21, 1994) be applied to lamps failing the humidity test. In that Notice of Proposed Rulemaking the agency proposed only for replaceable lens headlamps, to set forth additional requirements for headlamps that would have replaceable lenses. Such lamps would be designed not to corrode if the interiors were exposed briefly to the outside environment until such time that a lens replacement occurred (lens replacement is not now permitted). That lens replacement proposal had an additional chemical resistance test on the reflector, an additional 24-hour salt spray and 48-hour storage tests (all with the lens removed), and a cleaning test in accordance with the instructions supplied by the manufacturer with the headlamp. A final amendment to FMVSS No. 108 on this subject has not been issued yet.

In response to Koito's claims, NHTSA's technical review follows. Regarding the claim that headlamps that have visible moisture that are in use in Europe and Japan perform adequately, those regions have a greater preponderance of vehicle inspection performed than in the United States (U.S.) Timely headlamp replacement after failure is assisted by the routine inspection process. As a consequence, history has shown that the dominant cause of headlamp inspection failure and lamp replacement in Europe has been corroded reflectors. While it is possible that this situation may have changed, NHTSA is not aware of any change. The U.S. permitted replaceable bulb headlamps that are conceptually similar to those in Europe and Japan on the premise that headlamps introduced into the U.S. market would not exhibit the traditionally poor resistance to environmental degradation that had been typical of non-U.S. code headlamps. Additionally, because of the fewer and less thorough inspections in the U.S., there is the likelihood that lamps of reduced or failed performance would continue to be used on U.S. highways in greater numbers than in Europe or Japan. Thus, Koito's claim that adequate performance can be achieved by using lamps of non-U.S. market design is not substantiated.

Koito did not provide any data to show that headlamps would not eventually degrade over the life of the vehicle when they are occasionally or perpetually wet from moisture that is purposefully allowed to be in the interior of the lamp. The existence of visible moisture as an acceptable operational condition for headlamps is contrary to all State and Federal efforts to date to maintain a safe level of headlamp illumination performance, against a history of environmental degradation. It is difficult to accept that water in headlamps is not deleterious to headlamp performance; although, if lamp cost is no object, then it is conceivable that headlamps could be made to perform under such duress. NHTSA is not convinced that the public is ready to accept or understand that it is acceptable for water to be in certain headlamps and not be in others.

This is the second time that Koito has requested that the humidity requirements be amended to accommodate its needs. The last time was four years ago. While the present request is of a subtly different nature, the fact is that it is repetitive in nature: the humidity test prevents Koito from selling a design that cannot comply with the humidity requirements. NHTSA is not persuaded by Koito's claims that it is prevented from selling headlamps that have acceptable performance. The standard's requirements determine acceptable performance for the U.S. Unsubstantiated claims of real-world performance in some other region of the world, cannot be used as a basis for changing U.S. safety standards.

Koito claims that the present requirement is design restrictive and establishes a design and not a performance standard. The requirement is intended to address a headlamp's susceptibility to the ingress of moisture, which over the life of the lamp will cause deterioration of the lamp's photometric performance. The requirement is not solely for the purpose of testing in the instant the loss or failure of photometric performance as Koito believes. The test was never intended to simulate a lifetime of heating/cooling/dry/wet events that could occur with a lamp installed on a real vehicle. The test appears to discriminate well against lamps that are susceptible to the ingress of moisture, as evidenced by Koito's concern that traditional Japanese and European headlamp designs, susceptible to interior damage, cannot comply. While the test can be characterized as restrictive of certain headlamp designs, it is because those design cannot meet the performance demanded of them for passing the test. NHTSA does not view the requirement as a design standard, because the standard does not dictate to lamp manufacturers the design characteristics which they must choose. Manufacturers have complete freedom of design as long as the performance (not allowing moisture) is met.

Koito claims that the newly proposed corrosion test for headlamps that have removable lenses is an appropriate requirement for lamps to pass should they first fail the present humidity test. This is an incorrect application of that requirement. The newly proposed corrosion test is to address a headlamp's susceptibility to corrosion from the effects of having a broken lens. The exposure time due to a broken lens may vary widely case to case, but it is not continual for the life of the vehicle. This corrosion test is not an adequate requirement for headlamps that by their design could have very open interiors, as if they had broken lenses, over their entire existence. A very different and more stringent requirement would appear to be appropriate for such lamps. However, such a test would not determine lamps' susceptibility to condensing moisture that could disrupt photometry in the instant. Thus, it does not fulfill the safety need either.

In accordance with 49 CFR Part 552, this completes the agency's technical review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. The possible value of the requested amendment is particularly small in view of the petitioner's ability to build complying headlamps under the existing requirements and the lack of any inhibition in the standard against

innovative solutions for achieving compliance. After considering all relevant factors, including the need to allocate and prioritize scarce agency resources to best accomplish the agency's safety mission, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–17434 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Say's Spiketail Dragonfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Say's spiketail dragonfly (*Cordulegaster sayi*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is not warranted.

DATES: The finding announced in this document was made on June 20, 1995.

ADDRESSES: Comments or questions concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor, at the above address (904/232–2580).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the Service make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) of the Act requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings shall be published promptly in the **Federal Register**.

On February 15, 1994, the Service received a petition dated January 13, 1994, from Ms. Nancy Fraser Williams on behalf of the Rock Creek Owners' Association, Gainesville, Florida, to list the Say's spiketail dragonfly (*Cordulegaster sayi*) as endangered. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on October 26, 1994 (59 FR 53776). The finding also announced the Service's formal review of the species' status and solicited information and public comment regarding population trends, biological vulnerability, and threats to this species. Comments and information received by December 27, 1994, were considered in the 12-month finding.

On the basis of the best available scientific and commercial information, the Service finds that listing the Say's spiketail dragonfly is not warranted at the present time.

The earliest description of this dragonfly was made by Selys (1854) from a British Museum specimen taken in Georgia. Westfall (1953) reported three males collected at Lake City in 1896 and 1897 as the first specimens from Florida. Westfall and Johnson (unpublished) attributed additional state records to misidentifications with congeneric species. Their review demonstrated that the only known specimens of *Cordulegaster sayi* in existence were collected from eight specific historic sites in either Georgia or Florida. The current range includes central Georgia to northern and western Florida. Rock Creek is the best described and most productive of the eight historic sites. Sites on public land include Gordonia-Altamaha State Park in Georgia; Gold Head Branch and Torreya State Parks, San Felasco Hammock State Preserve, and Blackwater River State Forest in Florida. Besides Rock Creek, private land sites include Lake City, Columbia County, and Camp Crystal Lake, Clay County, Florida. Approximately a dozen specimens have been collected from these other sites. The most recent collections were made in 1994 from Blackwater River State Forest. Kroetzer and Kroetzer (unpublished) collected a specimen from Conecuh National Forest in Alabama in 1994 which has characteristics of both *Cordulegaster sayi* and its congener *C. bilineata*.

Say's spiketail dragonfly is associated with trickling hillside seepages in deciduous forests (Dunkle 1989). Adults have been collected from late February through late April in open areas within about a half mile of seepage breeding sites (Westfall and Mauffray 1994). Westfall (pers. comm. 1994) collected larvae of various instars from seepage pools and beneath wet leaves within and on the border of the seepage streamlets. Larval collections indicate that the species has a multi-year life cycle (Westfall and Mauffray 1994, Mauffray in litt. 1994).

Two seepages modified by development of the Rock Creek subdivision are the only known adverse habitat changes at this site (Mauffray in litt. 1994). Despite these modifications, Mauffray (Westfall and Mauffray 1994) discovered a sizable population in 1992. The collection of larvae from flooded seeps in 1993 (Westfall and Mauffray 1994) following two successive flood events did not support Mauffray's belief (in litt. 1994) that unflooded seeps are needed as dragonfly refugia for population survival. An observed increase in adult numbers from 1993 to 1994 would also not have been predicted following two consecutive annual floods. The observed fluctuations in adult numbers before and after surrounding land development may therefore be more a function of asynchronous emergence due to the species' presumed multi-year life cycle rather than an adverse response to flooding. Concerns for seepage damage by cattle (Daigle in litt. 1985) and pedestrians and vehicles (V. Compton, Blackwater Forestry Resource Administrator, pers. comm. 1994) in Blackwater River State Forest are the only other known instances rangewide of possible habitat impacts. Despite these observations, two adults were collected in 1994 in the vicinity of the historic collection site (J. Daigle, Florida Department of Environmental Protection, pers. comm., 1994)

Between 1970 and 1994, Mauffray (in litt. 1994) conservatively estimated that collecting had removed over 140 adult specimens from Rock Creek. This level

of collecting was related to the sites's uniqueness and accessibility. Despite this collecting pressure, the population persisted. The species' short flight season, variable emergence, lack of collection pressure on larvae, and increased conservation awareness probably mitigated serious collecting impacts.

Neither the city of Gainesville, Florida, nor Alachua County have local ordinances which mandate special local protection for the dragonfly or the habitat at Rock Creek (M. Drummond, Alachua County Environmental Protection Department, pers. comm.). Both Florida and Georgia have statutes intended to provide special protection and conservation measures for species designated according to specific criteria within the respective state laws. Say's spiketail dragonfly currently has no special designation in either state.

Agencies administering and managing parks and preserves in both states prohibit the removal of non-exempt fauna and flora from lands entrusted to them without prior written permission from the authorized representative (B. Wert in litt. 1995, D. Bryan in litt. 1995). The same requirement applies to the Florida state forest system (V. Compton, pers. comm.).

The current status and condition of the Lake City collection site is unknown since the collections were made nearly 100 years ago and exact locations were not specified. The Camp Crystal Lake site consists of open fields and three ravines administered respectively by the Alachua County School Board and the city of Keystone Heights Airport Authority. Both areas have controlled access. Leases provided to Camp Crystal Lake and Keystone Heights Sportsmen's Club by the Airport Authority which permit ravine access also prohibit property destruction or alteration as well as the removal of any plants or animals other than specified game animals without prior permission from the lessor (G. Reid, Keystone Heights, Airport Authority, pers. comm., 1994). An Airport Authority property manager patrols the areas three days a week.

Although existing regulatory mechanisms do not protect all Say's spiketail habitat, available information indicates that some protection is being afforded on public lands.

The Clean Water Act (section 404) is the primary federal law that provides some protection of aquatic habitats determined by the U.S. Army Corps of Engineers to be jurisdictional wetlands. These laws provide no protection against modification or development of upland habitats adjacent to the seepage breeding sites.

Where habitat of this species occurs on other Federal lands, including but not limited to the Forest Service, Park Service and Department of Defense, each agency's standard natural resource and wildlife protection guidance are implemented.

Mauffray (in litt. 1994) expressed concern for the Rock Creek population's survival from other man-made and natural factors such as insecticides, fertilizers from adjacent turf and landscape areas, fire, and drought. The Service acknowledges that man-made drains traversing the Rock Creek riparian corridor could serve as conduits for limited point and non-point source pollution within breeding sites. Mosquito spraying also may impact adult dragonflies and chemicals reaching breeding sites from sheet flow of surface and subsurface waters likewise may impact larvae. Information which substantiates these impacts, however, was not found. The dragonfly's apparent semi-aquatic larval stage should help it survive periods of low water. The Service considers the probable impacts from fire low because of the habitat's relative resistance to burning. The potential impact of agriculture and silviculture on habitat rangewide is unknown.

The distance separating known collection sites suggests that gene flow among populations of this habitat specialist was historically restricted. The adults' presumed short flight range further restricts potential exchange of genetic material. Although impacts to the Rock Creek deme (local populations with little or no outbreeding) might result in some loss of genetic diversity from the species genome, it would have little or no significance to the genetic fitness of other demes.

The Service believes that the floodwater retention project, if implemented, would not result in the extirpation of the Rock Creek population. An analysis of historic population fluctuations and Westfall and Mauffray's 1993 Rock Creek study does not support their contention that additional flooding would severely impact this dragonfly. Other factors such as chemicals, fire, and drought were assessed for cumulative impacts. Some impact might be expected if the factors occurred close enough in time to affect multiple life stages or generations. The Service's position is that the factors are either not factually supported and/or that the probability for their close temporal occurrence resulting in cumulative impacts is very low. The petitioner's concern for imminent impact to the population from the proposed project has been eliminated since Gainesville has placed the project on hold for an estimated three to five years while it updates its planimetric database (G. Pearson, City Engineer, Public Works Department, pers. comm.).

Seven of the eight historic collection sites remain intact and six receive some protection and management. Adults were recently collected at one of these sites and suitable habitat also exists at other as yet unsurveyed sites. The Service therefore concludes that the probability of finding other reproducing populations rangewide is high. The Service has funded a systematic survey of historic sites and other public lands in portions of Florida, Georgia, and Alabama. The survey hopes to better delineate the species' range and distribution. A single specimen representing a new site has since been collected at Camp Blanding National Guard Military Reservation in Clay County, Florida.

On the basis of the best available scientific and commercial information, the Service finds that listing Say's spiketail dragonfly as endangered is not warranted at the present time because the taxon presently is not in danger of extinction or likely to become so in the foreseeable future. The species will continue to be retained in category 2 at least until the results of the current status survey have been assessed. Category 2 candidates are those for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. In addition, the status of the proposed floodwater retention project will be monitored as will the Rock Creek population. The condition of new and other existing populations will be evaluated and pre-listing conservation actions instituted, where feasible, to further protect and restore this species and its habitat. The Service will continue to seek additional information about population trends, biological vulnerability and threats to this species. If additional information becomes available in the future indicating that listing as endangered or threatened is appropriate, the Service may reassess the listing priority for this species.

References

A complete list of references used in the preparation of this finding is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Mr. John F. Milio (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 20, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–17386 Filed 7–14–95; 8:45 am]

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50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the comment period for the proposed special rule.

SUMMARY: On February 17, 1995 (60 FR 9484), the Fish and Wildlife Service (Service) published a proposed special rule, pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The original deadline for comments on the proposed rule was May 18, 1995, however, on May 18, 1995 (60 FR 26712), a notice was published in the **Federal Register** announcing the reopening of the comment period to end July 17, 1995. The intent of this notice is to reopen the comment period to September 15, 1995.

DATES: The comment period for written comments is reopened until September 15, 1995.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecoregion, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6159).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina,* was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the ''take'' prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR Part 17, on February 17, 1995, in the **Federal Register**, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: July 10, 1995.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 95–17422 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 18

RIN 1018–AD04

Importation of Polar Bear Trophies From Canada; Proposed Rule on Legal and Scientific Findings To Implement Section 104(c)(5)(A) of the 1994 Amendments to the Marine Mammal Protection Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule and findings.

SUMMARY: This notice announces the proposed legal and scientific findings on the importation of polar bears (*Ursus maritimus*) taken in sport hunts in Canada, including ones taken, but not imported, prior to enactment of the 1994 Amendments of the Marine Mammal Protection Act (MMPA). Specifically, the U.S. Fish and Wildlife Service (Service) proposes to find that the Northwest Territories (NWT), the only area in Canada that currently allows sport hunting, has a monitored and enforced sport-hunting program that ensures polar bears are legally taken, is consistent with the purposes of the Agreement on the Conservation of Polar Bears, and is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level, provided certain provisions are in place in the specific population. The Service proposes to approve populations where the status of the population has been stable or increasing for previous harvest seasons and local and/or joint management agreement(s) are in place. Since Canada and the United States are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Service proposes that import and export procedures are in place to meet CITES requirements. This notice also proposes regulations on the disposition of the gall bladder, tagging of trophies, and import procedures needed to monitor legal import and to ensure the import will not contribute to illegal trade in bear parts. The Service invites comment on options proposed to meet the provisions of Section 102(b) of the MMPA concerning the importation of pregnant and nursing polar bears. For polar bears taken in the NWT prior to the Amendments through the effective date of the final rule, the Service proposes to issue permits when proof of legal take is demonstrated and the provisions of the Act concerning pregnant and nursing polar bears are met. The Service intends to make these findings for multiple sport-hunting seasons pending review as required

under Section 104(c)(5)(C) of the MMPA. This proposed rule is a supplement to the Service's previous proposed rule published on January 3, 1995.

DATES: The Service will consider comments and information received August 31, 1995 in formulating its decision on this notice and proposed rule.

ADDRESSES: Comments and information should be sent to: Director, Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 434. The Service has prepared a draft Environmental Assessment (EA) for this proposal. A copy of the draft EA may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell, Office of Management Authority, at the above address, telephone (703) 358–2903; fax (703) 358–2281.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995, the Service published in the **Federal Register** (60 FR 70) a proposed rule to establish application requirements, permit procedures, issuance criteria, permit conditions, and a special permit issuance fee. At that time, the Service was gathering information for this second proposed rule. This rule proposes the legal and scientific findings required by the 1994 Amendments that need to be made prior to the Service issuing permits to allow for the importation of sport-hunted trophies of polar bears legally taken by the applicant while hunting in Canada. Based on information on polar bear populations in Canada and Canada's management program, the Service believes these proposed findings are consistent with section 104(c)(5)(A) of the MMPA. The Service invites comment on three proposed options to meet the requirements of Section 102(b) of the MMPA that polar bears may not be imported if the bear at the time of taking was pregnant or a nursing cub. The rule also proposes to amend the proposed permit regulations announced in the January 3, 1995, notice by adding regulations on certification of legal take by the NWT for polar bears taken prior to the effective date of any final rule; disposition of the gall bladder; tagging of trophies; and import procedures needed to monitor legal import and to ensure the import will not contribute to illegal trade in bear parts.

In accordance with section 104(c)(5)(A) of the MMPA, prior to issuing a permit for the importation of a polar bear trophy, the Service must make a finding that the polar bear was legally taken by the applicant, and in consultation with the Marine Mammal Commission (MMC), and after opportunity for public comment must make the following findings: (A) Canada has a monitored and enforced sport-hunting program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears (International Agreement); (B) Canada has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; (C) the export from Canada and subsequent import into the United States are consistent with the provisions of CITES and other international agreements and conventions; and (D) the export and subsequent import are not likely to contribute to illegal trade in bear parts. According to the Committee Report (H.R. Rep. No. 439, 103d Cong., 2d Sess.(1994)) these provisions were placed in the law partly to ensure that the importation of polar bear trophies into the United States would not increase hunting demand in Canada that would result in unsustainable harvest levels. It was felt that if Canada's polar bear management program regulates harvest through a quota system based on principles of sustainable yield, any increase in the harvest quota would be based on scientific data showing the population had increased to such an extent as to support an increase in the quota.

The proposed rule provides information on polar bear biology and Canada's management program for this species. It discusses each of the legal and scientific findings for the Northwest Territories (NWT), the only area in Canada where polar bears can be harvested currently by non-residents through a regulated sport-hunting program.

The Service is to make the findings in consultation with the MMC, an independent Federal agency with statutory authority to make recommendations pursuant to Title II of the MMPA. Copies of the information received from Canada have been provided to the MMC for this purpose. The Service intends to announce its decision on these proposed findings after consultation with the MMC and the opportunity for public comment.

Population Status and Distribution

Although polar bears occur in most ice-covered areas of the Arctic Ocean and adjacent coastal land areas, their distribution is not continuous. They are most abundant along the perimeter of the polar basin for 120 to 180 miles (200 to 300 kilometers) offshore. The primary prey of polar bears is the ringed seal (*Phoca hispida*), followed by the bearded seal (*Erignathus barbatus*). The abundance of seals affects the distribution of polar bears. The long-term distribution of polar bears and seals depends on the availability of habitat which is influenced by seasonal and annual changes in ice position and conditions (U.S. Fish and Wildlife Service (USFWS) 1995).

It is estimated that there are 21,000 to 28,000 polar bears worldwide (Polar Bear Specialist Group (PBSG) 1995). The number of polar bears in Canada is estimated at 13,120 in 12 relatively discrete populations, referred to as management units or subpopulations in some documents (Government of the Northwest Territories (GNWT), unpublished documents on file with the Service) (Map 1).

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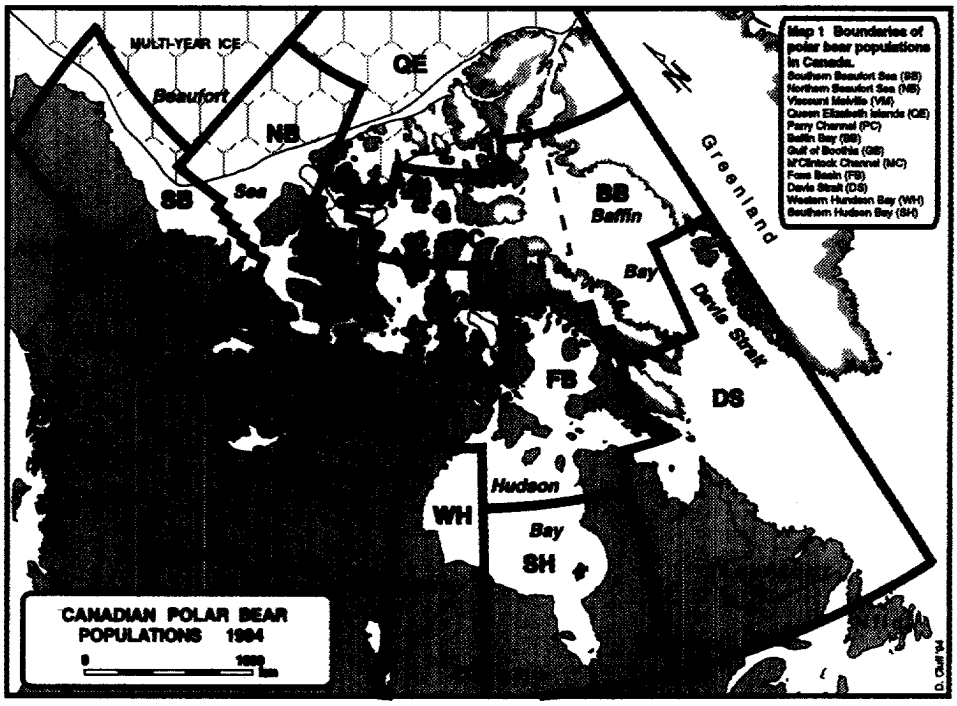

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The language in the Amendments refers to an ''affected population stock'' in the singular, and raises the issue of whether the Service needs to make the findings on one population for the whole of Canada or on the 12 populations under which Canada has been managing polar bears for over 20 years. In considering the following information, the Service has decided to treat the 12 Canadian populations as population stocks under the MMPA and make the proposed findings on that basis.

Congressman Jack Fields, during the House of Representatives floor debate for the 1994 Amendments, clarified that ''the term 'population stock' as defined in the MMPA means a group of marine mammals of the same species in a common spatial arrangement and is used in the bill to refer to these subpopulations and management units which reflect Canada's management regime'' (140 Cong. Rec. H2725, April 26, 1994).

For many marine species, there have been difficulties in defining stocks consistently under the MMPA. This particularly became apparent when the Service and the National Marine Fisheries Service (NMFS) under the 1994 Amendments were tasked with conducting stock assessments to determine the number of animals that may be removed from a population by human-caused mortality. Dr. Barbara Taylor (1995) in a NMFS administrative report pointed out that although the definition of population remains illusive, it can be critical to good management. She asserted that ''population stock'' in the MMPA has both a biological and management meaning. Two populations should be managed separately if interchange is low as there are potentially strong negative effects of treating large areas as single populations when mortality is concentrated in small areas. Dr. Taylor also suggested that ''maintaining the range of a species meets the MMPA objective of maintaining marine mammals as significantly functioning elements of their ecosystems.'' Canada's management program for polar bear recognizes 12 discrete populations with a set quota for human caused mortality specific to each population. Harvest data and scientific research have provided information to show that interchange between populations is low and human caused mortality is concentrated within localized areas. Therefore, the management of polar bears in Canada as discrete populations is consistent with the term ''population stock'' as used in the MMPA and ensures the maintenance of the polar bear throughout its range in Canada.

The GNWT wrote the Service that Canada's ''stocks'' of polar bears are termed ''populations''. This designation is based on increasing knowledge on the movement of polar bears. Boundaries of polar bear populations in Canada were initially based on geographic features using reconnaissance surveys. Over time, the boundaries have been confirmed and refined through scientific research on the movement of polar bears (e.g., mark-recapture, mark-kill harvest data, radio tracking, and satellite telemetry), local knowledge of bear movements, and physical factors affecting movements, such as ice formation and location of polynyas (e.g., areas where ice consistently breaks up and creates open water or areas where ice is refrozen at intervals during the winter). The research and accumulation of other information are ongoing. For example, the recently collected satellite telemetry data are being analyzed to redetermine the population boundaries for the Parry Channel/Baffin Bay population (GNWT).

Canada shares some polar bear populations with Greenland and Alaska. Northeastern Canada shares three populations (Queen Elizabeth Island, Baffin Bay/Parry Channel, and Davis Strait) with Greenland with the extent of exchange between Canada and Greenland as yet unclear. Northwestern Canada shares the Southern Beaufort Sea population with northern Alaska, with extensive east-west movements of polar bears between Canada and the United States.

Reproduction and Survival

Polar bears are intimately associated with Arctic ice. Due to unpredictability in the structure of Arctic sea ice and associated availability of food, it is

thought that adult males do not defend stable territories but may instead distribute themselves among different sea ice habitats at the same relative densities as solitary adult females (Ramsay and Stirling 1986).

Males locate females that are ready to breed by scent and tracks. Polar bears mate while on the sea ice between late March through May, with implantation occurring in September. Maternity dens are typically formed in drifted snow in late October and November and cubs are born in December and January (USFWS 1995).

A summary of research data on the reproduction and survival in polar bears is given in Taylor et al. (1987) and Ramsay and Stirling (1986). The large-scale unpredictable fluctuations of the Arctic environment strongly affect the recruitment rate and the survival of young. Polar bears have a low birth rate and exhibit ''birth pulse'' reproduction. A small number breed for the first time at 3 years of age and slightly more at 4 years of age. Most females start to produce young at 5 or 6 years of age. The number of females available to breed is affected by the survival rates of cubs, adult female survival rates, litter size, and litter production rates. As cub and litter survival rates increase, the number of females available for breeding in any year decreases. In any year, 30 to 60 percent of available adult female polar bears do not breed or are not impregnated. Typically, each litter consists of two cubs. The overall sex ratio is 50 males to 50 females. Cubs remain with the female until they are about 2.5 years old, during which time the females avoid associating with adult males. When the cubs are weaned, the females are again ready for breeding. Some females lose their cubs and are available for breeding the next season. The average breeding interval is 3 years. This results in a skewed sex ratio, with fewer females available to breed in any one year than males and in intrasexual competition among males for access to breeding females. Females stop reproducing at about 20 years of age. Due to mortality, the average litter size ranges from 1.58 to 1.87 in the High Arctic populations to as high as 2.0 in Hudson Bay. The first year survival rate is high (0.70 to 0.85) because of the long period of female parental care. The life history strategy of the polar bear is typified by high adult survival rates (0.76 to 0.95).

Canada's Polar Bear Management Program

Although each of the 12 populations of polar bear within Canada is managed as a unit, there is a somewhat complex sharing of responsibilities. Management has been delegated to the Provincial and Territorial Governments, but the Federal Government (Environment Canada's Canadian Wildlife Service) has an active research program and is involved in management of populations shared with other jurisdictions, especially ones with other nations. Native Land Claims have resulted in Co-management Boards for most of Canada's polar bear populations. Polar bears in Canada occur in the NWT, in the Yukon Territory, and in the provinces of Manitoba, Ontario, Quebec, and Newfoundland and Labrador (Map 1). All 12 populations lie within or are shared with the NWT. Provincial boundaries extend only to the low water mark of the Hudson Bay. Canadian territorial waters within the Arctic Ocean, Hudson Bay, and all islands and marine waters are part of the NWT. The offshore marine areas along the coast of Newfoundland and Labrador are under Federal jurisdiction (GNWT).

The Federal-Provincial Technical and Administrative Committees for Polar Bear Research and Management (PBTC and PBAC, respectively) were formed to ensure a coordinated management process consistent with internal and international management structures and the International Agreement. The Committees meet annually to review research and management of polar bears in Canada and have representation from all the Provincial and Territorial jurisdictions with polar bear populations, plus the Federal Government. Beginning in 1984, members of the Service have attended meetings of the PBTC and biologists from Norway and Denmark have attended a small number of meetings. In recent years, the PBAC meetings have included the participation of the non-government groups, the Inuvialuit Game Council and the Labrador Inuit Association, for their input at the management level. Beginning in 1995, representatives of Inuit groups harvesting polar bears were invited to attend PBTC meetings. The annual meetings of the PBTC provides for continuing cooperation between jurisdictions and for recommending management actions to the PBAC (Calvert et al. 1995). Most recently, emphasis has been on the development of Management Agreements, reducing quotas for populations thought to be over-harvested, and conducting research on populations with uncertain status (PBSG 1995).

NWT's Polar Bear Management Program

The NWT geographical boundaries include all Canadian lands and marine environment north of the 60th parallel (except the Yukon Territory) and all islands and waters in Hudson Bay and Hudson Strait up to the low water mark of Manitoba, Ontario, and Quebec. Polar bears are managed under the Northwest Territories Act (Canada). The 1960 Order-in-Council granted the Commissioner in Council (NWT) authority to pass ordinances to protect polar bears, including the establishment of a quota system to manage polar bears, that are applicable to all people. The Wildlife Act, 1988, and Big Game Hunting Regulations provide supporting legislation which recognizes each polar bear population.

Although the recently completed Inuvialuit and Nunavut Land Claim Agreements supersede the Northwest Territories Act (Canada) and the Wildlife Act, no change in management consequences for polar bears is expected. Under the umbrella of the NWT's Department of Renewable Resources (DRR), polar bears are co-managed through wildlife management boards, made up of Land Claim Beneficiaries and Territorial and Federal representatives. One of the strongest aspects of the program is that the management decision process is integrated between jurisdictions and with local hunters and management boards. A main feature of this approach is the development of Local Management Agreements between the communities that share a population of polar bears. These Agreements are then used to develop regulations which implement the agreements. Regulations specify who can hunt, season length, and age and sex classes that can be hunted, and the total allowable harvest for a given population in Polar Bear Management Areas. The DRR has officers to enforce the regulations in most communities of the NWT. Since the co-management system strives to develop local support for regulations before they are implemented, there is strong community pressure to comply with management agreements. Incidents of violation of regulations, kills in defense of life, or exceeding a quota are investigated.

There are a number of communities within the boundaries of each polar bear population. The total sustainable harvest for each population is divided among communities within the population boundaries, called settlement quotas. When agreement on a particular community's share of the

sustainable yield has been reached, tags are provided each year to the Hunters' and Trappers' Organizations or Associations or Committees (HTO). This group in conjunction with members of the community, decides how many tags to allocate to sport hunting and how many are to be used by local hunters. Sport hunting is not administered separately from other polar bear harvesting. It should be noted that some communities may hold quota tags for several separate populations, but tags can be used only for the populations for which the tags are issued (GNWT).

Harvest of Polar Bears and Sport Hunting

The hunting of polar bears is an important part of the culture and economy of indigenous peoples of the Arctic (PBSG 1995). A hunting season was first imposed in Canada in 1935. Hunting opportunities were restricted to Native people in 1949, with quotas for polar bears introduced in 1967. The harvest of polar bears was almost 700 in 1967/68, but dropped dramatically with the introduction of quotas. In the 1978/79 season, the largest increase occurred when the quota was increased by 12 percent (Lee et al. 1994). Since 1991, quotas have undergone major adjustments, mainly downward.

In the NWT, the indigenous people in a settlement may authorize the sale of a permit from the quota to a non-resident hunter. These hunts are subject to certain restrictions: the hunt must be conducted under Canadian jurisdiction and guided by a Native hunter; transportation during the hunt must be by dog sled; the tags must come from the community quota; and tags from unsuccessful sport hunts may not be used again. Sport hunters typically select trophy animals, usually large adult males. Table 1 shows that in 1993/94, 79 percent of polar bears taken as sport-hunting trophies were male. It also summarizes the number of sport hunts that occurred in the different populations in the NWT for the last two harvest seasons. Sport hunting for polar bears began in the NWT in 1969/70 with three hunts and gradually increased (GNWT). The average over the last five seasons was 55 as summarized by the Service in Table 2. The maximum number of sport hunts in any one year was 83 which occurred in the 1987/88 season. The success rate varied from 30 percent in 1979/80 to 91 percent in 1985/86 (Lee et al. 1994) and has averaged about 79 percent over the past five seasons. The number of quota tags used for sport hunting compared to the total known kill in the NWT averaged 10.9 percent annually over the last five seasons.

TABLE 1.—STATISTICS FOR POLAR BEAR SPORT HUNTING IN THE NWT FOR POPULATIONS IDENTIFIED AS SOUTHERN BEAUFORT SEA (SB), NORTHERN BEAUFORT SEA (NB), QUEEN ELIZABETH ISLANDS (QE), PARRY CHANNEL (PC), BAFFIN BAY (BB), GULF OF BOOTHIA (GB), AND FOXE BASIN (FB)

Population	1993/94 season			1992/93 season	
	No. killed (No. not successful)	Percent of total	Percent male	No. killed (No. not successful)	Percent of total
SB	3 (3)	9.7	67	1 (0)	2.7
NB	2 (3)	8.1	100	1 (1)	5.4
QE	0 (1)	1.6	.....	1 (0)	2.7
PC	26 (2)	45.2	85	22 (2)	64.9
BB	5 (0)	8.1	80	2 (1)	8.1
GB	7 (3)	16.1	86	4 (1)	13.5
FB	5 (2)	11.3	40	0 (1)	2.7
Total	48 (14)	.....	79	31 (6)	.....

TABLE 2.—SUMMARY OF SPORT HUNT KILLS IN NWT

Season	Total sports hunt	No. killed (percent success)	Known total kill in NWT	Percent total sport hunt to known kill in NWT
1989/90	60	48 (80)	537	11.2
1990/91	66	50 (76)	490	13.5
1991/92	48	39 (81)	549	8.7
1992/93	37	31 (84)	506	7.3
1993/94	62	48 (77)	432	14.4
Average	55	43 (79)	503	10.9

There is substantial economic return to the community from sport hunts. The potential value of the ''actual hunt cost'' in 1993/94 in Parry Channel for one polar bear was $18,500 (US) with 80 percent of the money staying in the community. However, only a few communities currently take part in sport hunts as it reduces hunting opportunities for local hunters (GNWT) and requires responsibilities in dealing with non-Native clients.

Polar bear sport hunts for non-residents are usually arranged through an agent or broker. In general, the agent or broker contacts the community's Hunters' and Trappers' Organization or Associations or Committees (HTO) to arrange for the hunt including the acquisition of a hunting license and tag for the hunter. If the community has not already decided what portion of its quota, if any, to designate for sport hunters, the HTO representative presents all requests for sport-hunt tags at a community meeting. The community decides on the number of

tags to be designated for sport hunting. Then the fee for the tag is paid and the tag is allocated to a specific hunter. The tag cannot be resold or used by any other non-resident hunter. In most cases polar bear tags for sport hunts are retained by the DRR officer until provided to the hunter. In a few cases, the tags are retained by the HTO who in turn provide them to the hunters (GNWT).

Proposed Legal and Scientific Findings and Summary of Applicable Information

Currently, only the NWT allows sport hunting of polar bear. Thus, the Service is proposing findings only for the NWT.

A. Legal Take

1. Proposed Finding

The Service proposes to find that the NWT has a management program that ensures a polar bear was legally taken and to condition the permit as outlined below. This program includes the use of hunting licenses; quota tags; DRR officers in communities; collection of biological samples from the trophy and collection of data from the hunter; a regulated tannery; a computerized tracking system for licenses, permits and tags; and an export permit requirement to export the trophy from the NWT to other provinces and a CITES permit system if the trophy is exiting Canada. This is all within the context of the laws, regulations, and co-management agreements discussed earlier.

For polar bears that are taken after the effective date of any final rule, the Service proposes to condition permits upon the presentation of a copy of the NWT hunting license with tag number and a Canadian CITES export permit that identifies the polar bear by hunting license and tag number to a Service inspector at the port at the time of import to satisfy the requirement of proof of legal take. For bears taken prior to the effective date of any final rule, the Service proposes to require the applicant to provide with his/her application a certification from the Department of Renewable Resources, Government of the Northwest Territories, that the polar bear was legally harvested and tagged, including the name of the hunter and location and season the bear was taken.

2. Summary of Legal Take

As described above, the agent or broker usually obtains the hunting license and tag for the hunter. Once a polar bear is taken, the tag is affixed to the hide and biological samples requested by the DRR officer are collected. Polar bear tags are metal, designed for one-time use, and stamped with the words polar bear, an identification number, and the harvest year. The identification number in combination with the harvest year identifies the community to which the tag was assigned. If a tag is lost prior to being affixed to a hide, the lost tag number and other information as required must be reported to the DRR officer prior to issuance of a replacement tag. In the event that the sport hunt is unsuccessful, the unused tag is destroyed.

By regulation, as soon as practicable after the bear is killed, a person must provide the following information to a DRR officer in the community, or a person who has been designated by the HTO and has the approval of a DRR officer: (a) The person's name; (b) the date and location where the bear was killed; (c) the lower jaw or undamaged post-canine tooth and, when present, lip tattoos and ear tags from the bear; (d) evidence of the sex of the bear; and (e) and any other information as required. Except where an officer verifies the sex of the polar bear, the baculum (i.e., penis bone) of the male polar bear must be provided for the purposes of determining sex. If proof of sex is not provided or an officer does not verify the sex of the bear, the bear will be deemed to have been female for the purposes of population trend/modelling.

Additional information, collected to complete a numbered Polar Bear Hunter Kill Return form, includes: The community where the hunt was based; the polar bear population from which the bear was harvested; the harvest season in which the bear was taken; the sex of the bear; the approximate latitude and longitude of where the bear was taken using a map or description of the location with geographical references; general comments on the physical condition of the bear, including a measure of the fat depth; an indication of whether the bear was alone or part of a family group, including if the bear was a mother with cubs; the estimated age class of the bear before the tooth was examined; the disposition of the hide; the hide value to the hunter; the hunter's address and the hunter's license number; the guide/outfitters name; and the name of the DRR officer in the applicable community.

By NWT regulation, a licensed tanner must needle stamp each hide or pelt upon receipt so that the hide or pelt may be identified as belonging to a specific customer. Polar bear tags are not intended to remain on the hide during tanning. When a tag is removed for tanning, it is returned to the owner of the hide.

In 1991, the DRR developed a Game License System to track all licenses, permits, and tags issued by the Department. It is accessible from any area of the NWT. All eight Regional Offices complete a monthly vendor return which is entered into the system. The vendor return contains all the licenses, permits, and tags that were issued during that month. Reports and searches may be generated as needed. Canada also maintains a computerized national polar bear harvest database. Up until quotas were established in 1967/68, harvest data were recorded opportunistically. With the introduction of quotas, a large percent of the harvest was recorded and since 1977/78 all harvests have been recorded. Should it be required, a polar bear trophy imported from Canada could be traced back to the individual who took the bear.

A NWT Wildlife Export Permit must be obtained from a DRR officer prior to exporting wildlife, including polar bear parts. The hunter must show the hunting license to obtain a NWT Wildlife Export permit. Polar bear parts may be exported from Canada with a Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) export permit (see discussion in section ''D'' below). The tag, either removed for tanning or removed at the time of export, needs to be submitted with supporting documentation as required for obtaining a CITES export permit (GNWT).

B. 1973 International Agreement on the Conservation of Polar Bears

During the 1950's and 1960's, there was a growing international concern for the welfare of polar bear populations. The primary concern was that the increased number of bears being killed could lead to endangerment of populations. In 1965 the PBSG, comprised of biologists from the five nations with jurisdiction over polar bears (Canada, Denmark (for Greenland), Norway, the United States, and the former Union of Soviet Socialist Republics), was formed under the auspices of the International Union for Conservation of Nature and Natural Resources, now known as the World Conservation Union (IUCN). This group was in large part responsible for the development and ratification of the International Agreement. It entered into force in 1976 for a 5-year period, and in 1981 was reaffirmed for an indefinite period. Greenland later was provided recognition through ''Home-rule''

although the Government of Denmark maintained its role in affairs of international scope.

The International Agreement unites nations with a vested interest in the Arctic ecosystem in supporting a biologically and scientifically sound conservation program for polar bears. It is a conservation tool that provides guidelines for management measures for polar bears. It defines prohibitions on the taking of polar bears as well as the methods of taking, and identifies action items to be addressed by the signatories, including protection of polar bear habitat and conducting polar bear research. The International Agreement is not self-implementing and does not in itself provide for national conservation programs. Each signatory nation has implemented a conservation program to protect polar bears and their environment (USFWS 1995). Since implementation and enforcement of the International Agreement is the responsibility of each signatory, different interpretations have resulted in a diversity of practices in managing polar bear populations (Prestrud and Stirling 1995).

The main purpose of the PBSG is to promote cooperation between jurisdictions that share polar bear populations, coordinate research and management, exchange information, and monitor compliance with the International Agreement. At the 1993 PBSG polar bear meeting it was stated, ''Overall, it seemed that all countries were complying fairly well to the intent, if not necessarily the letter of the Agreement'' (PBSG 1995). Prestrud and Stirling (1995) concluded that the influence of the International Agreement on the circumpolar development of polar bear conservation has been significant and polar bear populations are now reasonably secure worldwide.

1. Proposed Finding

The Service proposes to find that the NWT has a monitored and enforced sport-hunting program that is consistent with the purposes of the International Agreement as required by the 1994 Amendments under certain conditions. For the reasons discussed below, the Service proposes to approve only populations where the sport hunt for the previous year did not exceed 15 percent of the total quota for the NWT. Currently, all populations in the NWT meet this requirement (Table 2). The Service also proposes to approve only populations where provisions are in place to protect females with cubs, their cubs, and bears in denning areas during periods when bears are moving into denning areas or are in dens. At this time, the Service proposes not to approve the Southern Hudson Bay, the NWT population that is shared with Ontario, since Ontario has no provisions in place to protect females with cubs, their cubs, and bears in dens. The following discussion outlines the applicable requirements of the International Agreement as it relates to sport hunting and management of polar bear in the NWT.

2. Taking and Exceptions

Article I of the International Agreement prohibits the taking of polar bears, including hunting, killing, and capturing. Article III establishes five exceptions to the taking prohibition of Article I as follows: (a) for *bona fide* scientific purposes, (b) for conservation purposes, (c) to prevent serious disturbance of the management of other living resources, (d) by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party, and (e) wherever polar bears have or might have been subject to taking by traditional means by its nationals.

Article III does not specifically exclude sport hunting from the taking prohibition. However, Mr. Curtis Bohlen, head of the U.S. delegation at the 1973 negotiations of the International Agreement, clarified to the Service (pers. comm. 1995) that sport hunting was not precluded and that the U.S. position, which was generally agreed to by all, was that sport hunting could occur if the national territories could be defined so the Arctic Ocean could become a sanctuary. Canada issued a declaration at the time of ratification of the International Agreement to clarify that it regards the guiding of sport hunters by aboriginal people, within conservation limits, to be allowed. The declaration states, ''The Government of Canada therefore interprets Article III, paragraph 1, subparagraphs (d) and (e) as permitting a token sports hunt based on scientifically sound settlement quotas as an exercise of the traditional rights of the local people.'' Based on the clause ''in accordance with the laws of that Party,'' Canada declared that the local people in a settlement may authorize the selling of a polar bear permit from the quota to a non-Inuit or non-Indian hunter, provided the hunt is conducted under the guidance of a Native hunter and by use of a dog team, and is conducted within Canadian jurisdiction.

When the Service queried the GNWT for clarification of the term ''token'' sport hunt, they said that the term ''* * * has not been discussed further by managers and user groups since the Agreement came into effect in 1976.'' The GNWT pointed out that the most important point to note is that polar bear tags allocated for guided sport hunting are part of the normal allocation to the community and are not added to the total (GNWT). Although the language of the International Agreement does not limit the amount of sport hunting within a country's national territory, Canada used the term ''token'' in its declaration. Thus, for purposes of issuing import permits for sport-hunted polar bear trophies taken in Canada, the Service proposes to approve only populations where sport-hunting for the previous harvest season is ''token'', i.e., not to exceed 15 percent of the NWT total quota. This proposed percentage is based on the history of use, where typically 10 to 15 percent of the annual quota is used by sport hunters (GNWT).

Baur (1993) stated, ''The final exception, which allows for taking 'wherever polar bears have or might have been subject to taking by traditional means by its nationals' is the most difficult to interpret.'' One possible interpretation would be that only ''nationals'' of a country could take polar bears within that country's area of traditional taking. Under this interpretation it would be illegal for U.S. citizens to hunt polar bears outside the United States. The 1975 Environmental Assessment in support of U.S. Senate ratification of the International Agreement supported this interpretation. However, Baur wrote that there is no support in the background documentation leading up to the International Agreement to support this view.

Baur (1993) suggested that the best interpretation of this exception has to do with the intent of all IUCN drafts to establish a taking prohibition outside of national territories, with particular reference to the ''high seas''. The Parties chose to define a sanctuary area for polar bears in the Arctic Ocean by limiting the area within which taking could occur to those where hunting by traditional means occurred. Since such hunting was conducted mostly by Natives by ground transportation (e.g., dog teams, snow mobiles, etc.), the area affected seldom reached into the areas commonly understood to be ''high seas'' (Baur 1993). The Service agrees with this interpretation for this exception in the International Agreement and notes that Canada allows sport hunting within this interpretation (GNWT).

3. Protection of Habitat and Management of Polar Bear Populations:

Article II of the International Agreement provides that Parties: (1) Take ''appropriate action to protect the ecosystem of which polar bears are a part''; (2) give ''attention to habitat components such as denning and feeding site and migration patterns''; and (3) manage polar bear populations in accordance with ''sound conservation practices'' based on the best available scientific data (Baur 1993). It was suggested at the 1993 PBSG meeting that Canada may be in non-compliance with parts of the International Agreement. There was some discussion of whether Canada is using sound conservation practices in managing polar bears since some populations are thought to be over-harvested. Canada noted, however, that their management system allows for the reduction of quotas in response to a decline resulting from over-hunting. The NWT is currently working with local communities to reduce quotas in those jurisdictions where recent population data suggests an over-harvest.

It was also discussed that the selling of hides resulting from polar bears killed in self-defense violates Article II of the International Agreement. Canada noted that all polar bears killed in defense of life are subtracted from the local quota so the sale is not a conservation threat (PBSG 1995).

4. Prohibition on the Use of Aircraft and Large Motorized Vessels

Article IV of the International Agreement prohibits the use of ''aircraft and large motorized vessels for the purpose of taking polar bears * * * except where the application of such prohibition would be inconsistent with domestic laws.''

It is illegal in Canada to hunt polar bears from aircraft for either sport or local hunting. Aboriginal guides and sport hunters must conduct their hunt by dog team or on foot. (It should be noted that non-sport hunters may travel and hunt polar bears by 3-wheel ATV (all-terrain vehicles), snowmobile, and boats under 15 meters. There was some discussion, but no resolution, at the 1993 PBSG meeting on whether the extensive use of snowmobiles in Canada and Alaska to hunt polar bears by native peoples complied with the International Agreement (PBSG 1995). However, Mr. Curtis Bohlen clarified that snowmobiles were normally used by natives in Canada and Alaska and were considered traditional (pers. comm. 1995).) Access to the communities is by air only, so sport hunters must fly to reach their destinations. Aircraft, snow machines, and boats are sometimes used to transport equipment, hunters, and dogs to base camps which can be a great distance from the community. The hunt continues from the base camp by dog team.

Canada does not interpret transportation by air or other motorized vehicle to a place where the hunt begins as a violation of Article IV of the International Agreement (GNWT). The Service agrees with this interpretation. Baur (1993) explained that Article IV of the International Agreement ''followed strong opinion that the hunting of polar bears with aircraft should be stopped, and, furthermore, that the prohibition against the use of large motorized vessels for taking was directed at the practice, which was particularly common in the Spitsbergen area, of hunting bears from vessels of 100 feet or longer.''

5. The Prohibition on Taking Cubs and Females With Cubs

At the 1973 Conference, the Parties to the International Agreement adopted a non-binding ''Resolution on Special Protection Measures'' to take steps to: (a) Provide a complete ban on the hunting of female polar bears with cubs and their cubs and (b) prohibit the hunting of polar bears in denning areas during periods when bears are moving into denning areas or are in dens. In adopting this resolution, the Parties recognized the low reproductive rate of polar bears and suggested that the measures ''are generally accepted by knowledgeable scientists'' to be ''sound conservation practices'' within the meaning of Article II. While the prohibitions in the Resolution are considered to be important to the signatory nations, they are not terms of the International Agreement itself and are not legally binding (Baur 1993). At the 1993 PBSG meeting the resolution was discussed but no agreement was reached over the interpretation of whether females with their cubs and cubs are specially protected under the Agreement (PBSG 1995).

Although the Service recognizes that the resolution is not binding, the 1994 Amendments require the Service to make a finding that Canada's management program is consistent with the purposes of the International Agreement. The resolution clearly falls within the purposes of sound conservation practices of Article II. Thus, the Service proposes to approve only populations where provisions are in place to protect females with cubs, their cubs, and bears in denning areas during periods when bears are moving into denning areas or are in dens.

The Service proposes to find that the NWT meets these requirements as females with cubs-of-the-year and bears in dens are protected by Territorial regulations. In addition, females with yearlings and yearlings are protected, and, in some areas, females with 2-year-old cubs are also protected. However, the Service proposes not to approve the Southern Hudson Bay population that is shared with Ontario, since that province has no such protection in place.

Importation of Pregnant or Nursing Animals. The MMPA has a more stringent requirement than the Resolution on Special Protection Measures of the International Agreement discussed above. Section 102(b) prohibits the import of any marine mammal, except under a permit for scientific research or enhancing the survival or recovery of a species or stock, if such marine mammal was ''(1) pregnant at the time of taking; (2) nursing at the time of taking, or less than eight months old, whichever occurs later; (3) * * *; (4) taken in a manner deemed inhumane by the Secretary.'' Number 4 was included to address the issue of whether the taking of a mother if she had cubs would be inhumane since the cubs probably would not be able to survive without her. These prohibitions were part of the law passed in 1972 and have been applied to all import permits. Since Congress did not specifically exclude polar bear import permits from the prohibition of 102(b), the Service has considered them in this notice.

The Service has noted two timeframes when it might be difficult to ensure that these provisions are met. In viewing the life history of polar bears, during the month of October it would not be possible to know if the bear was pregnant. In the section on Reproduction and Survival above, information was presented that polar bears become implanted in late September and usually start building dens in late October and early November. In some part of the NWT the harvest season does not open until December 1, in which case any pregnant bears would be protected. But in other areas the harvest season starts October 1 and pregnant females would be available to be taken. Second, polar bear cubs nurse until they are approximately 2.0 to 2.5 years of age at which time they are about the same size as the mother. Polar bear cubs nearing the time when they are weaned would be difficult to identify.

The Service looked at various options to ensure that the requirements of

Section 102(b) are met prior to issuing a permit for the import of polar bear trophies taken in the NWT. The Service invites comments on the following options: (1) Have the NWT certify that at the time of take the bear was not pregnant, was not a nursing cub, and was not a mother with cubs based on information presented to the DRR officer; (2) condition the import permit that the permittee must certify at the time of import that at the time of take a female bear was not pregnant or a mother with cubs, and a young bear was not nursing; and/or (3) include issuance criteria that permits would not be issued for female bears taken during the month of October and bears taken while in family groups. At this time, the Service prefers the first option and so has proposed language for it. However, the Service invites comments on the three options presented. It should be noted that this provision applies to all polar bear to be imported, including ones taken prior to the 1994 Amendments.

C. Scientifically Sound Quotas and Maintenance of Sustainable Population Levels

The NWT manages polar bear with a quota system based on inventory studies, sex ratio of the harvest, and population modeling using the best available scientific information. The rationale of the polar bear management program is that the human caused kill (e.g., harvest, defense, or incidental kills) must remain within the sustainable yield, with the anticipation of a slow increase in number for any population. Each population is unique in terms of both ecology and management issues, and baseline information ranges from very good in some areas to less developed in others. But overall, polar bear populations in Canada are considered to be healthy (GNWT).

Congressman Jack Fields stated in the House of Representatives floor debate on the 1994 Amendments that ''. . . it is not the intent of the language that the Secretary [of the Interior] attempt to impose polar bear management policy or practices on Canada through the imposition of any polar bear import criteria'' (140 Cong. Rec. H2725, April 26, 1994). The Service agrees that the intent of the Amendments was not to change Canada's management program, but to ensure ''* * * sport hunting of polar bears does not adversely affect the sustainability of the country's polar bear populations and that it does not have a detrimental effect on maintaining those populations throughout their range'' (Committee Report, H.R. Rep. No. 439, 103d Cong., 2d Sess. 34 (1994)).

The Service found in reviewing the information that Canada has a dynamic management program for polar bears which includes research, monitoring programs, enforcement, and coordination with other nations. The NWT administers the bulk of the program through a system of co-management that involves the indigenous people. The NWT polar bear program has been shown to be an evolving program in the interest of conserving polar bear populations.

1. Proposed Finding

Based on information as summarized in this **Federal Register** notice, the Service proposes to find that the Northwest Territories in Canada has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for all populations, provided the status of each population is maintained as stable or increasing for the last harvest season and the average of the three preceding harvest seasons, and a joint management agreement(s) is in place that ensures the sustainability of the total harvest in a shared population.

The Service proposes to approve the following populations in the NWT where current data show that the status of the population has been maintained as stable or increasing for the last harvest season and the average of the three preceding seasons: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound, Gulf of Boothia, M'Clintock Channel, and Western Hudson Bay.

The Service proposes not to approve populations where current data show that the take for the last harvest season and the average of the three preceding seasons has exceeded the quota to such extent that Canada classifies the status of the population as declining. Currently, this includes the two populations with uncertain data, Parry Channel/Baffin Bay and Foxe Basin.

The Service also proposes not to approve the following populations that are shared by the NWT with Greenland, Quebec, Ontario, or Newfoundland and Labrador: Queen Elizabeth Island, Parry Channel/Baffin Bay, Foxe Basin, Davis Strait, and Southern Hudson Bay. The Service understands that currently there are no management agreements between the NWT and Greenland or the listed Provinces to ensure that the total harvest in these populations are sustainable.

The Service is concerned that U.S. residents may continue to take polar bears in populations that have not been approved if the proposal is adopted. Although the GNWT has told the Service that the two populations with uncertain data (Parry Channel/Baffin Bay and Foxe Basin) have ongoing research they believe will support a finding that the current quota ensure sustainable populations, the Service notes that any person who hunts in a non-approved population is taking a risk that he/she may never be able to legally import the polar bear into the United States. If a U.S. resident hunts a polar bear in a population that is not approved for import, the Service proposes to issue an import permit only if the Service finds, based on new data from the NWT, that the total harvest for that harvest season and the average of the three preceding harvest seasons was sustainable for the affected population and a management agreement(s) was in place with Greenland and/or a province(s) that shares the population with the NWT.

2. Inventory

It is difficult and expensive to determine population trends for polar bears since they are distributed over vast areas in the Arctic environment. A minimum of 3 to 5 years of research is needed to gain a reliable population estimate, and studies need to continue for 10 to 20 years to detect significant changes (Prestrud and Stirling 1995). Each population in the NWT is assessed by a periodic population inventory done on a rotational basis. The time required to sequentially assess all 12 populations and then begin the process over again is projected to be 20 years.

The first part of the inventory process identifies the geographic boundaries of each population. Boundaries, initially proposed based on land forms, sea ice dynamics, and reconnaissance surveys, have been refined by scientific research data on the movements of individual bears through the use of mark-recapture, mark-kill data from the harvest, radio tracking, and satellite telemetry. Research on population boundaries is ongoing.

The second part of the inventory process is to estimate the size of a population. The basic principle behind the use of mark-recapture and mark-kill data in wildlife management is that given a known number of identifiable animals, the rate at which those animals are recaptured or killed provides an assessment as to the size of the population. By regulation, lip tatoos or ear tags, applied to polar bears in the course of population inventories, must be submitted to the DRR at the time of harvest of the bear. In addition, the sex and age structure of the harvest is monitored. Changes in the sex and age

of the harvest over time provide insight into whether the population may be increasing or declining. Should mark-kill data, information from the monitoring program, or reports from local hunters indicate a problem with a particular population, the period between assessments could be shortened depending on the availability of research resources.

Data from ongoing research is incorporated into management practices as appropriate. The results of studies on which management of this species is based have been published in reports, conference proceedings, and refereed scientific journals.

3. Calculation of Sustainable Harvest

The GNWT manages polar bears under the assumption that the polar bear populations are experiencing maximal (e.g. no density effects) recruitment and survival rates. The estimated sustainable rate of harvest is then the maximum sustainable harvest.

Based on a model developed cooperatively between all jurisdictions managing polar bears, it was demonstrated that the two most critical parameters for estimating sustainable harvest are population numbers and adult female survival rate (Taylor et al. 1987a). As a result of sampling biases in the available data which affected the value of the analysis, the detailed analysis was simplified to contain only the most important features. One such simplification involved the use of pooled best estimates for vital rates for all Canadian polar bear populations. Using the pooled best estimates for vital rates, the polar bear harvest model indicated that the sustainable harvest (H) of a population could be estimated as:

$H=N\ (0.015/P_f)$,

where N is the total number of individuals in the population and P_f is the proportion of females in the harvest measured directly from the harvest returns. The formula can also be modified for populations with different renewal rates and, if new information becomes available, on birth and death rates (GNWT).

Table 3 provides vital information on each population including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest for the last harvest season and averaged over the last three and five seasons. Based on this information, the status of the population is designated as increasing, stable, or decreasing, represented by the symbols ''+'', ''O'', ''−''. The population status is expressed simply as the difference between the calculated sustainable harvest and the kill. For example, the calculated sustainable harvest for the Southern Beaufort Sea 1993/94 harvest season was 81.1. Since the total kill was 64, the harvest of polar bears in the Southern Beaufort Sea did not exceed the sustainable yield. Therefore, the population had the potential to increase. In contrast, the Foxe Basin (FB) kill exceeded the sustainable harvest, thus the population status is represented as declining. It should be noted that the status as outlined in the table allows for a difference of up to 3 bears between the kill and the calculated sustainable harvest. Thus, in the Gulf of Boothia, where the harvest in the 1993/94 season exceeded the quota by 2.3 bears, the status is considered to be stable.

TABLE 3.—POPULATION STATUS FOR CANADIAN POLAR BEAR POPULATIONS INCORPORATING HARVEST STATISTICS FROM 1989/90 TO 1993/94

[The populations are identified as follows: Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), Queen Elizabeth Islands (QE), Parry Channel (PC), Baffin Bay (BB), Gulf of Boothia (GB), M'Clintock Channel (MC), Foxe Basin (FB), Davis Strait (DS), Western Hudson Bay (WH), and Southern Hudson Bay (SH). The percent females (%/) statistic[1] does not include bears of unknown sex except for Labrador (1991/92 and 1992/93) and Greenland (all 5 years). Harvest statistics include all reported human-caused mortality of polar bears. Natural deaths are not included.]

Pop.[2]	Pop. estimate	Reliability* and S.E.	5-year average (1989/90–1993/94)		3-year average (1991/92–1993/94)		Current year (1993/94)		Population status** (5yr/3yr/1yr)
			Kill (%/)	Sustainable harvest[3]	Kill (%/)	Sustainable harvest[3]	Kill (%/)	Sustainable harvest[3]	
SB	[6]1800	Good	60.4 (39.6)	68.2	66.0 (39.5)	68.4	64 (32.2)	81.1	+/+/+
NB	1200	Good	32.2 (49.4)	36.4	30.0 (45.5)	39.6	16 (50.0)	36.0	+/+/+
VM[4]	230	Good	5.2 (45.8)	1.2	2.0 (83.3)	0.7	2 (50.0)	1.1	−/0/0
QE	200	Poor	10.6 (32.1)	9.0	9.7 (24.1)	9.0	11 (29.3)	9.0	0/0/0
PC–BB	[6]2470	Fair	197.0 (30.7)	111.3	199.3 (31.5)	111.3	200 (31.9)	111.3	−/−/− (Data uncertain)
GB	900	Poor	37.8 (40.4)	33.4	38.7 (36.5)	37.0	36 (40.0)	33.7	−/0/0
MC	700	Poor	30.4 (40.3)	26.1	27.3 (33.7)	31.2	24 (33.3)	31.5	−/+/+
FB[5]	2020	Good	128.6 (40.8)	74.3	125.0 (41.7)	72.7	100 (48.5)	62.5	−/−/−
DS	[6]1400	Fair	55.0 (41.6)	50.5	58.0 (38.2)	55.0	58 (36.2)	58.0	−/0/0
WH	1200	Good	44.8 (32.1)	54.1	41.3 (27.6)	54.1	32 (40.6)	44.3	+/+/+
SH	1000	Fair	59.0 (32.5)	45.0	51.0 (36.2)	41.4	45 (33.3)	45.0	−/−/0
Total[6]	13120		661.0	509.5	648.3	520.4	588	513.5	

*Good: Minimum capture bias, acceptable precision; Fair: Capture bias problems, precision uncertain; Poor: Considerable uncertainty, bias and/or few data.

**A difference of up to 3 bears between the kill and sustainable harvest statistics was considered to be no change in status. (− = decrease 0 = no change + = increase)

Notes:

[1] The percent of killed bears that are females is not regulated by law in all populations, but rather % Females is specified as a target in many of the Local Management Agreements.

[2] Local Management Agreements now exist for all populations except QE. These agreements are reviewed periodically as new information becomes available.

[3] Except for the VM population, the sustainable harvest is based on the sex ratio of the harvest, the population estimate (N) for the area and the estimated rates of birth and death (Taylor et al. 1987):

Sustainable Harvest = (N x 0.015) Proportion of Harvest that were Females.

Unpublished modelling indicates a sex ratio of 2 males to 1 female is sustainable, although the mean age and abundance of males will be reduced at maximum sustainable yield. Harvest data (Lee and Taylor, in press) indicates that the harvest is typically selective for males.

[4] The rate of sustained yield of the VM population is one sixth that of the other populations because of lower cub and yearling survival, and lower recruitment. The projected proportion of the harvest that are females is 15% based on the intention to take only males. A 5-year voluntary moratorium on harvesting bears in the VM population began in 1994/95.

[5] Communities that harvest from the FB population have agreed to a phased reduction in quota. The final harvest level will be 91 bears or the sustainable yield as determined by subsequent population estimates by 1997.

[6] Totals refer to the sum of the all populations within or shared with Canada.

Polar bears are a long-lived and late maturing species that have a low annual recruitment rate. Their life history strategy is a reliance on a constantly high adult survival rate and stable recruitment. Consequently polar bears are particularly vulnerable to over-harvest. Conservation management and comparisons with other long-lived species suggest that noncompensatory harvest models are most appropriate for polar bears (Taylor et al. 1987).

A common technique in wildlife management is to increase harvest of males as a means of increasing sustainable yield and conserving the reproduction potential of the population. Specific modeling has shown that the sex ratio of the polar bear harvest is a critical factor in calculating the sustainable yield of polar bear populations (Lee et al. 1994). A selective harvest quota based on a harvest ratio of two males to one female can be 50 percent higher than an unselective one (GNWT). Mating in bears is promiscuous and recruitment is primarily a function of the number of adult females (Taylor et al. 1987).

When the sex-selective harvest model was presented at the 1993 PBSG meeting, there were concerns raised. One was the difficulty of accounting for compensation in the model if more females were taken. Also, there was concern that if the population model was incorrect or if ecological conditions changed substantially, there would be a delay of many years before managers would realize that the predictions of the model were incorrect. Some felt this delay was too high a risk for use as a management tool (PBSG 1995). The NWT's DRR is aware of the concerns and is currently conducting a comprehensive risk analysis to consider all sources of uncertainty. It will be used to examine the inventory rotation period and the current standards for precision in the estimates of population size. In addition, they continue to monitor information on number, sex, and age of most polar bears harvested. Any over-harvest or significant change in the population due to natural ecological reasons likely would be detected. In addition, local hunters are familiar with the relative abundance of polar bears in their areas and would notice significant increasing or decreasing trends in polar bear numbers.

Since the population quota is based, in part, on the sex ratio of the harvest, Local Management Agreements have been developed with the intention to limit the female kill by prescribing a harvest sex ratio of two males for each female. Some communities have the sex ratio as a target and others have it as a regulation. For both situations, the kill of female polar bears has exceeded the annual sustainable yield in some communities in some years. The DRR is seeking resolution to this problem including the development of conservation education materials in an effort to reduce take of females due to misidentification of sex. A booklet on how to distinguish between males and females was revised to incorporate suggestions from hunters, and posters were produced to encourage hunters to select for males. In addition, a revised one-tag system referred to as the ''Flexible Quota Option'' has been developed by the DRR, based on the number of female bears that can be taken annually. This system requires adoption into regulation prior to implementation (GNWT).

Little is known about density-dependent population regulation in bears, including polar bears (Taylor et al. 1994). The current data are insufficient to determine if the mechanism is mainly nutritional, mainly social, or a combination of social and nutritional. To study density effects on polar bears would be a long term proposition and very expensive due to the slow growth rates, high environmental variability, and behavioral plasticity of the species. The NWT has placed its emphasis on conservation rather than maximization of yield. Their intention is to ensure the conservation of existing stocks with good data and management before doing more experimental work. They believe the need for information on density effects will increase as populations slowly increase under the current management system. They anticipate that their periodic inventory and subsequent management changes will provide information on how polar bear populations respond to various density levels over the long term (GNWT).

4. Quota

The recorded annual kill of polar bears in Canada tripled during the 1960's. The size of the unrecorded harvest is unknown. In 1968 when the NWT started to set quotas, the size of polar bear populations on which to base sustainable quotas was largely unknown. Quotas were introduced on an interim basis, based on previous harvest records for each community. After the late 1970's, quotas were increased on the basis of new scientific information for each population (Prestrud and Stirling 1995). Quotas continue to undergo adjustments based on new information.

Presently, the calculated sustainable harvest for each population represents the population quota. Therefore, the quota allocated is specific to each population. A quota allocated for one population cannot be used in another population. Quotas are not carried over from one year to the next. Typically, the population quotas and a summary of previous years' harvest data for each population is presented on an annual basis to the PBTC. A summary of the population status for Canadian polar bear populations incorporating harvest statistics is provided in Table 3. The reliability and standard error of each population estimate are expressed in qualitative (i.e., Good, Fair, or Poor) rather than quantitative terms because of bias in the population estimate as a result of sampling problems. The DRR expects that quantitative terms will be used in future status reports as population inventories are completed.

All human caused mortality is subtracted from the quota, including polar bears killed in sport hunts, taken in defense of life or property, or shot illegally, as well as accidental deaths from research studies. Occasionally the quota is exceeded due to unexpected defense kills, mistakes, or illegal kills. Typically an over-harvest is deducted from the following year's quota as a correction. Any tags identified for a sport hunt cannot be re-issued later if the hunter does not harvest a polar bear. Every unused tag from a sport hunt reduces the impact of the harvest on the affected polar bear population. To date, sport hunting accounts for about 10 to 15 percent of the annual quota, with about 80 to 90 percent of the quota tags being used as a result of a successful hunt (GNWT).

5. Status of Populations the Service Proposes to Approve

Southern Beaufort Sea (SB). The estimated population is 1,800 and is considered to be conservative. Mark-recapture and studies of movements using telemetry, conducted semi-continuously since the late 1960's in Alaska and the early 1970's in Canada, have determined the boundaries of this population. The population data is rated as good. Table 3 shows the status of the population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 64 bears taken in last year's harvest, 32.2 percent were females. The population estimate is currently under review. Guiding of sport hunts occurs on a limited basis in the Canadian portion of the population. The number of sport hunts for the last two seasons was 6 and 1, respectively (GNWT).

This population is shared between the jurisdictions of the United States (Alaska) and Canada (NWT and Yukon Territory). In Alaska polar bears are only taken for subsistence and handicraft purposes by Alaska Natives. Harvest of bears on either side of the international border affect the entire population. It should be noted that the Beaufort Sea boundary remains an issue of dispute between the United States and Canada, as noted in the results of the Ottawa Summit. The United States views the Canadian jurisdiction to end at the equidistant line and no bears should be taken west of that line. To date, no international agreements between governments on the management of specific populations of polar bears have been signed. However, in January 1988, a management agreement for polar bears in the Southern Beaufort Sea was signed by representatives of the Inuvialuit Game Council (IGC) in the Northwest Territories and the Fish and Game Management Committee of the North Slope Borough (NSB) in Alaska (USFWS 1995). Although the agreement is not legally binding on the Canadian or U.S. Government, it is signed by both groups and continues to be successful overall (Prestrud and Stirling 1995). The agreement is a precedent-setting example of how Native groups can successfully manage traditional harvest practices through self-regulation. The agreement has management restrictions that are consistent with the International Agreement, and that are in some part more stringent than the MMPA. The agreement, among other things, calls for establishing harvest limits based on the best available scientific evidence; prohibition on the use of large vessels or aircraft for hunting polar bears; protection of all bears in dens or constructing dens, pregnant females, cubs, and females with cubs; a management system to regulate the number of polar bears harvested and to ensure compliance with harvest limit allocations; a reporting system to collect critical information from harvested polar bear; and protection of important polar bear habitat.

The initial annual harvest quota for the Southern Beaufort Sea population was set at 38 bears each in Canada and Alaska. The hunting season in the NWT area is December 1 to May 31, timing limitations which protect pregnant females prior to denning. In Alaska the season for harvest by Alaska Natives is September 1 to May 31, a timing that does not contain the same protection. However, both Parties have agreed that all bears in dens or constructing dens are protected and family groups made up of females and cubs-of-the-year or yearlings are protected. During the first harvest (1988/89) under the management agreement take in Alaska exceeded the guidelines by 20, while the harvest in Canada was below the allocation. However, the harvest during the next three seasons were less than allocation guidelines in both Alaska and Canada. It is believed that the reduced take by the second harvest season was due to extensive efforts to distribute information on the management agreement. In addition, there has been a general trend in Alaska to harvest fewer family groups (USFWS 1995).

The population is also shared by the Yukon Territory where the legal basis for regulating polar bears is the Wildlife Act, 1981. Currently there are no residents of the Yukon harvesting polar bears as the people all moved to the NWT. The Yukon wishes to retain its management system in case the aboriginals return to the Yukon coast and harvest polar bears. There is a total quota of six tags which is currently on loan and included in the NWT's quota.

The Service proposes to approve the Southern Beaufort Sea population with the provisions that: (1) No bears be taken by sport hunting west of the equidistant line of the Beaufort Sea; (2) the management agreement for polar bears in the Southern Beaufort Sea between the IGC and NSB remains in effect; and (3) the Yukon Territory quota remains with the NWT or a joint management agreement is in place with scientifically sound quotas.

Northern Beaufort Sea (NB). The population estimate of 1,200 polar bears is believed to be unbiased and may be conservative. Mark-recapture and studies of movements using telemetry have been conducted at intervals since the early 1970's. Boundaries of the population have been determined using telemetry and recovery of tagged bears. An ongoing study is examining the possibility that this population extends further north than the data previously indicated. The population data is rated as good. Table 3 shows the status of the population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 16 bears taken in last year's harvest, 50 percent were females. Guiding of sport hunters occurs on a limited basis. Only 2 to 3 sport hunts occurred in the last two years.

Viscount Melville Sound (VM). The population estimate of 230 polar bears is believed to be unbiased. A 5-year mark-recapture and telemetry study of movements and population size was completed in 1992. Boundaries of the population were based on observed movements of female polar bears. In the mid-1970's when the original quotas were allocated, this population was thought to be large and productive. This area, however, has poor seal habitat and the productivity of polar bears was lower than expected. Harvesting polar bears at the initial quota levels caused the number of bears in the population to drop, especially males. Recent research has shown this population to have an annual recruitment rate less than previously believed. Residents of this area have agreed to a moratorium on polar bear hunting in this population until the year 2000. The placement of this moratorium on hunting is an example of how Canada is effectively administering its polar bear program based on current scientific information. It is anticipated that when the data shows that harvest activities can resume, there will be an annual quota of 4 males.

Gulf of Boothia (GB). Currently this population is estimated at 900 animals. A population estimate of 333 polar bears was derived from a limited research program of mark and recapture restricted to the western coastal areas. It was increased to 900 based on the information from local Inuit hunters and an estimate of bears in the central and eastern portions of the area that had not been sampled, but was collaborated by studies in the adjoining populations. Although the 900 animal estimate has no statistical level of precision, managers believe it to be more accurate than the previous estimate. The population data are limited and rated as poor. The boundaries are supported by studies conducted in adjacent areas. The status of the population was stable at the 3-year average harvests and the

1993/94 harvest. Of the 36 bears taken in last year's harvest, 40 percent were females (Table 3). More comprehensive research is planned for this population within the next 5 years, including reassessment of the size of the population. The number of sport hunts guided for the last two seasons was 10 and 5, respectively.

M'Clintock Channel (MC). A 6-year mark-capture population study was conducted in the mid-1970's. The population was estimated to be 900 polar bears. Local hunters advised that 700 might be a more accurate estimate. Under a Local Management Agreement between Inuit communities that share this population, the harvest quota for this area has been revised to levels expected to achieve slow growth based on the more conservative population estimate of 700 polar bears. The boundaries are supported by recoveries of tagged bears and movements documented by telemetry in adjacent areas. Table 3 shows the status of the population as increasing based on the 3-year average and the 1993/94 harvest. Of the 24 bears taken in last year's harvest, 33 percent were females.

Western Hudson Bay (WH). The population estimate of 1,200 is believed to be conservative as a portion of the southern range has not been included in the mark-recapture program. Research programs on the distribution and abundance of the population have been conducted since the late 1960's, with 80 percent of the adult population marked. Mark-recapture studies and return of tags from bears killed by Inuit hunters have provided extensive records. The population data is rated as good. Table 3 shows the status of the population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 32 bears taken in last year's harvest, 40.6 percent were females. During the open-water season, this population appears to be geographically segregated, although it is intermixed with the eastern Hudson Bay and Foxe Basin populations during the ice covered months.

The Western Hudson Bay population is shared with Manitoba, where polar bears are listed as a protected species under the Wildlife Act of 1991. There is no open hunting season and polar bears cannot legally be hunted at any time of the year by anyone. To hunt polar bears, including hunting by Treaty Indians, would require a permit from the Minister and no such permits are currently being issued. Under the terms of a Local Management Agreement, Manitoba is allocated a quota of 27 tags out of 55 for the Western Hudson Bay population. Eight tags are held in reserve by Manitoba for the control program and accidental deaths associated with the research program. The remaining 19 are currently on loan and included in the NWT total quota (GNWT). This does not mean that there is a total ban on hunting polar bears in the future. The Minister can authorize the taking of bear for any purpose ''not contrary to public interest.'' The current policy is that no person will be granted a permit to hunt polar bear until it is established there is a harvestable surplus over conservation needs of the population that takes into account political and scientific concerns (Calvert et al. 1995).

The Service proposes to approve this population with the provision that a management agreement between the NWT and Manitoba is in effect with scientifically sound quotas to ensure the total harvest in this population is sustainable.

6. Status of Shared Populations the Service Proposes Not To Approve

All of the following populations are shared with either Greenland or another Canadian province or both, and do not have formal agreements as to how the portion of the population outside the NWT will be managed. Management agreements drafted in 1994 for the Davis Strait, Foxe Basin, and Southern Hudson Bay populations attributed to NWT communities the existing, unchanged harvest levels and documented for Ontario, Quebec, Newfoundland and Labrador, and Greenland the current known annual harvest. Following completion of comprehensive population studies, including both scientific and traditional knowledge, the sustainable harvest of each population will be estimated and allocated fairly between all user groups through joint negotiations. These joint management negotiations are ongoing. The next PBTC meeting will be in Quebec partly to facilitate joint management discussions. Canada and Greenland are currently conducting joint research to confirm shared population boundaries and population estimates. Once this joint research report is completed, the two countries have agreed to move ahead with negotiations on developing joint management agreements (GNWT).

Queen Elizabeth Island (QE). The population is estimated at 200. Current information is that there are few polar bears in this remote area. The reliability of the data is poor. A likely scenario is that this area will eventually be managed as a sanctuary for polar bears. The status of the population was stable at the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 11 bears taken in last year's harvest, 29.3 percent were females. Only one sport hunt occurred during each of the past two seasons. A Local Management Agreement has not been finalized for this population. In addition, this population is shared with Greenland although the movement of polar bears between the NWT and Greenland is thought to be small in this population (see Parry Channel/Baffin Bay below).

Parry Channel (PC) and Baffin Bay (BB). This area is being considered as a unit as it is unclear what fraction of the Greenland harvest was from either Parry Channel or Baffin Bay populations. Information on the amount of exchange between these populations in Canada and Greenland is important for management since polar bears are harvested by communities in both countries. The current population estimate of 2,470 polar bears is considered preliminary and conservative. It was obtained by pooling the previous estimates for Lancaster Sound (1,657, increased to 2,000, based on sampling bias in the original studies that could have resulted in an underestimate of the population) and NE Baffin (470) populations with the assumption that a distinct population for west Greenland would not be found. The population data is rated as fair. The status of the population as shown in Table 3 is decreasing for the 5-year and 3-year average of harvests and the 1993/94 harvest. Last season's harvest was 200 bears (31.9 percent females). Most sport hunting has occurred in Parry Channel, 28 in 1993/94 harvest season and 24 in 1992/93. Limited guided sport hunts of 5 and 3 occurred in Baffin Bay during the same seasons (GNWT).

According to Born (1995) there is little information available on the take of polar bears in Greenland. There is no quota for harvest of polar bears in Greenland. Regulations prohibit the use of vehicles for the hunt and stipulate that hunters must be citizens of Greenland and hunt or fish full time. As of January 1, 1993, Greenland residents are required to obtain special permits to hunt polar bear. The reporting of take is voluntary, and the system of reporting has not worked reliably for many years. Greenland needs to obtain information on the number and sex ratio of bears taken in all areas and number of animals in the populations to establish a sustainable harvest level of polar bears. There is an ongoing Canadian-Greenland joint study to obtain data to delineate the range and number of bears in the shared populations. A summary of results of a polar bear survey suggests a harvest of 40 to 60 bears each year in

West Greenland, from the population shared with Canada (PBSG 1995). Recent satellite telemetry data indicates four populations: a western population, Baffin Bay, Jones Sound-Norwegian Bay, and Kane Basin. The final analysis and determination of population status will occur in the summer of 1995 after the collection of the last movement data. A re-inventory of population numbers is ongoing. Data collection should be finalized in Baffin Bay by the Fall of 1995 and in Parry Channel by 1997. Canada is not recommending any management action until the study is completed.

Foxe Basin (FB). An 8-year mark-recapture and telemetry study of movements and population size was concluded in 1992. The population estimate of 2,020 is believed to be accurate as the marking effort included the entire area. Polar bears were concentrated on the Southampton Island and Wager Bay areas during the ice-free season, but significant numbers of bears were found throughout the other islands and coastal areas. Because the previous harvest quotas are believed to have reduced the population from about 3,000 in the early 1970's to about 2,000 in 1991, the harvest quota is being incrementally reduced to levels that will permit recovery of this population. The reduction process is described in the NWT Local Management Agreements between the Inuit communities that share these polar bears. The population data are rated as good. The status of the population (Table 3) is shown as decreasing for the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 100 bears taken in last year's harvest, 48.5 percent were females.

The population is shared with Quebec where the legal bases for regulating polar bear are the Wildlife Conservation and Management Act, 1983; the Order in Council 1 3234, 1971; and the James Bay International Agreement, 1978 (GNWT). Inuit and Indians are allowed to hunt polar bears from three different populations, based on the ''guaranteed harvest'' levels determined for the James Bay Agreement, as long as the principle of conservation is respected (PBSG 1995). The guaranteed harvest levels are determined between the user groups and the Government of Quebec based on harvest records between 1976 and 1980. The levels are set without knowledge of the size of the polar bear population and without consultation with other user groups that hunt polar bears from the three shared populations. (In fact, The Inuit from Quebec have declined to participate in a management agreement with the NWT as there is some confusion how a co-management agreement would mesh with the James Bay and Northern Quebec Agreement.) The harvest levels set are 22, 31, and 9 for populations shared in Southern Hudson Bay, Davis Strait, and Foxe Basin, respectively. The Inuit have agreed with the harvest levels, while negotiations are occurring with the Crees. If the ''guaranteed harvest'' is exceeded, which is uncommon, there is no penalty. The number and sex of polar bears in the harvest are monitored, with age determined on many of them. There has been, however, some concern expressed over the inconsistencies in harvest data. Quebec does not have legislation to protect female polar bears with cubs and bears in dens (GNWT), but the Inuit hunters and trappers in Northern Quebec have agreed to protect them (PBSG 1988).

Davis Strait (DS). The population estimate is 1,400, and is based on field work conducted during the spring from 1976 through 1979. Traditional knowledge observations suggest that the population may have increased since 1979: (a) Hunters from Pangnirtung have reported larger numbers of bears in recent years and in 1994 took their entire quota in less than 2 days; (b) hunters from the Labrador Inuit Association have reported seeing an increased number of bears in the last several years; (c) hunters from Iqaluit report they have harvested the highest proportion of males of any settlement in the NWT due to high densities of bears encountered; and (d) hunters from Lake Harbour report a higher rate of encounters with polar bears in recent years. Observations made by biologists support the traditional knowledge reported by hunters: (a) during surveys conducted in the fall of 1992 and 1993, high densities of bears were found on the Cumberland Peninsula, Baffin Island; (b) the number of bears captured per hour of search time during 1991–94 on the Labrador coast almost doubled from 1976–79; (c) during the above surveys conducted in the 1990's, a large proportion of old adult males were seen (such sightings would not occur in an over-harvested population where the harvest was selective for males); and (d) satellite tracking data from 1991–94 indicate that a large proportion of the population is offshore in the pack ice during the spring and would not have been included in the capture and tagging as part of the 1980 population estimate. Population modeling indicates that the population would need to be at least 1,400 to sustain the present annual kill of 58 polar bear. The 1995 PBTC supported the revision of the population estimate to 1,400. Further work will be required to resolve the status of polar bears in this population. A joint resolution was signed by Quebec and NWT supporting a co-operative inventory of this population as a high priority. (Newfoundland and Labrador could not attend the meeting where that resolution was developed, but is supportive.) The population data is rated as fair. The status of the population (Table 3) is shown as stable for 3-year average of harvests and the 1993/94 harvest. Of the 58 bears in last year's harvest, 40.6 percent were females.

The Davis Strait population is shared with Quebec, Newfoundland and Labrador, and Greenland. For a discussion of Quebec, see Foxe Basin above. In Newfoundland and Labrador, the legal basis for regulating polar bears is the Wildlife Act, 1970. The current hunting season is limited to residents of the Torngat Electoral District on the northern Labrador coast, with no distinction made between natives and non-natives. To maintain consistency with the International Agreement, tags are issued through the Labrador Inuit Association, with unused tags being accounted for. Land claim negotiations that may affect how polar bears are managed in Newfoundland and Labrador are currently underway. In typical years Greenland harvests no polar bears from the Davis Strait population. In some years, however, ice is blown onto southern Greenland and, on the average, two bears are taken in Greenland. For additional discussion on Greenland's program, see Parry Channel/Baffin Bay above.

Southern Hudson Bay (SH). The population estimate of 1,000 is considered conservative. It is based on a 3-year study mainly along the Ontario coastline of movements and population size using telemetry and mark-recapture. Since a portion of the eastern and western coastal areas was not included in the study area, the calculated estimate of 763 bears was increased to 1,000. In addition, inshore areas were under-sampled because of difficulties in locating polar bears in the inland boreal forest. The study confirmed the population boundary along the Ontario coast during the ice-free season but showed the intermixing with the western Hudson Bay and Foxe Basin populations during the months when the bay is frozen over. The population data is rated as fair. Table 3 shows the status of the population as decreasing for the 5-year and 3-year average harvests, but as stable for the 1993/94 harvest. Of the 45 bears taken

in last year's harvest, 33.3 percent were females.

This population is shared with Quebec (see discussion under Foxe Basin), the NWT, and Ontario. In Ontario, polar bears are protected under the Game and Fish Act, 1980. Treaty Indians are allowed to hunt polar bears with an annual permissible kill of 30 animals (GNWT). Ontario has supported the adoption of guidelines for dividing the quota for polar bear populations shared with the NWT and Quebec, but there is no joint management agreement. There are no officers located in the villages where polar bears are hunted. At the 1994 PBTC meeting, it was reported that fewer kills are being reported by hunters, resulting in incomplete data. If the quota is exceeded, which is uncommon, hunters are encouraged to count the excess polar bears against the next year quota. Bears in dens and females with cubs are not specifically protected, but the take of such animals is believed to be rare.

7. Scientific Review

The language of the MMPA Amendments requires that a scientific review of the impact of permits issued on the polar bear population stocks be undertaken periodically. The Service published a proposed rule in the **Federal Register** (60 FR 70) on January 3, 1995, that discussed the scientific review process and proposed permit procedures. The first scientific review of the impact of permits issued on the polar bear population stocks is to be undertaken within 2 years after enactment, that is by April 30, 1996. This review is to provide an opportunity for public comment and the final report will include a response to such public comment. The Director will not issue permits to allow for the import of polar bears taken in Canada after September 30, 1996, if the Service determines that the issuance of permits is having a significant adverse impact on the polar bear population stocks in Canada. The Director may conduct an annual review of this determination. The review provides for the monitoring of the effects of permit issuance on Canada's polar bear population stocks and a means to guarantee the cessation of imports should there be an indication of an adverse impact on the sustainability of the Canadian population stocks. These reviews are to be based on the best scientific information available. If the Director does undertake a review, the Act requires that the review be completed by January 31 of the year in which the review was undertaken. The Director may not, however, refuse to issue permits solely on the basis that the review has not been completed by January 31.

D. CITES and Other International Agreements and Conventions

1. Proposed Finding

The MMPA requires that the Service find that the export from Canada and subsequent import into the United States are consistent with CITES and other international agreements and conventions. Based on the discussion below, the Service proposes to find that the provision of CITES will be met for the export and import of polar bear trophies taken in Canada. The International Agreement was discussed previously. At this time, the Service is not aware of any other agreements or conventions that need to be considered.

2. CITES

CITES is a treaty established to protect species impacted by international trade. Canada and the United States, along with 126 other countries, are Parties to CITES. The polar bear has been protected under Appendix II of CITES since 1975. Appendix II includes ''species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival'' (Article II of CITES). A CITES export permit must accompany each shipment from the country of origin. The export permit for dead specimens can be issued for any purpose as long as the scientific authority of the country of export determines that the shipment will not be detrimental to the survival of the species and the management authority of that country determines that the specimen was obtained legally.

For the export of polar bear from Canada, control of the polar bear harvest is demonstrated by quotas enforced by legislation and co-management agreements, and by development of a management plan. In the NWT, only the DRR Headquarters in Yellowknife and its Regional Offices can issue CITES permits for polar bears and polar bear products. A CITES permit for a polar bear product originating in the NWT may be issued from another Canadian province or territory only if the product was exported from the NWT with a Northwest Territories Wildlife Export Permit. This permit must be validated by Customs Canada upon export.

For import into the United States, all wildlife and wildlife products requiring a permit under CITES and the MMPA must meet inspection and clearance requirements as outlined in regulation (50 CFR Part 14), including entry through one of the ports designated for wildlife import and completion of a Wildlife Declaration Form (3–177).

E. Illegal Trade in Bear Parts

1. Proposed Finding

The Service proposes to find that the export and subsequent import of sport-hunted polar bear trophies to the United States would not be likely to contribute to the illegal trade in bear parts if the conditions proposed are adopted. The Service notes that this finding covers the illegal trade in parts of all species of bears. To ensure that the gall bladders of polar bears taken by U.S. hunters do not enter into trade, the Service proposes to condition any import permit that the permittee certify that the gall bladder was destroyed. To ensure that all polar bears that enter the United States can be identified as legally taken sport-hunted trophies and do not contribute to the illegal trade in polar bear parts, the Service proposes that the permittee make an appointment at least 72 hours prior to import with Service personnel at a designated port for wildlife to have a permanent tag affixed to the trophy upon import.

2. Trade in Gall Bladders

There is a diversity of opinion on trade in polar bear gall bladders. Resolution 5 of the 1993 PBSG meeting recommended that each party consider restricting the traffic in polar bear gall bladders. This was done in recognition that worldwide trade in bear parts, particularly gall bladders, threatens the survival of several species of bear, and that the legal availability of gall bladders of any species of bear makes it impossible to control the illegal trade, encouraging further illegal take of all species of bears, including polar bear (PBSG 1995). Canada's PBTC endorsed the resolution which allows each party to make its own decision. The PBTC recommended the PBAC discuss the issue and consider recommending a ban on trade of gall bladders from all bear species. Although legally harvested bear gall bladders can be sold in the NWT, the GNWT is currently reviewing the practice. Between 1992 and 1994, NWT Export Permits were issued for 61 polar bear gall bladders.

The Service is unaware of any published source that documents a demand for polar bear gall bladders, but there are several anecdotal episodes that suggest they are not in commercial demand. Dr. Derek Melton, Director, Wildlife Management, DRR, NWT, wrote the Service that Judy Mills, co-

author of the World Wildlife Fund report on The Asian Trade in Bear Parts, verbally told him ''that gall bladders from polar bears were regarded as less desirable than those of terrestrial species, possibly because of the taste associated with their marine diet.'' Dr. Ed Espinoza, Chief of the Criminalistics Section of the National Fish and Wildlife Forensic Lab related that examination of polar bear gall bladders at the Lab revealed that polar bear gall bladders smell fishy, probably due to the high content of marine fatty acids and oils. He remembered Inuits from Kotzebue, Alaska, telling him that they are not able to get financial compensation for polar bear gall bladders because ''they smell bad''. He also remembered a Canadian Wildlife Conservation Officer in Whitehorse telling him there were no interested Asian parties for the polar bear gall bladders because of the odor these galls had. On the other hand, in 1992, the first case of illegal sale of polar bear gall bladders was documented by U.S. law enforcement agents in Alaska (Schliebe et al. 1995). To ensure that the gall bladders of polar bears taken by U.S. hunters do not enter into trade, the Service proposes to condition any U.S. import permits for polar bears if this proposed rule is adopted. The condition would require the permittee to certify that the gall bladder, including its contents, from the polar bear proposed for import was destroyed.

3. Trade in Hides

It was reported at the 1993 PBSG meeting that the fur market is currently glutted, resulting in low prices for pelts on the open market. The trade in polar bear hides is fairly flat, and the market in the United States is closed because of the MMPA. According to the Service's Division of Law Enforcement, an undercover operation in Alaska during 1991 and 1992 showed that a black market for polar bear hides existed in Alaska. Greenland assists in marketing polar bear pelts for local communities. In 1992 a total of 60 hides were purchased by the tannery. Thirty of these went to Denmark (PBSG 1995).

4. Canada

There is some illegal trade in bear parts in Canada, but the extent is unknown. There are documented cases in the provinces, especially British Columbia. While trade in bear parts is now prohibited in British Columbia, Alberta, Newfoundland and Labrador, and Manitoba, it is still legal to sell bear parts in Ontario, Quebec, Saskatchewan, and the NWT. There may be some trade in bear parts from a province that does not allow trade by routing them through the provinces that still allow trade. There have been some questionable kills and some illegal kills of black bear to gain parts in the NWT. However, the trade in polar bear parts is not thought to be involved in any significant degree. GNWT wildlife officials have stated that distance and cost make polar bears inaccessible to southern poachers. Residents of the NWT consider the polar bear of cultural importance and worth more than just the economic value of its parts. Canada does not anticipate an increase in illegal activity or in the number of polar bears illegally killed as a result of allowing the export of sport-hunted trophies by U.S. citizens (GNWT).

5. Alaska

The MMPA prohibits, with limited exceptions, the harvest and trade of polar bears and polar bear parts in the United States. It restricts the take of polar bears to any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean provided such taking is not accomplished in a wasteful manner and is for subsistence purposes or is done for purposes of creating and selling authentic native articles of handicrafts and clothing.

All polar bear hides and skulls taken as part of the Native subsistence harvest must be tagged within 30 days of harvesting the polar bear. These tags are provided by the Service, are numbered for accountability and of such a design, construction, and material so as to maximize their longevity and durability on the specified parts. Polar bear parts may only be tagged by Service personnel or authorized Service representatives (e.g., Native residents of the community). The skin and skull of an animal must accompany each other when presented for tagging. Tags are attached or applied to the skins and skulls in such a manner as to maximize their longevity and minimize adverse effect to the appearance of the specified parts which might result due to hindering the tanning or handicrafting of skins, or the handicrafting of skulls. Tags must remain affixed to the skin through the tanning process and until the skin has been severed into parts for crafting into handicrafts or for as long as practical during the handicrafting process. If the tag does come off of the specified part the person in possession of the part has 30 days to present the part and broken tag to the Service or the Service's local representative for retagging.

6. Proposed Tagging Requirement

As previously described, the NWT tag applied to a polar bear hide is removed either at the time of tanning or upon export. Therefore, once imported, hides (raw and tanned), rugs, and mounts of Canadian sport-hunted polar bears are not distinguishable from untagged Alaskan polar bear hides which may have been illegally acquired or transported. In addition, there may be some polar bear hides and mounts taken in Canada and illegally imported into the United States prior to the Amendments.

To ensure that all polar bears that enter the United States can be identified as legally taken sport-hunted trophies and not contribute to the illegal trade in polar bear parts, the Service proposes that they be marked with a one-time tag that is to remain on the trophy indefinitely. The tag would be similar in design to tags used for Alaskan polar bears taken in the Native subsistence harvest. The Service is currently working with the Canadian Wildlife Service and the Government of the NWT on the feasibility of permanently tagging the hide of all sport-hunted polar bear in Canada at the time of harvest. Developing such a cooperative program might include developing a tag which could withstand the cold climate of the NWT, the tanning process, and the taxidermy process; be unobtrusive on a polar bear mount or rug; and be visible for inspection, if necessary. The Service anticipates that the development and implementation of this program could take from 6 months to 2 years.

Until a procedure for permanently tagging sport-hunted polar bear hides at the time of harvest has been adopted, the Service proposes that a permanent tag be affixed to all sport-hunted polar bear trophies including raw (untanned) hides, tanned hides, and prepared rugs and mounts, upon import into the United States and that the skull of the polar bear, if separate from the remainder of the trophy, be permanently marked with the tag number of the accompanying polar bear hide. To ensure that all polar bear parts are permanently marked or tagged, the Service proposes that all sport-hunted polar bears must be imported through a Fish and Wildlife Service designated port during normal business hours with at least a 72-hour prior notice.

The Service has experience with tagging programs for polar bear, walrus, and sea otter taken in the Native subsistence harvest in Alaska and for CITES regulated fur-bearing species, including brown bear, bobcat, river otter, and lynx. Based on this

experience and discussions with professional taxidermists and tanners, the Service has learned that plastic tags are more durable than metal tags, less likely to break or rip from the hides, and less likely to damage tanning equipment. The Service considered the following factors when looking at tagging requirements: the condition of the trophy upon import (i.e., untanned hide, tanned hide, finished rug or mount), the recommendations of professional taxidermists and tanners, the ability to examine the identification marks on the tag, the ability to replace a lost tag, and the extent to which the tag would be obtrusive to the overall appearance of the trophy.

Based on these considerations, the Service proposes that a plastic tag be placed like a bracelet around the ankle area of either the fore or hind legs of a mounted polar bear trophy. The same type of tag would be used for a raw or tanned hide or finished rug. In these cases, the Service proposes that the tag be affixed to the hide in the belly or flank area of the bear where it will be least disruptive to the taxidermy process and more likely to be concealed by the longer hair in these areas. To reduce the chances of a tag being snagged and ripped out or broken during the tanning process, and to reduce the obtrusiveness of the tag, the Service proposes that Service personnel would loop the tag upon itself prior to affixing it to a raw or tanned hide or a finished rug. Service personnel in Alaska have used this procedure when tagging sea otter pelts and have not had difficulty reading the tag. Provisions are also proposed to retag polar bear hides or mounts if tags are broken during tanning or lost.

Proposed Findings for Bears Taken Prior to the 1994 Amendments

Section 104(c)(5)(A) includes polar bears taken, but not imported, prior to the 1994 Amendments. The Service proposes that a permit for import of trophies taken in the NWT between December 21, 1972, through the effective date of any final rule may be issued when the applicant has demonstrated that the polar bear was legally taken and was not pregnant or nursing at the time of take. Such trophies would be subject upon import to the same marking and tagging requirements as sport-hunted polar bears taken in Canada after the effective date of any final rule.

The Service proposes to issue a blanket finding covering the NWT historic sport-hunting program for each year starting in late 1972 to the present for the following reasons: (1) Canada is a signatory to the 1973 International Agreement on the Conservation of Polar Bears which came into effect on May 26, 1976; (2) the hunting of polar bears in Canada has been restricted to Native people since 1949; (3) polar bears have been managed in the NWT under a quota since 1968; (4) the NWT has maintained a data collection and monitoring program on the polar bear harvest in its territory since the 1976/77 harvest season; (5) the NWT, DRR, has demonstrated a progressive management program for polar bear which includes scientific research and traditional knowledge; and (6) the 1994 Amendments do not require the evaluation of Canada's past polar bear management history.

It should be noted that proof the polar bear was legally harvested in Canada by the applicant or by a decedent from whom the applicant inherited the trophy may be more problematic for polar bears taken between late 1972 to 1976 since records maintained by DRR start from the mid 1970's. The Service proposes that an applicant provide the following to show proof of legal harvest for a polar bear taken prior to the effective date of the final rule if adopted: certification from the Government of the NWT that the bear was legally harvested and tagged during the specified harvest season and by the hunter of record. Whatever option is adopted for determining whether the specimens were pregnant or nursing at the time of taking, as discussed above, would also apply to these bears.

Public Comments Solicited

The Service is currently deliberating on the comments received on its earlier proposed rule and will respond to all comments to its proposals in the final rule. The Service invites comments on these new proposals. The Service will take into consideration the comments and any additional information received in making a decision on this proposal, and such consideration may lead to final findings and regulation that differ from this proposal.

Required Determinations

The Service has prepared a draft environmental assessment on the proposed rule, in accordance with the National Environmental Policy Act (NEPA). A determination will be made at the time of the final decision as to whether the proposed rule is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposal will affect only those in the United States who have hunted, or intend to hunt, polar bear in Canada. This action is not expected to have significant taking implications, per Executive Order 12630.

The information collection requirement contained in this section has been approved by OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and assigned clearance number 1018–0022. There will be no additional information collection requirements for tagging polar bears if the condition is adopted. Since the proposed rule would apply to importation of polar bear trophies into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

The Department has certified to OMB that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

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List of Subjects in 50 CFR Part 18

Administrative practice and procedures, Imports, Indians, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 18 of Chapter I of Title 50 of the Code of Federal Regulations to read as follows:

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Proposed § 18.30 [proposed to be added at 60 FR 70 (January 3, 1995)] is proposed to be amended by revising paragraph (a)(5) to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

(a) * * *

(5) Proof that the polar bear was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy), including:

(i) If the polar bear was taken prior to (effective date of final rule), a certification from the Department of Renewable Resources, Northwest Territories, that the polar bear was legally harvested and tagged, giving the name of the hunter and location (settlement and population) and season the bear was taken;

(ii) If the polar bear was taken on or after (effective date of final rule), the permittee must provide documentation at time of import to the Service inspector as outlined in § 18.30(f)(1)(ii).

(6) * * *

3. Proposed § 18.30 [proposed to be added at 60 FR 70 (January 3, 1995)] is proposed to be amended by revising paragraph (b) to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

* * * * *

(f) *Additional permit conditions.* Permits to import a sport-hunted polar bear trophy taken in Canada are subject to the conditions outlined in § 18.31(d) and the following special conditions:

(1) If the polar bear was taken on or after (effective date of final rule), the permittee must:

(i) Sign a statement, as a condition of the permit, that the gall bladder, including its contents, taken from the polar bear proposed for import was destroyed; and

(ii) Provide a copy of the NWT hunting license and tag number under which the polar bear was taken and a Canadian CITES export permit that identifies the polar bear by hunting license and tag numbers;

(2) The permittee must present to a Service inspector at the time of import a certification from the Department of Renewable Resources, Northwest Territories, that the polar bear at the time of take was not pregnant, was not a nursing cub, was not a mother with cubs, and was not moving into a den or already in a den.

(3) Any sport-hunted trophy imported with a permit issued under this section must be imported through a designated port for wildlife imports (see § 14.12) during regular business hours. The importer must notify Service personnel at the port at least 72 hours prior to the import and make arrangements for the Service to affix a tag in accordance with paragraph (f)(4) of this section prior to being cleared;

(4) A serially numbered, permanently locking tag identifying the species, year of import, and port of import must be affixed by the Service to each sport-hunted trophy upon import and must remain fixed indefinitely to the trophy as proof of legal import. Tags must be attached in a manner established by the Service to maximize their longevity and minimize their adverse affects to the appearance of the trophy; and

(5) In the event the tag comes off the trophy, the permittee must within 30 days:

(i) Contact the nearest Service office at a designated port or a Law Enforcement office as given in § 10.22 of this subchapter to schedule a time to present the trophy for retagging; and

(ii) At the time the new tag is attached, present the broken tag and proof that the trophy had been tagged and legally imported or, in the event that the tag was lost, a signed, written explanation of how and when the tag was lost and proof that the trophy had been tagged and legally imported.

* * * * *

4. Proposed § 18.30 [proposed to be added at 60 FR 70 (January 3, 1995)] is proposed to be amended by adding a new paragraph (j) to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

* * * * *

(j) *Findings.* (1) The Service has determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (e) (4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound, Gulf of Boothia, M'Clintock Channel, and Western Hudson Bay, provided:

(i) For the Southern Beaufort Sea population, no bears be taken west of the equidistant line of the Beaufort Sea; the management agreement between the Inuvialuit Game Council and the Fish and Game Management Committee of the North Slope Borough in Alaska remains in effect; and the Yukon Territory quota remains with the Northwest Territories or has a joint management agreement in place with scientifically sound quotas;

(ii) For the Western Hudson Bay population, a management agreement between the Northwest Territories and Manitoba is in effect with scientifically sound quotas;

(iii) For all of these populations, that females with cubs, cubs, or polar bears moving into denning areas or already in dens are protected from taking by hunting activities; and

(iv) The number of sport-hunted trophies taken in the prior harvest season does not exceed 15 percent of the total quota of the Northwest Territories.

(2) Any sport-hunted trophy taken in the Northwest Territories on or after (effective date of final rule) from a population that currently is not approved by the Service for import, will only be approved for an import permit if the Service can find, based on

updated information from the Northwest Territories, that:

(i) The total harvest during that harvest season and the average of the three preceding harvest seasons was sustainable for the affected population; and

(ii) A management agreement(s) was in place with Greenland and/or a province(s) that shares the population with the Northwest Territories.

(3) Any sport-hunted trophy taken in the Northwest Territories, Canada, between December 21, 1972, and (effective date of final rule) must meet the issuance criteria of paragraphs (e)(1), (2), (3), and (6)(i) of this section and may be imported upon obtaining an import permit prior to import and meeting the conditions of paragraphs (f)(2), (3), (4), and (5) of this section.

Dated: June 22, 1995.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–17432 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 136

Monday, July 17, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AA47

Hydropower Applications

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: On May 22, 1995, the Forest Service gave notice in the **Federal Register** (60 FR 27154) requesting public comment on proposed policy and procedures concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. The notice included text of the proposed policy and a portion of the agency's procedural handbook. However, reviewers were advised that the entire procedural handbook was available for review upon request. This draft handbook comprises over 300 pages.

The agency has received over 100 requests for the procedural handbook and continues to receive requests well into the public comment period. Organizations representing permit holders and applicants have requested additional time for review and comments. The agency concludes that the 60-day comment period provided for in the May 22, 1995, notice may not provide sufficient time for the public and affected parties to review the notice and the lengthy procedural handbook and submit comments. Therefore, the Forest Service is extending the comment period an additional 45 days to ensure that all parties who wish to comment are provided ample opportunity to do so.

DATES: Comments must be received in writing by September 5, 1995.

ADDRESSES: Send written comments to Director, Lands Staff, (2770), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Assistant Director, Lands Staff, 202–205–1248.

Dated: July 10, 1995.

Valdis E. Mezainis,

Acting Chief.

[FR Doc. 95–17372 Filed 7–14–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071095F]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Florida/Alabama Habitat Protection Advisory Panel.

DATES: The meeting will be held August 9, 1995, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Bay Harbor Inn, Harborview II Room, 7700 Courtney Campbell Causeway, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council; 5401West Kennedy Boulevard; Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Richard J. Hoogland, Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The panel will review and discuss a mariculture project in the Gulf of Mexico offshore from Alabama, seagrass damage from boat propellers, Florida Bay restoration activities, proposed change in fuel type for an electric generating plant located on the Little Manatee River, possible consequences of fuel conversion, proposed increase in water withdrawals from the Peace River for phosphate mining, and possible impacts of reduced Peace River flow on the Charlotte Harbor estuary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by August 2, 1995.

Dated: July 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17469 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071095E]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Large Pelagic/Sharks Committee and Coastal Migratory Species Committee will hold public meetings.

DATES: The meetings will be held on August 1 through August 3, 1995, as follows:

August 1, 10:00 a.m. to 12:00 noon, the Large Pelagic/Sharks Committee;

August 1, 1:00 p.m. to 5:00 p.m., the Coastal Migratory Species Committee;

August 2, 8:00 a.m. to 5:00 p.m., the Council;

August 2, 1:00 p.m. to 3:00 p.m., the Northeast Fisheries Science Center Stock Assessment Workshop;

August 3, 8:00 a.m.-approximately 12:00 noon, the Council.

ADDRESSES: The meetings will be held at the Sheraton Suites, 422 Delaware Avenue, Wilmington, DE 19801; telephone: (302) 654–8300.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to discuss: The NMFS entry limitation proposal for large pelagics; 1996 bluefish management; stock assessment updates for summer flounder, Atlantic mackerel, and black sea bass; 1996 quota recommendations for surf clams and

ocean quahogs; and other fishery management matters.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674–2331 at least 5 days prior to the meeting date.

Dated: July 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17468 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071095D]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on July 28, 1995, beginning at 9:00 a.m.

ADDRESSES: The meeting will be held in the Delaware Room of the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone: (610) 521–2400.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street; Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The main objectives of this meeting will be to review bluefish landings, catch data, and stock assessment information, and to make recommendations for management measures for 1996.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674–2331 at least 5 days prior to the meeting date.

Dated: July 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17467 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070795A]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of modification to scientific research permit no. 837 (P771#67).

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg 4, Seattle, WA 98115 has been issued a modification to permit no. 837.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., Bin C15700, Seattle WA 98115 (206/526–6150); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On May 24, 1995, notice was published in the **Federal Register** (60 FR 27492) that a request for a permit modification had been submitted by the above-named organization. The modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq*) and the fur seal regulations at (50 CFR part 215).

Dated: July 11, 1995.

Eugene T. Nitta,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–17465 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070595C]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint public meeting of the Council's Shrimp Committee, Shrimp Plan Development Team (PDT) and Shrimp Advisory Panel (AP).

DATES: The meeting will be held on August 1, 1995, from 8:00 a.m. until 5:00 p.m..

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571–1000.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: The joint meeting of the Council's Shrimp Committee, PDT and AP has been scheduled to facilitate completion of a public hearing draft of Amendment 2 to the Shrimp Fishery Management Plan that is being developed to address bycatch in the shrimp fisheries of the South Atlantic region. The Council's Shrimp Committee reviewed an options paper on bycatch reduction at the June 1995 Council meeting and approved recommendations on measures to be included in a public hearing document. This document will reflect the Council's proposals to (1) develop specific bycatch reduction measures for all penaeid shrimp fisheries in the South Atlantic exclusive economic zone (EEZ); (2) require the use of NMFS-approved bycatch reduction devices in all penaeid shrimp trawls in the EEZ; (3) reduce the bycatch component of weakfish and Spanish mackerel fishing mortality by 50 percent; and (4) include brown and pink shrimp in the management unit. The PDT will also be asked to help Council staff develop season and area closure options for the draft hearing document that is scheduled to be approved for public hearings and informal review at the August 21–25, 1995 Council meeting in Charleston, SC.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sharon Coste at the Council (see **FOR FURTHER INFORMATION CONTACT**) by July 18, 1995.

Dated: July 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17466 Filed 7–14–95; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0013]

Howland Caribbean Corporation, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Howland Caribbean Corporation, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 1, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0013, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 10, 1995.

Sadye E. Dunn,

Secretary.

[CPSC Docket No. 95–C0013]

Settlement Agreement and Order

In the Matter of Howland Caribbean Corporation a corporation.

1. Howland Caribbean Corporation (hereinafter, ''Howland''), a corporation, enters into this Settlement Agreement and Order with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Settlement Agreement and Order is to settle the staff's allegations that Howland knowingly caused the introduction into interstate commerce of certain banned hazardous toys and rattles, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Howland is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, since 1972, with its principal corporate offices located at 1679 Ponce De Leon, Santurce, Puerto Rico 00909. The firm also has an office in Ridgefield, Connecticut. Howland imports and distributes housewares and toys in Puerto Rico, and sells those products in Puerto Rico. Approximately 45 percent of its sales are from toys.

II. Allegations of the Staff

A. Toys

4. On eight occasions between July 23, 1991, and October 10, 1993, Howland caused the introduction into interstate commerce of 10 kinds of toys consisting of approximately 6,600 units intended for use by children under 3 years of age. All the toys were purchased through same exporter, Swatow International, Ltd., but were manufactured by, and purchased from, different manufacturers. These toys are identified and described below:

Sample No.	Product	Entry date	Units
M–807–1704	Happy Loco	07/23/91	480
P–807–2057	Pull-Along-Funny Telephone	09/17/91	720
P–807–2068	Old Timer Car Pull Toy	10/06/91	72
P–807–2081	Choo Choo Phone	10/17/91	96
P–807–2082	Push Telephone	10/17/91	480
R–800–2050	Happy Hippo Trolley Car	08/17/92	72
R–800–2051	Funny Plane	08/17/92	360
R–800–2718	Musical Sand Buggy	07/10/93	360
R–800–2722	Maracas	07/14/93	2880
R–800–2086; R–800–2087; R–800–2088	Press-Go-Mobile Toys (Police Car, Fire Truck, and Pick-Up Truck).	10/10/93	1080

5. The toys identified in paragraph 4 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR Part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR §§ 1500.51 and 1500.52, (a) one or more parts of each tested toy separated; and (b) one or more of the separated parts from each of the tested toys fit completely within the small parts test cylinder, as set forth in 16 CFR § 1501.4.

6. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 5 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

7. Each of the toys identified in paragraph 4 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

8. Each of the toys identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR § 1500.18(a)(9).

9. Howland knowingly caused the introduction into interstate commerce of the aforesaid banned hazardous toys, in violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

B. Baby Rattles

10. On October 17, 1991, Howland caused the introduction into interstate commerce of 1,296 units of a plastic baby rattle (''Rattle''), purchased through Swatow International, Ltd. (Sample No. P–807–2083).

11. When tested under the methods and procedures prescribed in 16 CFR § 1500.51, the handle of the rattle entered and penetrated the full depth of the cavity of the test fixture specified in 16 CFR § 1510.4.

12. Pursuant 16 CFR § 1500.18(a)(15), the Rattle presents a ''mechanical hazard'' (i.e., choking, aspiration, and/or ingestion of small parts) within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s), because it failed to comply with 16 CFR § 1510.4.

13. The Rattle is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), because it is a toy or other article intended for use by children which presents a ''mechanical hazard'' under 16 CFR § 1500.18(a)(15).

14. The Rattle is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), because it is a toy or other article intended for use by children which bears or contains a hazardous substance.

15. Howland knowingly caused the introduction into interstate commerce of the aforesaid banned hazardous Rattle is a violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

III. Response of Howland Caribbean Corporation

16. Howland denies the allegations of the staff set forth in paragraphs 4 through 15, and alleges that it never knowingly introduced or caused the introduction into interstate commerce of banned hazardous toys and rattles in violation of the FHSA, as alleged by the staff. Howland further alleges that in each instance specified in paragraphs 4 and 10, above, the firm acted on a reasonable belief either that each product was not intended for children under the age of three or that it otherwise complied with the CPSC's safety standards. Howland further alleges that in each instance, the firm fully cooperated with the staff and took the necessary actions to assure that none of the toys or rattles were distributed in the Commonwealth of Puerto Rico, or in the United States.

IV. Agreement of the Parties

17. The Consumer Product Safety Commission has jurisdiction over Howland and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

18. The Commission does not make any determination that Howland knowingly violated the FHSA or the CPSA. The Commission and Howland agree that this Agreement is entered into for the purposes of settlement only; does not constitute an admission by Howland that it knowingly violated the FHSA; and, upon final acceptance by the Commission, shall settle finally all allegations by the staff of violations of the FHSA by Howland of which the staff has knowledge as of the date of execution of this Settlement Agreement.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

20. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order.

21. Upon final acceptance this Settlement Agreement and Order and the issuance of the Final Order by the Commission, Howland knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Howland failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

23. A violation of the Order shall subject Howland to appropriate legal action.

24. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

25. The provisions of the Settlement Agreement and Order shall apply to Howland and each of its successors and assigns.

Respondent Howland Caribbean Corporation.

Dated: June 5, 1995.

By:

T.G. Howland,

President, Howland Caribbean Corporation.

Commission Staff.

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: June 12, 1995.

By:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

[CPSC Docket No. 95–C0013]

Order

In the Matter of Howland Caribbean Corporation, a corporation.

Upon consideration of the Settlement Agreement entered into between respondent Howland Caribbean Corporation, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Howland Caribbean Corporation; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further ordered, that upon final acceptance of the Settlement Agreement and Order, Howland Caribbean Corporation shall pay to the Commission a civil penalty in the amount of seventy-five thousand dollars and 00/100 ($75,000.00) in three payments: Twenty-five thousand and 00/100 dollars ($25,000.00) within twenty (20) days after service on Howland Caribbean Corporation of the Final Order accepting the Settlement Agreement, twenty-five thousand and 00/100 dollars ($25,000.00) within one year from the date of the first payment, and twenty-five thousand and 00/100 dollars ($25,000.00) within two years from the date of the first payment. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 16 of the Settlement Agreement and Order that Howland Caribbean Corporation violated the FHSA. Upon failure by Howland Caribbean Corporation to make payment or upon the making of a late payment by Howland Caribbean Corporation (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of

interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 10th day of July, 1995.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–17376 filed 7–14–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Combat Identification; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Combat Identification will meet in closed session on July 26–27, 1995 at the MITRE Corporation, Bedford, Massachusetts. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the DoD long term strategy and plan for development and fielding of a comprehensive situational awareness (SA) and combat identification (CID) architecture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: July 11, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17461 Filed 7–14–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Breakthrough Technologies; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Breakthrough Technologies will meet in closed session on August 5–6, 1995 in Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition & Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine a cross section of scientific areas with an eye to identifying potentially high payoff research that should be pursued by the Advanced Research Projects Agency (ARPA) directly, or in collaboration with other elements of the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: July 11, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17462 Filed 7–14–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Questionnaires for U.S. Army Corps of Engineers Planning Studies.

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register.**

Number of Respondents: 6,400.

Responses per Respondent: 1.

Annual Responses: 6,400.

Average Burden per Response: 30 minutes.

Annual Burden Hours (Including Recordkeeping: 3,700.

Needs and Uses: The Corps of Engineers uses these surveys for collecting primary information from the public, concerning use of, and involvement in, Corps of Engineers activity. These planning surveys will gather data from the public on flood damage, navigation, the environment, customer satisfaction, and public participation. The information collected hereby, will be used for planning, program evaluation, and basic research.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institutions; Farms; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Timothy G. Hunt.

Written comments and recommendations on the proposed information collection should be sent to Mr. Hunt at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 11, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17460 Filed 7–14–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Standard Form XXXX, Solicitation/Contract/Order for Commercial Items (FAR Case 94–790)

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form XXXX, Solicitation/Contract/Order for Commercial Items.

DATES: Comments may be submitted on or before September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

The proposed revisions include a new form, Standard Form XXXX, Solicitation/Contract/Order for Commercial Items. The form would replace several existing ''cover page'' forms on solicitations, orders, and contracts for commercial items and services. It is designed to facilitate incorporation of the contract clauses required for commercial items in solicitations, orders, and contracts. The new form would substitute for those ''cover page'' forms on a one-for-one basis, and is not intended to impose any additional burden on firms that do business with the Federal Government. The net effect of the entirety of the proposed revisions (including the new form) is likely to reduce the burden on Government contractors.

Information will be used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *45* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *500,000;* responses per respondent, *20;* total annual responses, *10,000,000;* preparation hours per response, *.75;* and total response burden hours, *7,500,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance 9000–0136 regarding Standard Form XXXX, Solicitation/Contract/Order for Commercial Items, FAR case 94–790, in all correspondence.

Dated: July 11, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–17441 Filed 7–14–95; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0013; FAR Case 94–721]

Clearance Request for Cost or Pricing Data and Exemption Information

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

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0013).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost or Pricing Data and Exemption Information.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR case 94–721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Federal Acquisition Streamlining Act of 1994 (the Act). It was published as a proposed rule on January 6, 1995 (60 FR 2282). Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of ''cost or pricing data'' to $500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. New exceptions are added to the requirement for the submission of ''cost or pricing data'' for commercial items; approval levels for waivers are changed, and prohibitions are placed on acquiring ''cost or pricing data'' when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) ''information other than cost or pricing data'', (2) exemptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* hours per response, including the time for reviewing instructions, searching existing data sources, gathering an maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *14,633;* responses per respondent, *6;* total annual responses, *87,798;* preparation hours per response, *3.89;* and total response burden hours, *341,534*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data and Exemption Information, FAR case 94–721, Truth in Negotiations Act and Related Changes, in all correspondence.

Dated: July 11, 1995.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–17442 Filed 7–14–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: August 3–5, 1995.

TIME: August 3, 1995—Executive Committee, 10 A.M.–1:30 P.M. (closed), 2 P.M.–3 P.M. (open); Achievement Levels Committee, 4 P.M.–6 P.M. (closed); Subject Area Committee #2, 4 P.M.–8 P.M. (closed); Nominations Committee, 6 P.M.–8 P.M. (closed). August 4, 1995—Full Board, 9 A.M.–10 A.M. (open); Design and Methodology Committee, Reporting and Dissemination Committee, and Subject Area Committee #1, 10 A.M.–12 Noon (open); Full Board, 12 Noon–2:30 P.M. (closed); 2:30 P.M.–5 P.M. (open); and 6:30 P.M.–8:30 P.M. (closed). August 5, 1995—Full Board, 9 A.M.–11:45 A.M. (open), 11:45 A.M.–until adjournment, approximately 12 Noon (closed).

LOCATION: The Ritz-Carlton Hotel—Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 3, the Executive Committee of the National Assessment Governing Board will meet in closed session from 10 A.M. to 1:30 P.M. The Committee will meet to discuss the development of cost estimates for NAEP and future contract initiatives. Public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Beginning at 2 P.M. until adjournment, 3 P.M., the Executive Committee will meet in open session to hear an update on the NAGB planning initiative activities and to discuss the special provisions for testing students with disabilities and with limited English proficiency.

Also on August 3, there will be closed meetings of the Achievement Levels Committee from 4 P.M. to 6 P.M., SAC #2 from 4 P.M.–8 P.M., and the Nominations Committee from 6 P.M.–8 P.M. The Achievement Levels Committee will be examining and discussing unreleased NAEP data (cut scores, percent of students at or above the levels, and test items) in the process of making their decisions about the 1994 levels in history and geography. The discussion will include references to specific items from the assessments, the disclosure of which might significantly frustrate implementation of the NAEP. This session mist be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

SAC #2 will be considering test items for inclusion in the 1996 assessments of mathematics and science. The review and subsequent discussions will include references to specific items for these assessments, the disclosure of which might significantly frustrate implementation of the NAEP. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Nominations Committee will review and discuss the qualifications of nominees for filling potential vacancies in Board membership. The review and subsequent discussions of this information relate solely to the internal rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

On August 4, the full Board will convene in open session from 9 A.M. to 10 A.M. The agenda for this session of the full Board meeting includes approval of the agenda, the Executive Director's Report, and update on NAEP activities. Between 10 A.M. and 12 noon, there will open meetings of the following subcommittees: Design and Methodology, Reporting and Dissemination, and Subject Area Committee #1. The Design and Methodology Committee will hear updates on below state assessments, the 1996 NAEP assessment design, and the Technical Review Panel studies planned for 1996 and beyond.

Agenda items for the Reporting and Dissemination Committee include consideration of Board policy on public access to NAEP background and cognitive questions; plans for release of NAEP reports; and testing of students with disabilities and limited English proficiency.

Subject Area Committee #1 will hear a progress report from the contractor on the plans for the civics assessment.

Beginning at 12 noon, until 2:30 P.M., the full Board will meet in closed session. The Board will hear a report on the 1994 achievement levels in history and geography which will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The meeting will be open from 2:30 P.M. until 5 P.M. when the Board will hear an update on the civics framework, NAGB Planning Initiative and presentations by authors of commissioned papers.

At 6:30 P.M., until 8:30 P.M., the Board will reconvene in closed session to consider candidates for nomination to the Board. Discussion of the candidates' qualifications relates solely to the internal rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

On August 5, at 9 A.M., the full Board will reconvene. The Board will meet in open session from 9 A.M. through adjournment, approximately 12 noon. The agenda for the open session includes a presentation by Kati Haycock of the American Association for Higher Education on Using NAEP Data and reports from the Board's standing

subcommittees—Subject Area #1, Subject Area #2, Achievement Levels, Reporting and Dissemination, Design and Methodology, and the Executive Committee.

The Board will hear the Nominations Committee report during the closed session, beginning at 11:45 A.M. to approximately 12:00 noon, and consider the recommendations of candidates for Board membership. Discussion of the candidates' qualifications relates solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of the Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5 P.M.

Dated: July 12, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–17470 Filed 7–14–95; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Notice of Deadline for Submission of Institutional Agreement for Participation in the Federal Perkins Loan Program Expanded Lending Option

AGENCY: Department of Education.

ACTION: Notice of deadline for submission of institutional agreement for participation in the Federal Perkins Loan Program Expanded Lending Option.

SUMMARY: This notice establishes the deadline for submission of the ''Institutional Agreement For Participation In the Federal Perkins Loan Program Expanded Lending Option (ELO)'' (ELO Participation Agreement) by those eligible institutions that elect to participate in the Federal Perkins Loan Program ELO in the 1995–96 award year (the period from July 1, 1995 through June 30, 1996).

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs. The ELO is available for the 1995–96 award year for institutions of higher education that participate in the Federal Perkins Loan Program.

To be eligible to participate in the Federal Perkins Loan Program ELO for 1995–96, an institution must have had a Federal Perkins Loan cohort default rate of 15 percent or less as of June 30, 1994, and must have participated in the Federal Perkins Loan Program for the two previous award years (1993–94 and 1994–95). In addition, an institution must enter into a special ELO Participation Agreement with the Secretary. An institution that elects to participate in the ELO must complete, sign, date and submit the ELO Participation Agreement by the closing date to obtain approval.

Institutions that become Federal Perkins Loan Program ELO participants will be required to increase the Institutional Capital Contribution (ICC) to at least a dollar-for-dollar match with any portion of the 1995–96 award year Federal Capital Contribution (FCC) received. Only new FCC received on or after July 1, 1995, would be matched at the increased rate. Institutions would not match funds received prior to July 1, 1995, at the higher rate. Institutions receiving no new FCC for the 1995–96 award year may still elect to participate in the Federal Perkins Loan Program ELO.

Institutions that become Federal Perkins Loan Program ELO participants may make loans to eligible students at higher maximum annual and aggregate limits than is the case with nonparticipating institutions. ELO participating institutions that do not ultimately make any loans at the higher ELO levels for the 1995–96 award year must still honor the ELO Participation Agreement to deposit in the Federal Perkins Loan Program Fund an ICC at least equal to the 1995–96 award year FCC deposited into the Fund. All other administrative procedures would remain the same as for institutions not participating in the Federal Perkins Loan Program ELO.

DATES: *Closing Date for Transmittal of ELO Participation Agreement:* To ensure participation in the Federal Perkins Loan Program ELO in the 1995–96 award year, an eligible institution that elects to participate must submit its ELO Participation Agreement by August 16, 1995.

ELO Participation Agreement Delivered By Mail: An ELO Participation Agreement delivered by mail must be addressed to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 600 Independence Avenue, S.W., Room 4714, Regional Office Building 3, Washington, DC 20202–5458.

An institution must show proof of mailing its ELO Participation Agreement by the closing date. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an ELO Participation Agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

ELO Participation Agreement Delivered by Hand and Commercial Delivery Services: An ELO Participation Agreement delivered by hand must be delivered to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 7th and D Streets, S.W., Room 4714 Regional Office Building 3, Washington D.C. Hand-delivered ELO Participation Agreements will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. An ELO Participation Agreement that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations: The following regulations apply to this program:

Student Assistance General Provisions, 34 CFR part 668.

Federal Perkins Loan Program, 34 CFR part 674.

Federal Work-Study Program, 34 CFR part 675.

Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

Federal Family Educational Loan Program, 34 CFR part 682.
New Restrictions on Lobbying, 34 CFR part 82.
Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

FOR FURTHER INFORMATION CONTACT: For information concerning ELO Participation Agreement submissions, contact Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Office of Postsecondary Education, 600 Independence Avenue, S.W. (Room 4714, ROB–3), Washington, DC 20202–5452. Telephone: 202–708–9751.

For technical assistance concerning the Federal Perkins Loan Program ELO, contact Susan Morgan, Chief, Campus-Based Loan Programs Section, or Sylvia R. Ross, Program Specialist, Policy Development Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, Telephone: 202–708–8242. 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.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program)

Dated: July 11, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–17454 Filed 7–14–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–144–001, et al.]

Allegheny Generating Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 1995.

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

1. Allegheny Generating Company

[Docket No. ER95–144–001]

Take notice that on June 8, 1995, Allegheny Generating Company tendered for filing its refund report in the above-referenced docket.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Smithfield Foods, Inc. v. Carolina Power & Light Company

[Docket No. EL95–60–000]

Take notice that on June 28, 1995, Smithfield Foods, Inc. (Smithfield), tendered for filing a complaint against Carolina Power & Light (CP&L) Company stating that certain rates charged by CP&L are unjust, unreasonable, unduly discriminatory, and anticompetitive.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Katex Energy Ventures, Inc.

[Docket No. ER95–295–002]

Take notice that on June 19, 1995, Katex Energy Ventures, Inc. tendered for filing a Notice of Secession for power marketing waivers, blanket authorizations, and order approving rate schedule.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Conowingo Power Company

[Docket No. ER95–555–000]

Take notice that on June 27, 1995, Conowingo Power Company (COPCO) tendered for filing a letter stating that COPCO and Delmarva Power & Light Company (Delmarva) were merged on June 19, 1995. COPCO states that the instant docket relates to the cancellation of two contracts between Delmarva and COPCO to be effective as of the date of the merger.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER95–1069–000]

Take notice that Southwestern Public Service Company (Southwestern) on July 3, 1995, tendered for filing a proposed amendment to its rate schedule for service to Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects changes in the maximum commitment at several delivery points, removes a delivery point, and adds an additional delivery point for service to Central Valley.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Premier Enterprises, Inc.

[Docket No. ER95–1123–000]

Take notice that on July 5, 1995, Premier Enterprises, Inc. tendered for filing an amendment to its May 31, 1995, filing in the above-referenced docket.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER95–1129–000]

Take notice that on July 6, 1995, Southwestern Public Service Company tendered for filing an amendment to its May 31, 1995 filing in the above-referenced docket.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. NAP Trading and Marketing, Inc.

[Docket No. ER95–1278–000]

Take notice that on June 28, 1995, NAP Trading and Marketing, Inc. (NAP) petitioned the Commission for acceptance of NAP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NAP intends to engage in wholesale electric power and energy purchases and sales as a marketer. NAP is not in the business of generating, transmitting, or distributing electric power. NAP is a direct wholly-owned subsidiary of North American Power Group, Ltd, which, through other subsidiaries, owns and operates non-utility generating facilities and related business ventures in the United States.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER95–1294–000]

Take notice that on June 30, 1995, Montana Power Company (Montana) tendered for filing a Notice of Termination of Montana Rate Schedule FPC No. 3 between Montana and Idaho Power Company.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Market Responsive Energy, Inc.

[Docket No. ER95–1295–000]

Take notice that on June 30, 1995, Market Responsive Energy, Inc. tendered for filing a petition for waivers, blanket approvals, disclaimer of

jurisdiction and order accepting rate schedule.

Comment date: July 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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. 95–17449 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–109–002, et al.]

Transcontinental Gas Pipeline Corporation, et al.; Natural Gas Certificate Filings

July 10, 1995.

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

1. Transcontinental Gas Pipeline Corporation

[Docket No. CP94–109–002]

Take notice that on July 3, 1995, Transcontinental Gas Pipe Line Corporation (''Transco''), Post Office Box 1396, Houston, Texas 77251, pursuant to and in accordance with Section 7(c) of the Natural Gas Act (''NGA'') and Part 157 of the Federal Energy Regulatory Commission's (''Commission'') regulations, filed an application in Docket No. CP94–109–002 to amend the certificate of public convenience and necessity issued by the Commission on December 21, 1994 in Docket No. CP94–109–000 (''December 21 Order'') authorizing Transco's 1995/1996 Southeast Expansion Project (''SE95/96''). Specifically, Transco requests authorization to (i) increase the certificated horsepower of the compressor additions authorized in the December 21 Order at Transco's Station Nos. 90, 100 and 150, (ii) increase, commencing with SE95/96 Phase II service, the firm transportation capacity under the project from 165,000 Mcf/d to 170,000 Mcf/d as a result of such increased horsepower, and (iii) reduce the certificated initial rate for Phase II service to reflect such increased firm transportation capacity under the project.

Transco states that its SE95/96 certificate includes the authorization to construct and operate 12,600 horsepower compressor additions at Transco's Station Nos. 90 and 150. Transco states that it contemplated installing compressor units at those stations which equalled 12,600 horsepower because those units were commercially available at the time of its original application. However, Transco states that the units now available from the manufacturer in this size range are rated at 14,100 horsepower, and, therefore, the manufacturers have replaced the specified units with 14,100 horsepower units. Thus, Transco will install the 14,100 horsepower units at Station Nos. 90 and 150 instead of the 12,600 horsepower units. Transco states that until further certificate authority is received, it will operate the 14,100 horsepower units at the 12,600 horsepower level certificated by the Commission in the December 21 Order. Transco states that limiting the operation of those units to the 12,600 horsepower level, however, will not take advantage of their full operational capability. Therefore, Transco requests that it be permitted to operate the units up to the 14,100 horsepower level commencing with the placement into service of Phase II of the project.

Transco further states that at Station No. 100, Transco is currently authorized by the SE95/96 certificate to install and operate 6,500 horsepower of additional compression in Phase II of the project. Transco now proposes to increase that certificated addition by 2,000 horsepower, to 8,500 horsepower. Transco states that it will accomplish this 8,500 horsepower increase at Station No. 100 by (i) derating existing compressor units 3, 4, 5 and 9 at the station by an aggregate amount of 4,000 horsepower, and (ii) installing an additional 12,500 NEMA rated horsepower unit. Transco's determination to derate the existing units is based on actual operating data for the units and the removal of steam injection from unit 5 due to water shortages experienced at the station. The 12,500 horsepower unit is the size unit that was furnished by the manufacturer. Accordingly, Transco requests that it be permitted to make these Phase II modifications at Station No. 100 and install and operate 8,500 horsepower of additional compression in lieu of the 6,500 horsepower addition certificated in the December 21 Order.

Transco states that the horsepower increases and compressor modifications proposed herein will be performed in compliance with the Commission's environmental requirements, including the environmental conditions set forth in Appendix B of the December 21 Order.

Transco also requests authorization to increase the firm transportation capacity under SE95/96 from 165,000 Mcf/d to 170,000 Mcf/d commencing with Phase II service. Transco states that this additional 5,000 Mcf/d of firm transportation capacity will be created as a result of the compressor modifications described above. The additional capacity will extend from the main line interconnect with the Mobile Bay Lateral to points upstream of Transco's Station No. 140. Pursuant to the terms of the Precedent Agreements executed with the SE95/96 shippers, Transco has executed letter agreements with 12 of the SE95/96 shippers for such additional firm transportation service. Those letter agreements require Transco and the shippers to execute, within 30 days after Transco's receipt and acceptance of the authorizations requested, a restated Rate Schedule FT Service Agreement for service under SE95/96 providing for the increased level of service.

Transco further states that the initial monthly reservation rate of $9.86 per Mcf certificated by the Commission for Phase II service was based in part on billing determinants of 165,000 Mcf/d times 12. As a result of the 5,000 Mcf/d of increased firm transportation service that Transco will be able to render under SE95/96 beginning with Phase II, the billing determinants for Phase II service will be increased to 170,000 Mcf/d times 12. Based on these revised billing determinants and the estimated costs, rate design and cost of service factors approved by the Commission in the December 21 Order, Transco requests approval of a revised initial monthly reservation rate of $9.57 per Mcf for Phase II service.

Comment date: July 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Interstate Offshore Company

[Docket No. CP95–588–000]

Take notice that on June 29, 1995, Pacific Interstate Offshore Company (PIOC), located at 633 West Fifth Street, Suite 5200, Los Angeles, CA 90071–2006, filed in Docket No. CP95–588–000, an application pursuant to Section

3 of the Natural Gas Act and Sections 153.10–153.12 of the Commission's Regulations for Section 3 authorization and a Presidential Permit pursuant to Executive Order 10485, as amended by Executive Order 12038, to construct, connect, operate, and maintain certain pipeline and metering facilities (the Border Crossing Facilities) in El Paso County, Texas, in the vicinity of the International Boundary between the United States and the Republic of Mexico.

PIOC states that the Border Crossing Facilities will be used to provide natural gas transportation service from upstream pipeline facilities to downstream facilities to be built in Mexico to serve the Samalayuca II gas-fired electric generating plant which is to be located approximately 30 miles south of the Cities of Juarez, Mexico, and El Paso, Texas. PIOC further states that it will operate the Border Crossing Facilities as ''open access'' facilities to be interconnected with upstream facilities which are not yet constructed. If PIOC is successful in negotiating a gas transportation agreement with the Comision Federal de Electricidad, it will file an application under Section 7(c) of the Natural Gas Act seeking authority to construct the upstream pipeline facilities which will interconnect with existing facilities of El Paso Natural Gas Company.

The facilities will have a capacity of 175 Mmcf/d. PIOC estimates the cost of the proposed facilities to be approximately $792,000.

Comment date: July 31, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP95–589–000]

Take notice that on June 29, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–589–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate upgraded metering facilities at a new location for the Duvall/Cottage Lake Meter Station in King County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate upgraded metering facilities at a new location for the Duvall/Cottage Lake Meter Station in King County, Washington, which will have a design capacity of 32,450 Dth/d at 400 psig. It is stated that these facilities, which would cost $597,900, would be used to provide firm deliveries to Washington Natural Gas Company under existing agreements.

Comment date: August 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company; Koch Gateway Pipeline Company

[Docket No. CP95–600–000]

Take notice that on July 3, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, and Koch Gateway Pipeline Company (Koch Gateway), formerly United Gas Pipe Line Company, 600 Travis Street, Houston, Texas 77002, jointly as the Companies, filed in Docket No. CP95–600–000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a certain exchange service which was once required for exchange of gas among the Companies. The Companies received authority for the exchange service on February 23, 1981. The rate schedules for which the Companies are seeking abandonment authority are as follows:

Docket No.	Volume (Mcfd)	Company	Rate Schedule
CP80–543.	10,000	Columbia	X–100
CP80–543.	10,000	Columbia Gulf	X–75
CP80–543.	10,000	Koch ..... Gateway .	X–137

Columbia's Rate Schedule X–100, Columbia Gulf's Rate Schedule X–75, and Koch Gateway's Rate Schedule X–137 provided for the exchange of up to 10,000 Mcf per day of natural gas among the companies. Koch Gateway received up to 10,000 Mcf per day for Columbia's account at the producer's platform in Eugene Island Block 43 and at an existing meter in the Lake Hatch Field, and redelivered equivalent volumes to Columbia at the outlet side of Sea Robin's meter near Erath, Louisiana. Columbia Gulf received up to 10,000 Mcf per day for Koch Gateway's account at a subsea tap in Vermilion Area Block 245 and transported the gas through the Bluewater Project for delivery to Koch Gateway or for Koch Gateway's account at the outlet side of Sea Robin's meter near Erath. Imbalances in deliveries were corrected on a monthly basis. The benefits derived from the exchange of volumes were substantially equal and mutually beneficial, so there was no transportation charge involved. There has been no gas transported under the exchange agreement since July 1991 and there are no imbalances. Columbia Gulf is currently providing Koch Gateway alternative Part 284 interruptible transportation services under ITS–1 and ITS–2 rate schedules filed under Docket Nos. ST94–5135 and ST92–1926, respectively.

Comment date: July 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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. 95–17450 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP93–564–003]

ANR Pipeline Co.; Notice of Amendment

July 11, 1995.

Take notice that on July 7, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed, pursuant to 18 CFR 385.215, to further amend its application filed under Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate pipeline facilities and related facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR is amending its application to supply recently executed precedent agreements and to make revisions in volumes to be transported as reflected in the terms of the precedent agreements. ANR states that the two shippers it has executed precedent agreements with, Michigan Consolidated Gas Company (MichCon) and The Consumers' Gas Company Limited (Consumers'), will now transport up to 90,000 Dth per day. (Previously, the maximum volume to be transported for both shippers was 75,000 Dth per day.) Specifically, MichCon has executed a 15-year precedent agreement for 75,000 Dth per day. Consumers' has executed an 11–year precedent agreement for 10,000 Dth per day the first year, 15,000 Dth per day in years two through ten, and 5,000 Dth in the final year. In addition, ANR proposes a new in-service date of November 1, 1996, due to the time it has taken to negotiate the precedent agreements.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 1, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary,

[FR Doc. 95–17390 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–566–002]

ANR Pipeline Co.; Notice of Amendment

July 11, 1995.

Take notice that on July 7, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed, pursuant to 18 CFR 385.215, to further amend its application filed for authorization under Section 3 of the Natural Gas Act (NGA) and a Presidential Permit to site, construct, operate and maintain pipeline facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR states that the purpose of this amendment is to reflect the restructuring of its project as set forth in ANR's companion application in Docket No. CP93–564–003, filed July 7, 1995. ANR states the project has been reconfigured with regard to: the inclusion of executed precedent agreements, the terms of such precedent agreements, and a change in the proposed in-service date to November 1, 1995.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 1, 1995, 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17389 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–601–000]

Mississippi River Transmission Corp.; Request Under Blanket Authorization

July 11, 1995.

Take notice that on July 5, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a prior notice request with the Commission in Docket No. CP95–601–000 pursuant to Section 147.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Ste. Genevieve County, Missouri, to provide service for Laclede Gas Company (Laclede) under MRT's blanket certificates issued in Docket Nos. CP82–489–000 and CP89–1121–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

MRT proposes to construct and operate a 4-inch tap and appurtenant facilities as a delivery point to serve Laclede, who would provide natural gas service to Chemical Lime Company's lime kiln facilities. MRT states that it would deliver up to 6,000 MMBtu equivalent of natural gas to Laclede at the proposed delivery point on a peak day and 50,000 MMBtu on an annual basis. MRT states that Laclede would reimburse MRT for the estimated $161,700 construction cost of the proposed delivery point. MRT also states that its existing FERC tariff does not prohibit additional delivery points, nor would the natural gas volumes it proposes to deliver to Laclede via the

proposed tap exceed currently certified transportation quantities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17388 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1999–000]

Wisconsin Public Service Corp.; Notice of Authorization for Continued Project Operation

July 11, 1995.

On June 24, 1993, Wisconsin Public Service Corporation, licensee for the Wausau Project No. 1999, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1999 is located on the Wisconsin River in Marathon County within the City of Wausau, Wisconsin.

The license for Project No. 1999 was issued for a period ending June 30, 1995. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1999 is issued to Wisconsin Public Service Corporation for a period effective July 1, 1995, through June 30, 1996, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1996, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Wisconsin Public Service Corporation is authorized to continue operation of the Wausau Project No. 1999 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17387 Filed 7–14–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5259–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 16, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1759.01.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Worker Protection Standards. (ICR No: 1759.01). This is a request for the approval of burden hours for requirements under the Worker Protection Standard (WPS). This action seeks approval for requirements no longer exempt by the Paperwork Reduction Act of 1995.

Abstract: EPA is charged under 40 CFR parts 156 and 170 for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, in forests, in nurseries and in greenhouses. The WPS workplace practices are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides; basic training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements in case of pesticide exposure; and provisions for emergency assistance.

The information burden is primarily that of third party notifications to inform agricultural workers and pesticide handlers of basic safety practices.

Burden statement: The public burden for this collection of information is estimated to average ¼ hour per respondent. Less than 1 percent of the total burden is recordkeeping.

Respondents: The potential respondents are agricultural employers, including employers in farms as well as nursery, forestry, and greenhouse establishments.

Estimated No. of Respondents: 1,000,000.

Estimated No. of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 2,100,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden (please refer to EPA ICR #1759.01) to:

Sandy Farmer, EPA ICR #1759.01, U.S. Environmental Protection Agency, Information Policy Branch—2136, 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and

Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 10, 1995.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 95–17478 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5259–5]

Fuels and Fuel Additives; Grant of Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 13, 1994, I issued a decision denying the November 30, 1993 application of the Ethyl Corporation (''Ethyl'') for a fuel additive waiver under Clean Air Act section 211(f)(4), 42 U.S.C. 7545(f)(4), to permit sale of HiTEC 3000, a fuel additive product containing methylcyclopentadienyl manganese tricarbonyl (''MMT''), for use in unleaded gasoline. 59 FR 42227 (August 17, 1994). In that decision, I found that Ethyl had demonstrated as required by Section 211(f)(4) that MMT would not ''cause or contribute to a failure of any emission control device or system'' in a vehicle to achieve compliance with the emission standards for which the vehicle has been certified. I also decided that the waiver application should nonetheless be denied because of my conclusion that there is a reasonable basis for concern regarding the potential adverse effects on public health which could result from the emissions of manganese particulates associated with MMT use.

On April 14, 1995, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Ethyl Corporation* v. *EPA*, No. 94–1505 (D.C. Cir.). In that decision, the Court held that Section 211(f)(4) does not afford me the discretion to consider factors other than the mandatory ''cause or contribute'' determination in deciding whether to issue a fuel additive waiver for HiTEC 3000. Based on this conclusion, the Court has instructed me to ''grant Ethyl's request for a waiver.'' Accordingly, pursuant to the mandate of the Court, effective today I am granting Ethyl's November 30, 1993 application for a fuel additive waiver for HiTEC 3000.

EFFECTIVE DATE: The effective date July 11, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 233–9034.

Dated: July 11, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–17476 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5259–4]

Marsh Management Subcommittee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a two day meeting for the Marsh Management Subcommittee under the Ecosystem Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The purpose of this subcommittee is to convene a consensus process among stakeholders in coastal Louisiana related to marsh management practices.

DATES: The Subcommittee will meet on August 2–3, 1995. The Subcommittee will meet on August 2 at 10 a.m. to 5 p.m. and on August 3, 1995 from 10 a.m. to 3 p.m.

ADDRESSES: Corps of Engineers New Orleans District Office located the Foot of Prytania, 7400 Leake Avenue, New Orleans, LA 70118. The meeting is open to the public, with limited seating on a first-come-first-served basis.

Anyone wishing to make oral presentations should contact Connie Cahanap by 4 pm Monday, July 24, 1995. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Due to the time constraints, oral presentations will be strictly limited to three minutes and slots are limited. Available time slots will be allocated on a first-come, first served basis to those scheduling a presentation in advance. Written comments will be accepted at any time prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Connie Cahanap, Wetlands Division, OWOW, Mail Code 4502F, US Environmental Protection Agency, Washington, DC 20460, (202) 260–6531.

Dated: July 10, 1995.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 95–17480 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140230; FRL–4933–3]

TSCA Confidential Business Information; Revised Security Manual; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has adopted revisions to its procedures for handling confidential business information (CBI) under the Toxic Substances Control Act (TSCA). These revised procedures are set forth in a new TSCA CBI security manual for Federal employees and contractors, the availability of which is announced by this notice.

DATES: The requirements of the manual are effective July 17, 1995.

ADDRESSES: Copies of the revised manual are available from: The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone: (703) 487–4650 or (800) 553–NTIS.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is issuing this notice to announce the revised TSCA security manual for Federal employees and contractors. The revised *TSCA Confidential Business Information Security Manual* supersedes the previous edition of the *TSCA Confidential Business Information Security Manual*. The revised manual includes changes and refinements in existing procedures developed since the publication of the previous manual.

Several changes to the manual have been made as a result of EPA's continuing efforts to improve the procedures for handling TSCA CBI. None of these changes reduce the level of protection afforded TSCA CBI.

Changes and clarifications include: (1) The transfer to the Office of Program Management and Evaluation from the Information Management Division of the duty of investigating and addressing

alleged TSCA security infractions, and (2) amending TSCA manual security procedures to achieve consistency with applicable TSCA regulations. These and other changes are designed to improve security for TSCA CBI while recognizing EPA's need to work with such TSCA CBI to perform the Agency's statutory duties. The Agency's policy on revisions to TSCA CBI security manuals was announced in the **Federal Register** of November 14, 1985 (50 FR 47108). EPA is publishing this notice in accordance with the requirements of that policy.

EPA is printing and distributing copies of the revised manual to affected EPA offices. The provisions of the revised manual are effective July 17, 1995. Copies of the revised manual are available to the public by contacting NTIS at the address or telephone number listed under the **ADDRESSES** unit of this document.

List of Subjects

Environmental protection.

Dated: June 8, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–17473 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Proposed Related Services; Real Estate Brokerage, Farm Management, and Mineral Management

AGENCY: Farm Credit Administration.

ACTION: Notice; request for public comment.

SUMMARY: The Farm Credit Administration (FCA or Agency), by the Farm Credit Administration Board (Board), requests public comment on an inquiry by a Farm Credit System (System or FCS) institution for approval to offer Real Estate Brokerage, Farm Management, and Mineral Management service programs as authorized ''Related Services.'' The requested services are being published for a 60-day public comment period prior to the FCA acting on a request to offer such services.

DATES: Comments must be submitted to the FCA within September 15, 1995.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Gary K. Van Meter, Senior Attorney, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 15, 1995, the FCA Board voted to adopt final regulations on related services at 12 CFR part 618. (See 60 FR 34090, June 30, 1995.) Under title I, section 1.12; title II, sections 2.5 and 2.12 (15); and title III, section 3.7 of the Farm Credit Act of 1971, as amended (the Act), the FCA is responsible for promulgating regulations governing the offering and administering of technical assistance, financial assistance, and financially related services (hereinafter referred to as ''related services'') by System banks and associations. The statute authorizes System institutions to provide financial and technical assistance to borrowers, applicants, and members and make available to them related services appropriate to their on-farm, aquatic and cooperative operations under regulations prescribed by the FCA.

Related service, as defined in § 618.8000(c) (see 60 FR 34090, June 30, 1995), means ''any service or activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters.'' The FCA notes that, should the requested service be authorized, farm-related businesses or persons eligible for rural housing loans would not be eligible unless they otherwise satisfy the eligibility criteria for related services in § 618.8005.

The revised regulation at § 618.8000 requires a prior determination that any new services, not previously authorized and placed on the Related Services List (RS List), are legally authorized and do not present excessive risk to the requesting institution or the System as a whole. In order to evaluate safety and soundness risks, the submitting institution must be specific in its request as to what types of services will be provided and, if necessary, what controls would be appropriate to address potential risks.

The following services would be provided to persons eligible to receive such services from the Farm Credit System under § 618.8005:

Real Estate Brokerage Services: The applicant would offer real estate brokerage services to buyers or sellers (or both parties) of agricultural property. Commissions on sales transactions of property would be competitive with other brokerage services in the service territory. Key factors of the program would include the following: Location of sales professionals throughout proposed service territory; national and regional advertising; complete auction services; large network of qualified buyers; recommended pricing strategies for clients; prompt and efficient sales closings; and suggestions for assistance with financial structuring for purchasers.

Farm Management Services: Regional teams of professionals familiar with the market would provide a full complement of farm land services to all types of agricultural land owners in the service territory, subject to eligibility constraints. Farm management includes defining ownership goals, identifying problems, analyzing alternatives and making recommendations for achieving business goals. Farm managers would present the customer with a full spectrum of lease or custom farming alternatives and help the owner decide how to ultimately get the best return on the owner's assets. Key factors of the service would include developing a comprehensive farm operating plan, securing operators/renters and negotiating leases, providing property reporting including annual budgets and projections, periodic inspections of crop programs and conservation measures, analysis of government programs, formulation and implementation of capital improvement and repairs, and handling commodity sales.

Mineral Management Services: The applicant would provide professional mineral management services to eligible customers. Marketing techniques would be utilized to maximize lease bonuses and assure that energy companies are aware of the clients' unleased/available mineral acreage. Key factors of the service include supervision and management of mineral assets, collection and processing of revenue from producing assets, property evaluation, unitization, review and payment of taxes, review and tracking of authorizations for expenses, lease evaluation and negotiation, lease payment record maintenance, review of lease and other mineral-related agreements, processing division orders and assignments, and regular property reviews for each account.

Because of the complex nature of these proposed services, the FCA solicits public comment prior to acting on the request, in accordance with the guidelines recently adopted in

§ 618.8010(c)(3). The Agency believes that its evaluation of the proposal will be aided by public comment on issues raised by the proposal. Specifically, the FCA requests comments on the risks inherent in offering these services, such as the potential for conflicts of interest and liability or environmental concerns, particularly in regard to providing such services to borrowers with distressed loans. The Agency also requests comments on the potential benefits to farmers, how the provider ensures that services are provided to eligible entities, feasibility and appropriateness of such services for Farm Credit institutions, the impact of such services on the lending function, and any other pertinent issues. In addition, the FCA requests commenters to consider what Systemwide issues might be raised by a decision to authorize such services.

The FCA also requests commenters to propose how they believe identified concerns might be mitigated. Commenters should bear in mind that the identified concerns could also be addressed by the FCA's standard of conduct regulations, or by applicable State laws and regulations, licensing requirements, and industry ethical standards, or in appropriate circumstances, by requiring pertinent disclosure or anti-tying requirements for certain services. Additionally, internal controls could be adopted that limit the amount of risk taken on by an institution offering such services.

The FCA has concluded that some of the conflict of interest or liability concerns might be addressed by offering any or all of the services through a service corporation and requests comment on the following issues:

(a) What, if any, limits should there be on board structure or composition?

(b) If necessary, how should the amount of capital a bank can invest in the service corporation be limited?

(c) Are there any organizational or procedural constraints or limits that may be appropriate?

In its evaluation of the proposed services, the FCA will focus on systemic issues rather than on institution or program-specific factors. If the FCA authorizes the above-related services, any System bank or association may develop a program and subsequently offer the related service(s) to eligible recipients, subject to any special conditions or limitations imposed by the FCA. The Agency may, at the time of approval, impose such special conditions or limitations on any approved service as the FCA in its sole discretion may deem necessary or appropriate to ensure safety and soundness or compliance with law or regulation. These programs would be subject to review during the examination process.

Dated: July 11, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–17433 Filed 7–14–95; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 7, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions 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 Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. 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: N/A.

Title: Section 64.707 Public Dissemination of Information by providers of operator services.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other-for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 436 responses; 8 hours burden per response; 3,488 hours total annual burden.

Needs and Uses: Section 64.707 requires that operator service providers (OSPs) regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. OSPs will provide this information primarily in the form of a written report that will be regularly updated. Consumers will use this information to increase their knowledge of the choices available to them in the operator service market.

OMB Number: N/A.

Title: Section 63.703(a) Consumer Information - Branding by Operator Service Providers.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 436 responses; 4,504 hours burden per response; 1,963,888 hours total annual burden.

Needs and Uses: Section 65.703(a) requires that operator service providers (OSPs) disclose to consumers, at the outset of operator-assisted telephone calls, their identify, and, upon request by the consumer, the rates for the call, collection methods for charges, and complaint procedures. OSPs will most often disclose their identify to consumers via an automated recording at the beginning of all operator-assisted calls. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

OMB Number: N/A.

Title: Section 76.630(a) Compatibility with consumer electronic equipment.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 12,050 responses; 1.01 hours burden per response; 12,150 hours total annual burden.

Needs and Uses: Section 76.630(a) states that cable system operators requesting waivers of the prohibition on signal encryption from the Commission must notify subscribers of the waiver request by mail. This disclosure requirement is for consumer protection purposes and to inform subscribers of compatibility matters and notify them of the cable operator's request to waive the prohibition on signal encryption.

OMB Number: N/A.

Title: Section 76.936 Written decisions.

Form No.: N/A.

Action: New collection.

Respondents: State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 1,200 responses; 1 hour burden per response; 1,200 hours total annual burden.

Needs and Uses: Section 76.936 states a franchising authority must issue a written decision in a rate making proceeding when ever it disapproves an initial rate for basic service tier or associated equipment in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. The Commission requires these written

decisions so that cable operators and the public are aware of the results of the rate-making proceedings.

OMB Number: N/A.

Title: Section 76.946 Advertising Rates.

Form No.: N/A.

Action: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 1,200 responses; 30 minutes burden per response; 6,000 hours total annual burden.

Needs and Uses: Section 76.946 states that cable operators that advertise rates for basic service and cable programming tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a fee plus rate that indicates the core rate plus the range of possible additions. The Commission established this requirement to ensure consumer awareness of rates for basic cable service and associated equipment.

OMB Number: N/A.

Title: Section 76.986 ''A la carte'' offerings.

Form No.: N/A.

Action: New collection.

Respondents: Individuals or households; Business or other for-profit; State, Local and Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 890 responses; 1.27 hours burden per response; 1,130 hours total annual burden.

Needs and Uses: Section 76.986(b) states that in reviewing a basic service rate filing, local franchising authorities may make an initial decision addressing whether a collective offering of ''a la carte'' channels will be treated as an unregulated service or a regulated tier. The franchising authority must make this initial decision within the 30 days established for review of basic cable rates and equipment costs in Sec. 76.933(a) or within the first 60 days of an extended 120 day period. The franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice. Operators and consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decision. Operators shall provide notice to the franchise authorities of their decision whether or not to appeal to the Commission. Consumers shall provide notice to franchise authorities of their decision to appeal.

OMB Number: N/A.

Title: Section 76.951 Standard complaint form; other filing requirements.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 300 responses; 15 minutes burden per response; 75 hours total annual burden.

Needs and Uses: Section 76.951 states that cable operators must provide copies of the FCC Form 329 Standard Complaint Form, upon request. The Commission has set forth this disclosure requirement as a way to encourage dialogue between unsatisfied subscribers and their cable operators.

OMB Number: N/A.

Title: Section 76.956 Cable operator response.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 1,200 responses; 15 minutes burden per response; 300 hours total annual burden.

Needs and Uses: Section 76.596 states that unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to the complaint. The response shall indicate when the service occurred and should include rate cards, channel line-ups and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must serve its response on the complainant and the relevant franchising authority. The Commission set forth this requirement to insure that the complainant is apprised of the response submitted to the Commission by the cable company.

OMB Number: N/A.

Title: Section 76.931 Notification of basic tier availability and Section 76.932 Notification of proposed rate increase.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other-for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 24,000 responses; 2.25 hours burden per response; 27,000 hours total annual burden.

Needs and Uses: Section 76.931 states that cable operators shall provided written notification to new subscribers at the time of installation on the availability of basic tier service. Section 76.932 states that a cable operator shall provide written notice to a subscriber of any increase in the price to be charged for basic service tier or associated equipment at least 30 days before any proposed increase is effective.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17378 Filed 7–14–95; 8:45 am]

BILLING CODE 6712–0I–F

[Report No. 2083]

Petition for Reconsideration of Actions in Rulemaking Proceedings

July 12, 1995.

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed August 1, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool. (PR Docket No. 89–553).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding. (PP Docket No. 93–253).

Implementation of Sections 3(n) and 332 of the Communications Act. (GN Docket No. 93–252)

Number of Petitions Filed: 9.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17430 Filed 7–14–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 95–N–05]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Housing Finance Board) promulgated Community Support regulations (12 CFR Part 936). Under the review process established in the regulations, the Housing Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 *et seq.* (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the sixth quarter review (1994–95 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: Due Date for Member Community Support Statements for Members Selected in Sixth Quarter Review: August 31, 1995.

Due Date for Public Comments on Members Selected in Sixth Quarter Review: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Associate Director, Office of Housing Finance, (202) 408–2845, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Housing Finance Board currently reviews all FHLBank System members that are subject to CRA once every two years.

Approximately one-eighth of the FHLBank members in each district will be selected for review by the Housing Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Housing Finance Board follows the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Housing Finance Board will postpone review of new members until they have been System members for one year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Sixth Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1 Post Office Box 9106 Boston, Massachusetts 02205–9106		
Jewett City Trust Company	Jewett City	CT
Manchester State Bank	Manchester	CT
New Milford Bank and Trust Company	New Milford	CT
Dime Savings Bank of Norwich	Norwich	CT
Putnam Savings Bank	Putnam	CT
Savings Bank of Rockville	Rockville	CT
Bank of South Windsor	South Windsor	CT
Thomaston Savings Bank	Thomaston	CT
North American Bank and Trust Company	Waterbury	CT
Wilton Bank	Wilton	CT
Provident Institution for Savings	Amesbury	MA
Community Bank	Brockton	MA
Bay State Federal Savings Bank	Brookline	MA
BayBank	Burlington	MA
Grove Bank	Chestnut Hill	MA
Chicopee Savings Bank	Chicopee	MA
Foxborough Savings Bank	Foxboro	MA
Framingham Savings Bank	Framingham	MA
Gloucester Bank & Trust Company	Gloucester	MA
Great Barrington Savings Bank	Great Barrington	MA
Hudson Savings Bank	Hudson	MA
Lee Bank	Lee	MA
Lenox Savings Bank	Lenox	MA
Enterprise Bank and Trust Company	Lowell	MA
Washington Savings Bank	Lowell	MA
Medway Savings Bank	Medway	MA
Nantucket Bank	Nantucket	MA
Middlesex Savings Bank	Natick	MA
Newburyport Five Cents Savings Bank	Newburyport	MA
North Easton Savings Bank	North Easton	MA
Seamen's Bank	Provincetown	MA
Hibernia Savings Bank	Quincy	MA
Granite Savings Bank	Rockport	MA
Roslindale Co-operative Bank of Boston	Roslindale	MA

Member	City	State
Somerset Savings Bank	Somerville	MA
Bank of Western Massachussetts	Springfield	MA
Watertown Savings Bank	Watertown	MA
Kennebec Savings Bank	Augusta	ME
Bath Savings Institution	Bath	ME
Kingfield Savings Bank	Kingfield	ME
Androscoggin Savings Bank	Lewiston	ME
Livermore Falls Trust Company	Livermore Falls	ME
Key Bank of Maine	Portland	ME
Maine Bank and Trust Company	Portland	ME
Saco and Biddeford Savings Institution	Saco	ME
Sanford Institution for Savings	Sanford	ME
First Colebrook Bank	Colebrook	NH
Laconia Savings Bank	Laconia	NH
Bank of New Hampshire	Manchester	NH
Granite Savings Bank and Trust Company	Barre	VT

Federal Home Loan Bank of New York—District 2
Seven World Trade Center
22nd Floor
New York, New York 10048–1185

Audubon Savings & Loan Association	Audubon	NJ
Mellon Bank, F.S.B.	Paramas	NJ
Interchange State Bank	Saddle Brook	NJ
Trenton Savings Bank	Trenton	NJ
Minotola National Bank	Vineland	NJ
Albion Federal Savings & Loan Association	Albion	NY
Bath National Bank	Bath	NY
Manufacturers and Traders Trust Company	Buffalo	NY
Canajoharie Building, S&LA	Canajoharie	NY
Champlain National Bank	Elizabethtown	NY
Fairport Savings & Loan Association	Fairport	NY
Highland Falls FS&LA	Highland Falls	NY
Habib American Bank	New York	NY
Sterling National Bank and Trust Company	New York	NY
Rome Savings Bank	Rome	NY
Trustco Bank New York	Schenectady	NY
Solvay Bank	Solvay	NY
Troy Savings Bank	Troy	NY
Banco Popular de Puerto Rico	San Juan	PR

Federal Home Loan Bank of Pittsburgh—District 3
601 Grant Street
Pittsburgh, Pennsylvania 15219–4455

Wilmington Trust Company	Wilmington	DE
Apollo Trust Company	Apollo	PA
First Columbia Bank & Trust Company	Bloomsburg	PA
Chambersburg Trust Company	Chambersburg	PA
Farmers and Merchants Trust Company	Chambersburg	PA
Cambria County FS&LA	Cresson	PA
Curwensville State Bank	Curwensville	PA
Montour Bank	Danville	PA
Fidelity Deposit and Discount Bank	Dunmore	PA
Elderton State Bank	Elderton	PA
Bucktail Bank and Trust Company	Emporium	PA
PFC Bank	Ford City	PA
Glen Rock State Bank	Glen Rock	PA
Peoples Bank of Glen Rock	Glen Rock	PA
Harris Savings Bank	Harrisburg	PA
Jefferson Bank	Haverford	PA
Central Bank	Hollidaysburg	PA
Farmers and Merchants Bank	Honesdale	PA
Irwin Bank and Trust Company	Irwin	PA
Three Rivers Bank and Trust Company	Jefferson Borough	PA
Peoples Bank and Trust Company	Jennerstown	PA
Jersey Shore State Bank	Jersey Shore	PA
Jonestown Bank and Trust Company	Jonestown	PA
Royal Bank of Pennsylvania	King of Prussia	PA
Farmers First Bank	Lititz	PA
Miners Bank of Lykens	Lykens	PA
Juniata Valley Bank	Mifflintown	PA
First Federal Savings Bank of New Castle	New Castle	PA

Member	City	State
Peoples Bank of Western Pennsylvania	New Castle	PA
National Bank of North East	North East	PA
Orrstown Bank	Orrstown	PA
Port Richmond Savings	Philadelphia	PA
Phoenixville Federal Savings Association	Phoenixville	PA
PNC Mortgage Bank, N.A.	Pittsburgh	PA
Union Bank and Trust Company	Pottsville	PA
Meridian Bank	Reading	PA
Scottdale Bank and Trust Company	Scottdale	PA
Sun Bank	Selinsgrove	PA
First West Virginia Bank, N.A.—Buckhannon	Buckhannon	WV
Shawnee Bank, Inc.	Dunbar	WV
First Exchange Bank	Mannington	WV
One Valley Bank - North, Inc.	Moundsville	WV
Ameribank, Inc.	Northfork	WV
Bank of Paden City	Paden City	WV
Commercial Banking and Trust Company	Parkersburg	WV
Peoples Bank of Point Pleasant	Point Pleasant	WV
First National Bank of Romney	Romney	WV
Jefferson Security Bank	Shepherdstown	WV

Federal Home Loan Bank of Atlanta—District 4
Post Office Box 105565
Atlanta, Georgia 30348

First National Bank of Columbiana	Columbiana	AL
Bank of the South	Dothan	AL
St. Clair Federal Savings Bank	Pell City	AL
Citizens Bank and Savings Company	Russellville	AL
First Tuskegee Bank	Tuskegee	AL
First of Englewood, FSB	Englewood	FL
First Family Bank, fsb	Eustis	FL
Heritage National Bank	Fort Meyers	FL
First City Bank of Fort Walton	Fort Walton	FL
First National Bank and Trust	Fort Walton Beach	FL
Founders National Trust Bank	Ft. Meyers	FL
Georgia First Bank	Gainesville	FL
Merchants and Southern Bank	Gainesville	FL
Dadeland Bank	Miami	FL
First Federal Bank	Perry	FL
Citizens Federal Savings Bank of Port St. Joe	Port St. Joe	FL
Seminole Bank	Seminole	FL
First Bank of Tallahassee	Tallahassee	FL
Barnett Bank of Tampa	Tampa	FL
SunBank/Mid-Florida, N.A	Winter Haven	FL
Bank of Camilla	Camilla	GA
Rabun County Bank	Clayton	GA
Barnett Bank of Southwest Georgia	Columbus	GA
Citizens Bank and Trust of Fayette County	Fayetteville	GA
Lanier National Bank	Gainesville	GA
Gordon Bank	Gordon	GA
Citizens Community Bank	Hahira	GA
Bank of Hartwell	Hartwell	GA
Trust Company Bank of Middle Georgia	Macon	GA
Bank of Madison	Madison	GA
Newnan Savings Bank, FSB	Newnan	GA
Patterson Bank	Patterson	GA
Pelham Banking Company	Pelham	GA
United Bank and Trust Company	Rockmart	GA
Ameribank, N.A	Savannah	GA
Carver State Bank	Savannah	GA
Georgia Central Bank	Social Circle	GA
Oconee State Bank	Watkinsville	GA
Waycross Bank and Trust	Waycross	GA
First National Bank of Waynesboro	Waynesboro	GA
Barrow Bank and Trust Company	Winder	GA
Bank of Annapolis	Annapolis	MD
Kopernik Federal Savings Association	Baltimore	MD
Chesapeake Bank and Trust Company	Chestertown	MD
Chestertown Bank of Maryland	Chestertown	MD
American Trust Bank	Cumberland	MD
County Banking and Trust Company	Elkton	MD
FCNB Bank	Frederick	MD
First Bank of Frederick	Frederick	MD

Member	City	State
Bank of Glen Burnie	Glen Burnie	MD
Farmers and Merchants Bank of Hagerstown	Hagerstown	MD
Hagerstown Trust Company	Hagerstown	MD
Peninsula Bank	Princess Anne	MD
National Bank of Rising Sun	Rising Sun	MD
Sparks State Bank	Sparks	MD
Taneytown Bank and Trust Company	Taneytown	MD
Bank of Maryland	Towson	MD
Union National Bank	Westminister	MD
Bank of Stanly	Albemarle	NC
Bank of Mecklenburg	Charlotte	NC
First Charlotte Bank and Trust Company	Charlotte	NC
Gibsonville Community Savings Bank	Gibsonville	NC
Farmers and Merchants Bank	Granite Quarry	NC
Triad Bank	Greensboro	NC
CCB Savings Bank of Lenoir, Inc., SSB	Lenoir	NC
Mocksville Savings Bank, SSB	Mocksville	NC
Citizens Bank	Murphy	NC
Randleman Savings Bank, S.S.B.	Randleman	NC
Carolina State Bank	Shelby	NC
Bank of North Carolina	Thomasville	NC
Salem Trust Bank	Winston-Salem	NC
Bank of Charleston, N.A	Charleston	SC
Chesnee State Bank	Chesnee	SC
M.S. Bailey & Son, Bankers	Clinton	SC
Clover Community Bank	Clover	SC
Investors Savings Bank	Florence	SC
Carolina First Bank	Greenville	SC
Williamsburg First National Bank	Kingstree	SC
Anchor Bank	Myrtle Beach	SC
Pee Dee State Bank	Timmonsville	SC
Poinsett Bank, a F.S.B.	Travelers Rest	SC
Arthur State Bank	Union	SC
Woodruff State Bank	Woodruff	SC
Bank of Northern Virginia	Arlington	VA
First National Bank	Christiansburg	VA
George Mason Bank	Fairfax	VA
F & M Bank Massanutten	Harrisonburg	VA
First Sentinel Bank	Richlands	VA
Princess Anne Bank	Virginia Beach	VA
Northern Neck State Bank	Warsaw	VA

Federal Home Loan Bank of Cincinnati—District 5
Post Office Box 598
Cincinnati, Ohio 45201

Nelson County Federal Savings & Loan Association	Bardstown	KY
Bedford Loan and Deposit Bank	Bedford	KY
Bank of Benton	Benton	KY
Berea National Bank	Berea	KY
South Central Bank of Bowling Green	Bowling Green	KY
Meade County Bank	Brandenburg	KY
Edmonton State Bank	Edmonton	KY
Fifth Third Bank of Northern Kentucky	Florence	KY
Pennyrile Citizens Bank and Trust Company	Hopkinsville	KY
First Security Bank and Trust, McLean	Island	KY
Lexington Federal Savings Bank	Lexington	KY
Cumberland Valley National Bank	London	KY
Fifth Third Bank of Kentucky	Louisville	KY
Graves County Bank, Inc.	Mayfield	KY
Community First Bank	Mount Olivet	KY
Princeton Federal Bank, FSB	Princeton	KY
Citizens National Bank of Russellville	Russellville	KY
Community First Bank	Warsaw	KY
Bank of McCreary County	Whitley City	KY
Pioneer Federal Savings Bank	Winchester	KY
First National Bank of Ohio	Akron	OH
Citizens Bank of Ashville	Ashville	OH
Union Bank and Savings Company	Bellevue	OH
Bethel Building and Loan Company	Bethel	OH
Equitable Savings and Loan Company	Cadiz	OH
Harvest Home Savings Bank	Cheviot	OH
Mt. Washington Savings & Loan Company	Cincinnati	OH
Star Bank, N.A.	Cincinnati	OH

Member	City	State
Galion Building and Loan Association	Galion	OH
Greenville National Bank	Greenville	OH
Second National Bank	Greenville	OH
Citizens Loan & Savings Company	London	OH
First Federal Savings & Loan Association	Lorain	OH
Cardinal State Bank	Maineville	OH
Old Fort Banking Company	Old Fort	OH
Ripley Federal Savings & Loan	Ripley	OH
First National Bank of Shelby	Shelby	OH
Lenox Savings Bank	St. Bernard	OH
The Strasburg Savings and Loan Company	Strasburg	OH
Peoples Savings Bank	Urbana	OH
First FS&LA of Van Wert	Van Wert	OH
Second National Bank of Warren	Warren	OH
Trumbull Savings and Loan Company	Warren	OH
Perpetual Savings Bank	Wellsville	OH
Peoples Savings Bank	Xenia	OH
First Federal Savings Bank of Eastern Ohio	Zanesville	OH
Citizens National Bank	Athens	TN
Heritage Bank	Clarksville	TN
The Bank/First Citizens Bank	Cleveland	TN
Peoples Bank	Clifton	TN
Bank of Putnam County	Cookeville	TN
Tennessee Community Bank	Covington	TN
First National Bank of Crossville	Crossville	TN
Bank of Dickson	Dickson	TN
First Federal Savings Bank	Dickson	TN
Home Bank of Tennessee	Ducktown	TN
Carter County Bank of Elizabethton	Elizabethton	TN
Union Planters Bank of North Central Tennessee	Erin	TN
Peoples Bank of Elk Valley	Fayetteville	TN
Jackson County Bank	Gainesboro	TN
Tennessee State Bank	Gatlinburg	TN
Bank of Goodlettsville	Goodlettsville	TN
Greene County Bank	Greeneville	TN
Bank of Halls	Halls	TN
Commercial Bank	Harrogate	TN
Community First Bank	Hartsville	TN
Volunteer Bank	Jackson	TN
Union Bank	Jamestown	TN
Bank of Tennessee	Kingsport	TN
Central State Bank	Lexington	TN
First Bank	Lexington	TN
Enterprise National Bank	Memphis	TN
Tennessee Bank and Trust	Millington	TN
First Bank and Trust	Mount Juliet	TN
Cavalry Banking, FSB	Murfreesboro	TN
First American National Bank	Nashville	TN
Commercial Bank and Trust Company	Paris	TN
Farmers Bank	Portland	TN
Central Bank	Savannah	TN
First Community Bank of Bedford County	Shelbyville	TN
DeKalb County Bank and Trust	Smithville	TN
Farmer's and Merchants Bank	Trezevant	TN
American City Bank	Tullahoma	TN
Reelfoot Bank	Union City	TN
Bank of Commerce	Woodbury	TN

Federal Home Loan Bank of Indianapolis—District 6
P.O. Box 60
Indianapolis, IN 46205–0060

First Federal Bank	Corydon	IN
Blue River Federal Savings Bank	Edinburgh	IN
Bright National Bank	Flora	IN
Norwest Bank, Indiana	Fort Wayne	IN
First United Savings Bank, FSB	Greencastle	IN
Pacesetter Bank of Hartford City	Hartford City	IN
Fifth Third Bank of Central Indiana	Indianapolis	IN
Landmark Savings Bank, F.S.B.	Indianapolis	IN
Peoples Bank and Trust Company	Indianapolis	IN
Union Federal Savings Bank of Indianapolis	Indianapolis	IN
Lafayette Savings Bank, F.S.B.	Lafayette	IN
Farmers State Bank	Mentone	IN

Member	City	State
First Federal Savings Bank of Indiana	Merrillville	IN
Peoples Savings & Loan Association	Monticello	IN
New Washington State Bank	New Washington	IN
First Citizens State Bank	Newport	IN
Citizens State Bank of Petersburg	Petersburg	IN
Republic Bank	Ann Arbor	MI
Signature Bank	Bad Axe	MI
Lake-Osceola State Bank	Baldwin	MI
Central State Bank	Beulah	MI
Community Bank	Caro	MI
Exchange State Bank	Carsonville	MI
Home Federal Savings Bank of Detroit	Detroit	MI
Northern Michigan Savings Bank	Escanaba	MI
State Bank of Ewen	Ewen	MI
Oakland Commerce Bank	Farmington Hills	MI
State Savings Bank	Frankfort	MI
Grand Bank	Grand Rapids	MI
Kent City State Bank	Kent City	MI
FMB—Security Bank	Manistee	MI
First National Bank in Macomb County	Mount Clemons	MI
Firstbank	Mount Pleasant	MI
First National Bank in Norway	Norway	MI
Sterling Bank and Trust, FSB	Southfield	MI
Macomb Federal Savings Bank	St. Clair Shores	MI
SJS Federal Savings Bank	St. Joseph	MI
Bank of Stephenson	Stephenson	MI
Empire National Bank	Traverse City	MI
Omni Savings Bank, F.S.B.	Columbia	SC

Federal Home Loan Bank of Chicago—District 7
111 East Wacker Drive
Suite 700
Chicago, Illinois 60601

Aurora National Bank	Aurora	IL
Merchants National Bank	Aurora	IL
Magna Bank of St. Clair County, N.A.	Belleville	IL
Colonial Bank	Chicago	IL
Huntington Federal Savings Bank of Illinois	Chicago	IL
Marquette National Bank	Chicago	IL
South Shore Bank of Chicago	Chicago	IL
First National Bank	Chicago Heights	IL
Evanston Bank	Evanston	IL
First Federal Savings and Loan Association	Herrin	IL
Farmers State Bank of Hoffman	Hoffman	IL
Community Trust Bank	Irvington	IL
Jacksonville Savings Bank	Jacksonville	IL
Kankakee Federal Savings and Loan Association	Kankakee	IL
Union Federal Savings and Loan Association	Kewanee	IL
First of America—Northeast	Libertyville	IL
Prospect Federal Savings Bank	Lombard	IL
Citizens National Bank of Macomb	Macomb	IL
Heartland Savings Bank	Mattoon	IL
First Suburban National Bank of Maywood	Maywood	IL
Peoples National Bank	McLeansboro	IL
First Midwest Bank/Western Illinois, N.A.	Moline	IL
Nokomis Savings & Loan Association	Nokomis	IL
Orangeville Community Bank	Orangeville	IL
Palos Bank and Trust Company	Palos Heights	IL
First State Bank of Red Bud	Red Bud	IL
Amcore Bank of Rockford	Rockford	IL
North Shore Trust and Savings	Waukegan	IL
Waukegan Savings & Loan Association	Waukegan	IL
First FS&LA of Westchester	Westchester	IL
LaSalle Bank Westmont	Westmont	IL
Metro Savings Bank, F.S.B.	Wood River	IL
State Bank of Arcadia	Arcadia	WI
State Bank of Argyle	Argyle	WI
Belleville State Bank	Belleville	WI
Blackhawk State Bank	Beloit	WI
Citizens State Bank	Cadott	WI
Badger State Bank	Cassville	WI
State Bank of Chilton	Chilton	WI
Citizens State Bank	Clinton	WI

Member	City	State
Bank of Buffalo	Cochrane	WI
London Square Bank	Eau Claire	WI
Union Bank and Trust Company	Evansville	WI
F&M Bank—Fennimore	Fennimore	WI
American Bank of Fond du Lac	Fond du Lac	WI
Equitable Bank, S.S.B.	Hales Corner	WI
State Financial Bank, Hales Corners	Hales Corner	WI
Heritage Bank of Hayward	Hayward	WI
Horicon State Bank	Horicon	WI
Farmers and Merchants Bank of Jefferson	Jefferson	WI
F&M Bank—Kaukauna	Kaukauna	WI
Marion State Bank	Marion	WI
Mid-Wisconsin Bank of Medford	Medford	WI
Mitchell Bank	Milwaukee	WI
Farmers Savings Bank	Mineral Point	WI
Bank of Mondovi	Mondovi	WI
Montello State Bank	Montello	WI
Necedah Bank	Necedah	WI
Farmers Exchange Bank of Neshkoro	Neshkoro	WI
Bank of New Glarus	New Glarus	WI
Clare Bank, N.A.	Platteville	WI
F&M Bank—Potosi	Potosi	WI
Bank of Poynette	Poynette	WI
Heritage Bank and Trust	Racine	WI
Firstart Bank Sheboygan, N.A.	Sheboygan	WI
State Bank of Stockbridge	Stockbridge	WI
Wisconsin Savings Bank	Tomah	WI
Westby-Coon Valley State Bank	Westby	WI

Federal Home Loan Bank of Des Moines—District 8
907 Walnut Street
Des Moines, Iowa 50309

Ackley State Bank	Ackley	IA
Exchange State Bank	Adair	IA
First State Bank	Belmond	IA
Hawkeye Bank of Council Bluffs	Council Bluffs	IA
Security Bank and Trust Company	Decorah	IA
Norwest Bank Iowa, N.A.	Des Moines	IA
Pilot Grove Savings Bank	Pilot Grove	IA
First Bank and Trust Company	Rock Rapids	IA
Security National Bank of Sioux City	Sioux City	IA
Citizens First National Bank	Storm Lake	IA
First National Bank of Waverly	Waverly	IA
Peoples Savings Bank	Wellsburg	IA
Security Savings Bank	Williamsburg	IA
State Bank of Worthington	Worthington	IA
Atwater State Bank	Atwater	MN
Border State Bank	Badger	MN
First National Bank of Baudette	Baudette	MN
Ameribank	Bloomington	MN
First National Bank of Brewster	Brewster	MN
Buffalo National Bank	Buffalo	MN
First Security Bank	Byron	MN
Peoples Bank of Commerce	Cambridge	MN
First State Bank of Eden Prairie	Eden Prairie	MN
Eitzen State Bank	Eitzen	MN
Marquette Bank Golden Valley	Golden Valley	MN
First Security Bank—Hendricks	Hendricks	MN
First National Bank of Henning	Henning	MN
Jackson Federal Savings and Loan Association	Jackson	MN
Janesville State Bank	Janesville	MN
Citizens State Bank of Kelliher	Kelliher	MN
Security State Bank of Kenyon	Kenyon	MN
First Security Bank—Lake Benton	Lake Benton	MN
State Bank of Long Lake	Long Lake	MN
Lake County State Bank	Long Prairie	MN
First Security Bank—Madison	Madison	MN
Bank of Maple Plain	Maple Plain	MN
Melrose State Bank	Melrose	MN
First National Bank in Montevideo	Montevideo	MN
Mountain Iron First State Bank	Mountain Iron	MN
Citizens Bank of New Ulm	New Ulm	MN
State Bank and Trust Company of New Ulm	New Ulm	MN

Member	City	State
Community National Bank	Northfield	MN
First Security Bank—Sanborn	Sanborn	MN
First American Bank, N.A.	St. Cloud	MN
American Bank National Association	St. Paul	MN
American Commercial Bank	St. Paul	MN
Western State Bank of St. Paul	St. Paul	MN
First State Bank of Wabasha	Wabasha	MN
Heritage Bank, N.A	Willmar	MN
Citizens Bank of Southern Missouri	Ava	MO
Jefferson Savings and Loan Association	Ballwin	MO
Boone County National Bank of Columbia	Columbia	MO
Tri-County State Bank	El Dorado Springs	MO
Commercial Trust Company	Fayette	MO
Hamilton Bank	Hamilton	MO
Home Exchange Bank of Jamesport	Jamesport	MO
Jefferson Bank of Missouri	Jefferson City	MO
Central Bank of Kansas City	Kansas City	MO
Hillcrest Bank	Kansas City	MO
Kearney Trust Company	Kearney	MO
Lawson Bank	Lawson	MO
United State Bank	Lewistown	MO
Platte Valley Bank of Missouri	Platte City	MO
State Bank of Slater	Slater	MO
Citizens Bank of Sparta	Sparta	MO
Heritage Bank of St. Joseph	St. Joseph	MO
Southwest Bank of St. Louis	St. Louis	MO
First Community Bank	Windsor	MO
Security State Bank of Edgeley	Edgeley	ND
First American Bank and Trust of Grafton	Grafton	ND
Stutsman County State Bank	Jamestown	ND
First Southwest Bank—Mandan	Mandan	ND
First National Bank of Oakes	Oakes	ND
Bank of Steele	Steele	ND
Peoples State Bank	Westhope	ND
Security State Bank	Wishek	ND
Dakota State Bank	Blunt	SD
First Madison Bank	Madison	SD
Security State Bank	Madison	SD
BankWest, Inc	Pierre	SD
First National Bank of White	White	SD

Federal Home Loan Bank of Dallas—District 9
5605 North MacArthur Boulevard
9th Floor
Dallas/Fort Worth, Texas 75261–9026

First National Bank of Izard County	Calico Rock	AR
First National Bank of Crossett	Crossett	AR
Farmers and Merchants Bank	Des Arc	AR
Dumas State Bank	Dumas	AR
Citizens Bank of Northwest Arkansas	Fayetteville	AR
First National Bank of Phillips County	Helena	AR
First Bank of Arkansas	Jonesboro	AR
Simmons First Bank of Jonesboro	Jonesboro	AR
Central Bank and Trust	Little Rock	AR
Merchants and Planters Bank	Manila	AR
Citizens' Bank	Marion	AR
Citizens National Bank of Nashville	Nashville	AR
Twin City Bank	North Little Rock	AR
Farmers and Merchants Bank	Prairie Grove	AR
Commercial National Bank of Texarkana	Texarkana	AR
First Bank of Arkansas	Wynne	AR
Bank of Commere	Baton Rouge	LA
Mississippi River Bank	Belle Chasse	LA
Bank of Gonzales	Gonzales	LA
Kaplan State Bank	Kaplan	LA
Vermilion Bank and Trust Company	Kaplan	LA
Peoples State Bank of Many	Many	LA
Sabine State Bank and Trust Company	Many	LA
Minden Bank and Trust Company	Minden	LA
First National Bank in St. Mary Parish	Morgan City	LA
City Bank and Trust Company	Natchitoches	LA
Exchange Bank and Trust Company	Natchitoches	LA
Liberty Bank and Trust Company	New Orleans	LA

Member	City	State
Sicily Island State Bank	Sicily Island	LA
First NBC	Slidell	LA
St. Martin Bank and Trust Company	St. Martinville	LA
Concordia Bank and Trust Company	Vidalia	LA
Evangeline Bank and Trust Company	Ville Platte	LA
Citizens Bank and Trust Company of Vivian	Vivian	LA
Progressive State Bank and Trust Company	Winnsboro	LA
Carthage Bank	Carthage	MS
First National Bank	Clarksdale	MS
Union Planters Bank	Clarksdale	MS
Bank of the South	Crystal Springs	MS
Commercial Bank of De Kalb	De Kalb	MS
Farmers and Merchants Bank	Forest	MS
Hancock Bank	Gulfport	MS
Peoples Bank of Mississippi	Indianola	MS
Bank of Lucedale	Lucedale	MS
Great Southern National Bank	Meridian	MS
Home Savings Bank, SSB	Meridian	MS
Newton County Bank	Newton	MS
First National Bank of Oxford	Oxford	MS
Citizens National Bank	Pascagoula	MS
Citizens Bank of Philadelphia	Philadelphia	MS
Peoples Bank	Ripley	MS
Peoples Bank and Trust Company	Tupelo	MS
Ranchers State Bank	Belen	NM
Carlsbad National Bank	Carlsbad	NM
Community Bank	Espanola	NM
First National Bank of Farmington	Farmington	NM
Western Bank	Lordsburg	NM
Centinel Bank of Taos	Taos	NM
Peoples Bank	Taos	NM
McFarland Brothers Bank	Tucumcari	NM
Amarillo National Bank	Amarillo	TX
First State Bank	Bandera	TX
Community Bank	Beaumont	TX
Citizens National Bank at Brownwood	Brownwood	TX
Burleson State Bank	Burleson	TX
Columbus State Bank	Columbus	TX
Citizens State Bank of Corpus Christi	Corpus Christi	TX
Reunion Bank	Dallas	TX
First National Bank of Ennis	Ennis	TX
First National Bank of Fabens	Fabens	TX
Bank of Commerce	Fort Worth	TX
Central Bank and Trust	Fort Worth	TX
First State Bank	Granger	TX
First Bank	Houston	TX
First National Bank	Kerrville	TX
Laredo National Bank	Laredo	TX
First State Bank	Livingston	TX
First National Bank in Lockney	Lockney	TX
First Bank and Trust of Memphis	Memphis	TX
Franklin National Bank	Mount Vernon	TX
Citizens Bank	New Braunfels	TX
Liberty National Bank in Paris	Paris	TX
Security State Bank	Pearsall	TX
Rosenberg Bank & Trust	Rosenberg	TX
Farmers National Bank	Rule	TX
First National Bank of San Benito	San Benito	TX
American National Bank	Texarkana	TX
Mainland Bank	Texas City	TX
ProBank, N.A	The Woodlands	TX
Texas National Bank	Tomball	TX
American Bank, N.A	Waco	TX
Community Bank	Wellington	TX

Federal Home Loan Bank of Topeka—District 10
Post Office Box 176
Topeka, Kansas 66601

First Bank of Arvada	Arvada	CO
FirstBank of Aurora, N.A	Aurora	CO
First National Bank of Las Animas	Las Animas	CO
Pueblo Bank and Trust Company	Pueblo	CO
FirstBank of Silverthorne, N.A.	Silverthorne	CO

Member	City	State
First National Bank of Steamboat Springs	Steamboat Springs	CO
FirstBank of Wheat Ridge, N.A.	Wheat Ridge	CO
Community National Bank	Chanute	KS
Farmers State Bank	Circleville	KS
Bank of the Southwest	Dodge City	KS
First State Bank	Edna	KS
Commerce Bank	El Dorado	KS
Emporia State Bank and Trust Company	Emporia	KS
Kansas State Bank	Holton	KS
Humboldt National Bank	Humboldt	KS
First National Bank and Trust Company	Junction City	KS
First State Bank of Kansas City	Kansas City	KS
Guaranty Bank and Trust	Kansas City	KS
Neodesha Savings and Loan Association, FSA	Neodesha	KS
The Bank	Oberlin	KS
Olathe Bank	Olathe	KS
Metcalf State Bank	Overland Park	KS
City National Bank of Pittsburg	Pittsburg	KS
Citizens State Bank and Trust Company	Seneca	KS
Commerce Bank and Trust	Topeka	KS
Five Points Bank	Grand Island	NE
Home State Bank	Louisville	NE
Farmers & Merchants Bank	Milford	NE
Norwest Bank Nebraska, N.A.	Omaha	NE
Packers Bank and Trust Company	Omaha	NE
First State Bank	Scottsbluff	NE
Cattle National Bank of Seward	Seward	NE
Jones National Bank and Trust Company	Seward	NE
First National Bank of Wahoo	Wahoo	NE
Community National Bank	Alva	OK
American National Bank	Ardmore	OK
Weststar Bank	Bartlesville	OK
First National Bank of Bethany	Bethany	OK
American National Bank of Bristow	Bristow	OK
First National Bank of Chelsea	Chelsea	OK
Farmers and Merchants Bank	Crescent	OK
Grand Federal Savings Bank	Grove	OK
Green County FS&LA	Miami	OK
Liberty Bank and Trust of Oklahoma City, N.A.	Oklahoma City	OK
First National Bank of Okmulgee	Okmulgee	OK
Farmers and Merchants Bank of Piedmont	Piedmont	OK
McClain County National Bank	Purcell	OK
Liberty Bank and Trust Company of Tulsa	Tulsa	OK

Federal Home Loan Bank of San Francisco—District 11
307 East Chapman Avenue
Orange, California 92666

First Central Bank, N.A.	Cerritos	CA
Southern Pacific Thrift & Loan	Culver City	CA
EurekaBank, a FSB	Foster City	CA
Western Bank	Los Angeles	CA
County Bank of Merced	Merced	CA
CivicBank of Commerce	Oakland	CA
Ventura County National Bank	Oxnard	CA
Redlands Federal Bank, F.S.B.	Redlands	CA
Bay Area Bank	Redwood City	CA
U.S. Bank of California	Sacramento	CA
Central Sierra Bank	San Andreas	CA
Bank of San Francisco	San Francisco	CA
First Republic Thrift and Loan	San Francisco	CA
Sequoia National Bank	San Francisco	CA
Coast Commercial Bank	Santa Cruz	CA
Saratoga National Bank	Saratoga	CA
Del Amo Savings Bank, FSB	Torrance	CA
Comstock Bank	Reno	NV

Federal Home Loan Bank of Seattle—District 12
1501 4th Avenue
Seattle, Washington 98101–1693

Valley of Belgrade	Belgrade	MT
FirstWest Bank	Glendive	MT
Citizens' State Bank	Hamilton	MT

Member	City	State
First Security Bank of Kalispell	Kalispell	MT
Valley Bank of Kalispell	Kalispell	MT
First National Bank in Libby	Libby	MT
Bitterroot Valley Bank	Lolo	MT
Richland Bank and Trust	Sidney	MT
West One Bank, Oregon	Portland	OR
First National Bank of Layton	Layton	UT
Wasatch Bank	Orem	UT
Anchor Mutual Savings Bank	Aberdeen	WA
Bank of Grays Harbor	Aberdeen	WA
Cascade Community Bank	Auburn	WA
Cashmere Valley Bank	Cashmere	WA
First American State Bank	Centralia	WA
Security State Bank	Centralia	WA
West Coast Mutual Savings Bank	Centralia	WA
North Cascades National Bank	Chelan	WA
Bank of Whitman	Colfax	WA
Grant National Bank	Ephrata	WA
Everett Mutual Savings Bank	Everett	WA
Islanders Bank	Friday Harbor	WA
Bank of Latah	Latah	WA
Bank of the Pacific	Long Beach	WA
First National Bank of Port Orchard	Port Orchard	WA
First Heritage Bank of Snohomish	Snohomish	WA
Home Security Bank	Sunnyside	WA
Northwest Community Bank	Tacoma	WA
Bank of the West	Walla Walla	WA
Prairie Security Bank	Yelm	WA
American National Bank of Cheyenne	Cheyenne	WY
First National Bank of Wyoming	Laramie	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than August 31, 1995.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than August 31, 1995.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Housing Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: July 7, 1995.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 95–17142 Filed 7–14–95; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 23, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 23, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the expansion of economic activity has slowed considerably further. In April, nonfarm payroll employment was about unchanged after posting reduced gains in the first quarter, and the civilian unemployment rate rose to 5.8 percent. Industrial production fell in April, largely reflecting a cutback in the production of motor vehicles, and capacity utilization rates declined somewhat. Reflecting markedly weaker demand for motor vehicles, total retail sales were down in April after rising moderately over the first quarter. Housing starts were unchanged in April after declining sharply in the first quarter. Orders for nondefense capital goods point to further strong expansion of spending on business equipment; nonresidential construction has continued to trend appreciably higher. The nominal deficit on U.S. trade in goods and services widened in the first quarter from its average rate in the fourth quarter. Broad indexes of consumer and producer prices have increased faster on average thus far this year, while advances in labor compensation costs have remained subdued.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 23, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Intermediate- and long-term interest rates have declined considerably further since the Committee meeting on March 28, while short-term rates have registered small decreases. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies, after falling to low levels, rose on balance over the intermeeting period.

M2 and M3 strengthened in March and April. For the year through April, M2 expanded at a rate in the lower half of its range for 1995 and M3 grew at a rate somewhat above its range. Total domestic nonfinancial debt has grown at a rate a bit above the midpoint of its monitoring range in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on January 31-February 1 established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee anticipated that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was lowered to 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 11, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95–17412 Filed 7–14–95; 8:45 am]

BILLING CODE 6210–01–F

First Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 July 31, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire La Cumbre Savings Bank, F.S.B., Santa Barbara, California, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 11, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17413 Filed 7–14–95; 8:45 am]

BILLING CODE 6210–01–F

First Commerce Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Corporation, New Orleans, Louisiana; to merge with Central Corporation, Monroe, Louisiana, and thereby indirectly acquire Central Bank, Monroe, Louisiana, and First United Bank of Farmerville, Farmerville, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to acquire 80.1 percent of the voting shares of American Bancshares, Inc., Holstein, Iowa (in organization), and thereby indirectly acquire American National Bank, Holstein, Iowa.

In connection with this application, American Bancshares, Inc., Holstein, Iowa, (in organization); also has applied to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Holstein, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mott Bankshares, Inc., Mott, North Dakota; to become a bank holding company by acquiring 49 percent of the voting shares of Commercial Bank of Mott, Mott, North Dakota.

In connection with this application, Commercial Bank of Mott Employee Stock Ownership Plan and Trust, Mott, North Dakota, also has applied to become a bank holding company by acquiring 51 percent of the voting shares of Commercial Bank of Mott, Mott, North Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ercil P. and Lee Nell Phillips Charitable Remainder Unitrust, Pleasanton, Nebraska; to become a bank holding company by acquiring 50.2 percent of the voting shares of Pleasanton State Bank, Pleasanton, Nebraska.

2. Platte Valley Cattle Co., Grand Island, Nebraska; to acquire 100 percent of the voting shares of Pleasanton State Bank, Pleasanton, Nebraska.

Board of Governors of the Federal Reserve System, July 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17414 Filed 7–14–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 546]

National Physical Activity Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for the two competitive categories of a one-year grant program for National Physical Activity Program. National organizations which have experience in promoting physical activity are encouraged to apply, as well as those that have not traditionally been active in the physical activity promotion field but are experienced in reaching women, older adults, and/or racial/ethnic minority populations (including African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaska Natives).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Physical Activity and Fitness. (To order a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Section 317(k)(2) [42 U.S.C. 247(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 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.

Eligible Applicants

Eligible applicants are national organizations that are public, private, nonprofit, and for-profit or voluntary agencies that have organizational capacities and experience to assist constituencies, their affiliates, and/or other relevant agencies in the promotion of physical activity. National organizations are those that operate at the national level, and have activities or offices in at least ten States or territories. This announcement is limited to national organizations to ensure dissemination of consistent messages and information to all States within a short period of time.

States or their bona fide agents or instrumentalities are not eligible for funding under this program announcement.

A physical activity network currently exists among States for the promotion of physical health activities.

No applications will be accepted from applicants who do not meet the eligibility criteria.

Availability of Funds

Approximately $700,000 is available in FY 1995 to fund approximately 14 awards in two competitive categories. It is expected that the average award will be $50,000, ranging from $20,000 to $100,000.

1. Approximately $350,000 will be available to fund national organizations whose mission does not focus on physical activity, but which traditionally serve one or more of the following target populations: women, older adults, and racial/ethnic minorities.

2. Approximately $350,000 will be available to fund national organizations experienced in physical activity promotion.

It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to one year. Funding estimates may vary and are subject to change.

Purpose

The purpose of National Physical Activity Program is to mobilize constituencies and establish or enhance partnerships within and among national organizations to actively promote regular, moderate-intensity physical activity.

Program Requirements

Organizations will be required to focus on building or expanding physical activity promotion efforts within their constituencies and in partnership with other national organizations. Activities supported through this program announcement must be directly related to the promotion of regular, moderate-intensity physical activity.

To achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Implement organizational policies and initiatives promoting physical activity within affiliates and/or other organizations serving target populations at the national, State, and local levels.

2. Provide technical advice, training, and assistance, as appropriate.

3. Participate in CDC's national promotion of physical activity.

4. Disseminate programmatic information, and target such information to appropriate recipients.

5. Mobilize constituencies and establish or enhance partnerships to achieve one or more of the following goals:

—Media advocacy through national, State, local, or organizationally-based initiatives;

—Educational interventions which may include education of the public about physical activity recommendations and ways to comply, incentives and competition, community mobilization, etc.

—National, State, and/or local policy initiatives that encourage physical activity, such as encouraging developers building housing projects to include sidewalks, bike/pedestrian paths, and open recreation areas.

—Support planning or implementation of community infrastructure changes which encourage physical activity.

6. Attend and participate in two 2-day workshops in Atlanta, Georgia, (no more than two individuals per grantee in attendance).

Evaluation Criteria (Total 100 Points)

Applications will be will be reviewed and evaluated according to the following criteria:

A. Background/Need (10 points)

The extent to which the applicant justifies the need for the project.

B. Capacity (20 points)

The extent to which the applicant identifies and describes target populations and constituencies; and demonstrates the capacity, ability, and leadership potential to address the identified needs and develop and conduct program activities.

C. Goals and Objectives (25 points)

The extent to which objectives are specific, measurable, feasible, directly related to the program's goals, and appear achievable within a one year project period.

D. Operational Plan (25 points)

The feasibility and appropriateness of the operational plan and evaluation process.

E. Collaborating (20 points)

The extent to which the applicant describes in detail how it will collaborate with national, State, and/or local physical activity promotion programs, and other appropriate national, State, and/or local organizations.

F. Budget and Accompanying Justification (Not Weighted)

The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives and planned activities of the project, with no more than thirty percent of grant dollars being spent on salaries.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. The due date for State process recommendations will be 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the FY and would not allow for an application receipt date which would accommodate the 60 day State recommendation process within FY 1995). If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application deadline date. The Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 18, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 546. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from John M. Davis, Division of Chronic Disease Control and Community Intervention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–46, Atlanta, GA 30341–3724, telephone (404) 488–5692.

Please refer to Announcement 546 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock number 017–001–00474–0), or ''Healthy People 2000'' (Summary Report, Stock Number 017–001–00473–1), referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–0018.

Dated: July 10, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–17423 Filed 7–14–95; 8:45 am]

BILLING CODE 4163–18–P

Advisory Committee for Injury Prevention and Control: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC)

announces the following conference call committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 2 p.m.–4 p.m., August 1, 1995.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, Conference Room 1004, 2939 Flowers Road, Atlanta, Georgia 30341.

Status: Closed: 2–4 p.m., August 1, 1995.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The Science and Program Review Work Group will consider injury control research program project grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The meeting will be closed to the public in accordance with provisions set forth in sections 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Tom Bartenfeld, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop K–60, Atlanta, Georgia 30341–3724, telephone 404/488–4696.

Dated: July 11, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–17419 Filed 7–14–95; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–910–1640–00; 250F; WYW 129948]

Notice of Realty Action; Sale of Public Land in Washakie County, Wyoming: Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 95–10015, beginning on page 20112, in the issue of Monday, April 24, 1995, make the following corrections:

On page 20113 in column 2, specific patent reservations should have included the following two rights-of-ways:

WYW75336–Surface Water Flowline
WYW94115–Gas Pipeline and Road

Dated: June 23, 1995.

Charles F. Wilkie,

Area Manager, Bighorn Basin Resource Area.

[FR Doc. 95–17431 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–22–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Threatened and Endangered Species and an Agreement for Several Unlisted Species by the Regli Estate, Humboldt County, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that the Regli Estate (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–803749. The proposed permit would authorize the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina,* owl) and marbled murrelet (*Brachyramphus marmoratus,* murrelet), and the endangered bald eagle (*Haliaeetus leucocephalus*) and American peregrine falcon (*Falco peregrinus anatum,* falcon) during proposed timber harvest activities, in accordance with the Applicant's Habitat Conservation Plan (HCP). The Applicant also has requested to enter into an Implementing Agreement (IA) with the Service to conserve eight currently unlisted species. The IA contains provisions for amending the proposed permit to include these currently unlisted species should they subsequently become listed under the Act.

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit and approval of the HCP and IA. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before August 16, 1995.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. Individuals wishing copies of the application or EA for review should immediately contact the above office (916–979–2725). Please refer to permit number PRT–803749 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton, at the office listed above.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act, and its implementing regulations, the ''taking'' of species listed as threatened or endangered is prohibited. However, the Service, under limited circumstances, may issue permits to take listed wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits are promulgated at 50 CFR 17.32 for threatened species, and 50 CFR 17.22 for endangered species.

The Applicant is proposing to harvest approximately 113 acres of timber from their 480-acre ownership in Humboldt County, California. The harvest areas contain second-growth white fir (*Aibes concolor*), Sitka spruce (*Picea sitchensis*) and redwood (*Sequoia sempervirens*), approximately 40 years old, with a component of coastal hardwoods. The proposed timber harvest would remove suitable owl habitat and is likely to result in the take, as defined in the Act and its implementing regulations. Although the Applicant has applied for a permit to authorize incidental take of murrelets, bald eagles, and falcons, suitable habitat for these species does not occur on the property, and take is unlikely. The Applicant has requested an IA with the Service to cover other species that are not currently listed, but are addressed by the HCP. These species include: northern goshawk (*Accipiter gentilis*), Pacific fisher (*Martes pennanti pacifica*), marten (*Martes americana*), California red tree vole (*Arborimus pomo*), northern red-legged frog (*Rana aurora aurora*), tailed frog (*Ascaphus truei*), Del Norte salamander (*Plethodon elongatus*), and torrent salamander (*Rhyacotriton variegatus*). Effects of the proposed action on these currently unlisted species are analyzed in the HCP and EA. The permit and HCP would be in effect for 20 years. The application includes the HCP and IA.

The proposed harvest may result in take of one pair of owls due to removal of suitable owl nesting and roosting habitat. Under the HCP, impacts would

be mitigated by implementing selective harvest techniques that would maintain owl foraging habitat in all harvested areas, protecting an 80-acre core nesting area for one of the two owl pairs known to exist in the HCP area, and planting conifer species on approximately 80 acres of currently unforested habitat within the HCP area which would result in a net increase in forested habitat over time. In addition, take of owls would be minimized using seasonal protection measures specified in the HCP.

The EA considers the environmental consequences of five alternatives, including the proposed action and no action alternatives. The Proposed Action alternative is issuance of the permit for the listed species and approval of the IA for the currently unlisted species. The No Action alternative would result in no immediate timber harvest. The ''No-take'' Harvest alternative would limit harvest to a level that would not take owls. The Delayed Operations alternative considered the delay of harvest activities until the State of California completes its California Board of Forestry Conservation Plan. The Maximum Timber Harvest alternative involves the implementation of clear-cutting activities in a manner that would not maintain either of the two owl territories on the property.

Dated: July 7, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

(Notice: Availability of an Environmental Assessment and Receipt of an Application for a Permit Under Section 10(a)(1)(B) of the Endangered Species Act.)

[FR Doc. 95–17424 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: August 4–5, 1995, 8:00 a.m.–5:00 p.m.

ADDRESSES: Sherman Motor Inn, 200 East Main Street, Wolf Point, Montana 59201.

The Agenda of this meeting will be: Review minutes of last meeting, discuss follow-up actions from previous meeting, introductions/opening remarks, review of design competition criteria and related proposal packages, schedule revision for design competition and symposium, discussion and selection of juring site, recommendation and selection of jury chairman, decisions on future meetings, communication requirements, committee structure, etc.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Indian Affairs Coordinator, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287 (303) 969–2511.

Dated: July 7, 1995.

Gerard Baker,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 95–17428 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–70–P

Underground Railroad Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Underground Railroad Advisory Committee will be held in Philadelphia, Pennsylvania in room 320A, in the Customshouse located at 200 Chestnut Street on August 11, 1995. The meeting will begin at 9:00 a.m. and will adjourn at approximately 4:00 p.m.

The Underground Railroad Advisory Committee was established by Public Law 101–628 to advise the Secretary of the Interior in preparation of a study of alternatives for commemorating and interpreting the Underground Railroad used by slaves escaping to freedom before the conclusion of the Civil War. This will be the fifth meeting of the Committee. The matters to be discussed at the meeting include:

—The study's progress by the National Park Service including the National Historic Landmark Theme Study and the working draft Special Resource Study

—Committee finalizing their recommendations on the expanded concepts for resource protection, interpretation and commemoration of the Underground Railroad

—Presentation of the draft interpretive brochure

—Discussion of proposed actions by the National Park Service in regard to Underground Railroad

This meeting has been scheduled with less than 30 days notice because it was just recently determined to be the only opportunity for a majority of the committee members to meet while accommodating their individual schedules. The meeting will be open to the public. However, space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Anyone may file a written statement concerning the matters to be discussed at the commission meetings. For further information about the meeting or submitting statements, contact Mr. John Paige, Underground Railroad Study Team Captain, National Park Service, Denver Service Center-TEA, P.O. Box 25287, Denver, CO 80225–0287 (Telephone 303/969–2356).

Dated: July 12, 1995.

Denis P. Galvin,

Associate Director, Professional Services Washington Office.

[FR Doc. 95–17486 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 497X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, MD, and Mineral County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–04 to permit CSXT to abandon a 3.32-mile portion of its Cumberland Subdivision, in Allegany County, MD, and Mineral County, WV. The abandonment begins at the Western Maryland/B&O point of switch, from Valuation Station 26+22.3 to Valuation Station 2+29.3, extends from milepost BA–165.74 to milepost BA–163.19, and includes the 0.32-mile Virginia Avenue Industrial Track, from Valuation Station 0+00 to Valuation Station 17+10. The exemption will be subject to standard employee protective conditions and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 16, 1995. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[1] and requests for issuance of a notice of interim trail use under 49 CFR 1152.29 must be filed by July 27, 1995, petitions to stay must be filed by August 1, 1995, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 7, 1995, and petitions to reopen must be filed by August 11, 1995.

ADDRESSES: Send pleadings, referring to Docket No. AB–55 (Sub-No. 497X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: June 29, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17438 Filed 7–14–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Finance Docket No. 32739]

Berkman Rail Services, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation

Berkman Rail Services, Inc. (Berkman), a noncarrier and new Pennsylvania for-profit corporation, has filed a notice of exemption to acquire and operate 5.2 miles of rail line owned by Consolidated Rail Corporation, known as the Schenley Industrial Track extending from milepost 0.0 to milepost 4.0, between Schenley, PA and Bagdad, PA, and from milepost 28.8 to milepost 30.0, between Kiski Junction, PA and Schenley, PA. The transaction was expected to be consummated on or before June 30, 1995.[1]

Any comments must be filed with the Commission and served on: Richard R. Wilson, Esq., 2310 Grant Building, Pittsburgh, PA 15219.

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 automatically stay the transaction.

Decided: July 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17440 Filed 7–14–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The verified notice of exemption was filed by Berkman on June 23, 1995, and the exemption became effective 7 days later on June 30, 1995. Thus, consummation could occur no sooner than June 30, 1995. Berkman stated in its notice that consummation would not take place sooner than the effective date of the exemption.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Authorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New collection

(1) *ABC* Change of Address Form and Special Filing Instructions for ABC Class Members.

(2) INS Form I–855 and M–426. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: Not-for-profit institutions. As a result of class action litigation concerning asylum claims by certain Salvadoran and Guatemalans was resolved by a court-approved settlement in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991), and hereinafter referred to as ''the *ABC* Settlement Agreement,'' or ''the Agreement.'' Under the Agreement, certain Salvadoran and Guatemalan class members are entitled to a de novo asylum interview and adjudication under the Immigration and

Naturalization Service regulations which were in effect on October 1, 1990.

The Special Filing Instructions for *ABC* Class Members (Form M–426) are part of the Immigration and Naturalization Service's continuing implementation of the Agreement. The Special Filing Instructions clarify procedures class members must follow to pursue and retain benefits provided by the Agreement. This explanatory document provides necessary information to class members in light of the changes in regulations controlling applications for asylum (50 FR 55288, November 4, 1994) and for work authorization (59 FR 62284, December 5, 1994 and 60 FR 21973, May 4, 1995) which became effective after approval of this Agreement.

The Special Filing Instructions includes an ''*ABC* Change of Address Form'' (Form I–855), which class members will use to inform the Immigration and Naturalization Service of address changes. This form is mandated by the Agreement.

(4) 250,000 annual respondents at 2.5 hours per response.

(5) 625,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 10, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17455 Filed 7–14–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justices's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resource Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection.

(1) Aircraft/vessel Report.

(2) Form I–92. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: business or other for-profit. Others: Federal Government. The completion of Immigration and Naturalization Service Form I–92 entitled Aircraft/Vessel Report is required by Sections 231 and 251 (manifest requirements) of the Immigration and Naturalization Act. The data collected on the Form I–92 is used by the Department of Justice (Immigration Service), Department of Commerce, Department of Labor, etc., to accurately collect arrival and departure data on passengers, vessels,and aircraft. The data will be used to support mission requirements.

(4) 720,000 annual respondents at .18 (11 minutes) per hours per response.

(5) 129,600 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 10, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17456 Filed 7–14–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection.

(1) Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

(2) None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: None. Executive Order 12781 of November 20, 1991, authorized the Immigration and Naturalization

Service to develop a Telephone Verification System demonstration project of an employment verification system. The purpose of this demonstration project is to aid employers in complying with the Immigration Reform and Control Act of 1986, as it pertains to the employment of illegal aliens. Under current law employers are required to verify employment eligibility of alien employees prior to employment. This telephone system will improve the employers capability of employee employment verification.

(4) 1,000 annual respondents each making 276 inquiries, for a total of 276,000 responses, and a total of 31.9 hours per respondent per year.

(5) 31,908 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 10, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17457 Filed 7–14–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Alien Change of Address Card.

(2) INS Form AR–11. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Section 265 of the Immigration and Naturalization Act (8 United States Code 1305) requires all alien within the United States to notify the Immigration and Naturalization Service in writing of each change of address within ten days from the date of such change and furnish such additional information as may be required by the Attorney General.

(4) 250,000 annual respondents at .083 hours per response.

(5) 20,750 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 10, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17458 Filed 7–14–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection.

(1) Change of Address Card.

(2) INS Form I–697A. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. In compliance with the Immigration Reform and Control Act of 1986, Public Law 99–603, the Immigration and Naturalization Service uses the information collected on the Form I–697A to keep current the addresses of legalization applicants, special agricultural workers and Replenishment Agricultural Workers. The information is used to update an applicant's address in the Legalization Automated Database. The country, date of birth and registration number are elements needed to identify specific applicants who have similar names and/or don't provide an A-File number, registration number or provide a wrong A-File number.

(4) 600,000 annual respondents at .083 hours per response.

(5) 49,800 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 10, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17459 Filed 7–14–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire Tuesday, Nov. 14, 1995. The groups or fields represented are as follows: employee organizations (multiemployer plans), accounting, the insurance field, employers and the general public (pensioners).

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, D.C. 20210. Recommendations must be delivered or mailed on or before Oct. 1, 1995. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 12th day of July, 1995.

Olena Berg,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 95–17483 Filed 7–14–95; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

Job Training Partnership Act; Migrant and Seasonal Farmworker Programs; Final Allocations; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction.

SUMMARY: In notice document 95–15745 on page 33237 in the issue of Tuesday, June 27, 1995, an appendix containing the final allocations for Program Year 1995 should have been published. Accordingly republished below is the information found in notice document 95–15745, as well as the appendix containing the final allocations for Program Year 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219–5500 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration publishes the final allocations for Program Year 1995 (July 1, 1995–June 30, 1996).

The allocations set forth in the appendix to this notice were computed according to the allocation formula published at 59 FR 17577 (April 13, 1994). For PY 1995, $85,710,000 were appropriated for migrant and seasonal farmworker program. This amount is an increase of $134,000 above the appropriation for PY 1994. This appropriation is subject to reduction depending upon possible rescissions for FY 1995. Each year since 1987, additional funds have been included to meet the demand for training and employment services to Special Agricultural Workers (SAWs) who became eligible for the program as a result of the Immigration Reform and Control Act of 1986. In addition, the reports of the House of Representatives and the Senate Committees on Appropriations on the Department of Labor's 1995 appropriations state that the committees expect the Department to continue the farmworker housing program. The Department concurs with this request.

The allocation formula is being applied to $81,832,000. The remaining $3,878,000 of the PY 1995 section 402 appropriation is being held in the section 402 national account to fund the housing program ($3,000,000), the Hope, Arkansas, Migrant Rest Center ($300,000), and other training and technical assistance projects.

Allocation Formula

As stated above, the $81,832,000 formula total was allocated on a State-by-State basis using the same formula that was applied in PY 1994. This ensures programmatic stability.

Formula Allocations in Future Years

The Department intends to update the allocation formula to incorporate more current data on the farmworker population. To this end, in April 1994, a special task force was convened to explore options for revising the formula and its bases. Findings from this task force will be reflected in a new proposed allocation formula which will be published in the **Federal Register** for comment.

Signed at Washington, DC, this 10th day of July 1995.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

BILLING CODE 4510–30–M

STATE	PY 1994 ALLOCATION	PY 1995 ALLOCATION	CHANGE
ALABAMA	$957,273	$965,342	$8,069
ALASKA	$0	$0	$0
ARIZONA	$1,837,144	$1,852,629	$15,485
ARKANSAS	$1,411,316	$1,423,212	$11,896
CALIFORNIA	$17,639,663	$17,788,348	$148,685
COLORADO	$973,821	$982,029	$8,208
CONNECTICUT	$249,069	$251,168	$2,099
DELAWARE	$143,057	$144,263	$1,206
DISTRICT OF COLUMBIA	$0	$0	$0
FLORIDA	$5,599,056	$5,646,251	$47,195
GEORGIA	$2,069,222	$2,086,664	$17,442
HAWAII	$304,175	$306,739	$2,564
IDAHO	$1,060,763	$1,069,704	$8,941
ILLINOIS	$1,723,703	$1,738,232	$14,529
INDIANA	$944,918	$952,883	$7,965
IOWA	$1,589,010	$1,602,404	$13,394
KANSAS	$843,640	$850,751	$7,111
KENTUCKY	$1,635,215	$1,648,998	$13,783
LOUISIANA	$962,347	$970,459	$8,112
MAINE	$395,800	$399,136	$3,336
MARYLAND	$370,285	$373,406	$3,121
MASSACHUSETTS	$424,367	$427,944	$3,577
MICHIGAN	$1,062,216	$1,071,169	$8,953
MINNESOTA	$1,541,114	$1,554,104	$12,990
MISSISSIPPI	$1,751,792	$1,766,558	$14,766
MISSOURI	$1,323,202	$1,334,355	$11,153
MONTANA	$806,585	$813,384	$6,799
NEBRASKA	$936,781	$944,677	$7,896
NEVADA	$242,747	$244,793	$2,046
NEW HAMPSHIRE	$136,126	$137,273	$1,147
NEW JERSEY	$483,619	$487,695	$4,076
NEW MEXICO	$723,811	$729,912	$6,101
NEW YORK	$2,237,327	$2,256,186	$18,859
NORTH CAROLINA	$3,634,047	$3,664,679	$30,632
NORTH DAKOTA	$566,216	$570,989	$4,773
OHIO	$1,094,023	$1,103,245	$9,222
OKLAHOMA	$735,205	$741,402	$6,197
OREGON	$1,314,950	$1,326,034	$11,084
PENNSYLVANIA	$1,476,636	$1,489,083	$12,447
PUERTO RICO	$3,552,835	$3,582,782	$29,947
RHODE ISLAND	$0	$0	$0
SOUTH CAROLINA	$1,305,773	$1,316,779	$11,006
SOUTH DAKOTA	$837,630	$844,690	$7,060
TENNESSEE	$1,157,912	$1,167,672	$9,760
TEXAS	$7,229,159	$7,290,094	$60,935
UTAH	$296,615	$299,115	$2,500
VERMONT	$257,664	$259,836	$2,172
VIRGINIA	$1,252,986	$1,263,547	$10,561
WASHINGTON	$2,061,922	$2,079,302	$17,380
W. VIRGINIA	$265,148	$267,383	$2,235
WISCONSIN	$1,486,018	$1,498,544	$12,526
WYOMING	$244,097	$246,155	$2,058
FORMULA TOTAL	$81,148,000	$81,832,000	$684,000
HOUSING/TA	$4,428,000	$3,878,000	($550,000)
APPROPRIATION TOTAL	$85,576,000	$85,710,000	$134,000

[FR Doc. 95–17482 Filed 7–14–95; 8:45 am]
BILLING CODE 4510–30–C

Reengineering of Permanent Labor Certification Program; Solicitation of Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Employment and Training Administration (ETA) is in the process of reengineering the permanent alien labor certification process. ETA's goals are to make fundamental changes and refinements that will: (1) streamline the process; (2) save resources; (3) improve effectiveness; and (4) better serve customers. The reengineering effort is a collaborative effort of federal and State staff who are involved in the administration of alien certification programs. The reengineering effort also involves consultation throughout the process with sponsors, stakeholders, State partners, and outside interest groups to solicit ideas and suggestions for change.

As part of the collaborative effort required for effective reengineering, ETA is publishing a questionnaire in the **Federal Register** to aid in the solicitation of comments on important issues that are fundamental to the reengineering process. In addition, ETA welcomes comments on any other matter pertaining to the reengineering of the permanent alien certification program. Any interested party is invited and encouraged to participate in this collaborative process and provide input to the Department through written comments.

DATES: Responses to and comments on the attached questionnaire should be submitted to ETA no later than August 22, 1995.

ADDRESSES: Submit comments to: Flora T. Richardson, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Department of Labor, 200 Constitution Avenue., NW., Room N–4456. Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Denis M. Gruskin, Senior specialist (202) 219–4369 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Permanent Alien Employment Certification Process

Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain nonimmigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(a).

If the Department of Labor (DOL) determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect wages and working conditions of similarly employed U.S. workers, DOL so certifies to the DOS and INS by issuing a permanent alien labor certification.

Department of Labor Regulations

The Department has promulgated regulations at 20 CFR part 656, governing the labor certification process described above for the permanent employment of certain immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(5)(A) of the Immigration and Nationality Act. 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations.

Part 656 sets forth the responsibility of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal/State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing, and able U.S. workers to perform the work, and to ensure that aliens are not employed under conditions affecting the wages and working conditions of similarly employed U.S. workers.

Why Reengineer?

The labor certification process described above has been criticized as being complicated and time consuming. It can take up to 2 years or more to complete the process; requires substantial government resources to administer; and is reportedly costly and burdensome to employers. ETA, therefore, is reexamining the effectiveness of the various regulatory requirements and the application processing procedure, with a view to achieving considerable savings in resources both for the Government and employers, without diminishing significant protections now afforded U.S. workers by the current regulatory and administrative requirements.

The questionnaire published below solicits comments on how best to achieve the goals of the reengineering process.

Interested parties are invited and encouraged to participate in this collaborative process and to provide input to the Department through answers to the questionnaire, and/or written comments on any issue they believe to be relevant to the reengineering process. Copies of the questionnaire also are being mailed to various employers, unions, associations, and other interest groups.

Signed at Washington, DC, this 12th day of July 1995.

John R. Beverly III,

Deputy Director, U.S. Employment Service.

BILLING CODE 4510–30–M

PERMANENT ALIEN LABOR CERTIFICATION PROGRAM REENGINEERING QUESTIONNAIRE

INSTRUCTIONS

Thank you for taking the time to respond to this questionnaire. We would appreciate your reponses to each of the questions in this questionnaire. The information you provide will be helpful to the Department of Labor (DOL) in assessing the effectiveness of the Permanent Labor Certification Program and will assist us in the ongoing reengineering of the permanent program.

Section I asks for information about you.

Section II asks you to rate the importance and satisfaction levels of various services and functions provided by State and Federal staff. In addition, this section elicits your comments on these services and functions. You may also provide any suggestions you may have for streamlining or improving the process in terms of effectiveness or reduced cost to the regulated community and the Government.

Section III asks for specific information regarding your experience with filing permanent labor certification applications. This section also requests your ideas on ways to improve the Permanent Alien Labor Certification Program to increase its efficiency and effectiveness.

Section IV asks you to comment on some preliminary ideas that are being considered as possibilities for reengineering the permanent labor certification process. This section also gives you the opportunity to present your ideas for consideration.

Please provide responses to questions and ideas in Section III and IV on a separate attachment.

SECTION I. TELL US ABOUT YOURSELF

Name of Respondent _____

Address of Respondent *(Optional)* _____

Telephone Number *(Optional)* _____

Which category below best describes you?

- ☐ A. Employer
- ☐ B. Attorney or Law Firm
- ☐ C. Trade Association
- ☐ D. Professional Association
- ☐ E. Union
- ☐ F. Member of the Public
- ☐ G. Government Agency
- ☐ H. Other _____

How many times have you used the permanent labor certification process in the past 2 years? _____

SECTION II. TELL US HOW WE ARE DOING

For each item, under the IMPORTANCE column, please circle a number based on the following scale:

For each item, under the SATISFACTION column, please circle a number based on the following scale:

If you do not have a basis to make a judgment about any of the services listed in Section II, you should check the "Not Applicable" box.

STATE EMPLOYMENT SECURITY AGENCY (SESA)	N/A
Knowledge regarding ALC Regulations, policies, and procedures.	N/A
Responsiveness, assistance and guidance to the public.	N/A
Timeliness of review and direction.	N/A
Accuracy of prevailing wage determinations.	N/A
Consistency of prevailing wage determinations.	N/A
Adequacy of prescreening of resumes.	N/A
Quality of applicant referrals.	N/A
Timeliness of applicant referrals.	N/A

Comments:

US DOL REGIONAL OFFICE	
Knowledge of ALC regulations, policies and procedures.	N/A
Responsiveness, assistance and guidance to the public.	N/A
Clarity of Notice of Findings.	N/A
Accuracy of determinations.	N/A
Timeliness of determinations.	N/A

Comments:

SECTION III. TELL US ABOUT THE CURRENT PERMANENT LABOR CERTIFICATION PROCESS

1. What is your overall opinion of the permanent labor certification process as a protection for the jobs, wages, and working conditions of U.S. workers? As an effective screening tool for foreign workers needed in the economy?
2. What does the process cost you in fees, recruitment costs, and lost productivity or business? How has it helped you?
3. How effective are the major recruitment mechanisims required by the process -- the advertisement, the job order, and the notice? What would you suggest as alternatives?
4. How are the recruitment requirements of the permanent labor certification process contrary to the usual recruitment and hiring practices of employers?
5. What suggestions do you have for improving the permanent case processing in terms of timeliness? Efficiency? Procedural steps? Responsibilities of States and Regions? Simplified decisions?
6. Is DOL's "prevailing wage" concept the most effective way of determining that the employment of foreign workers in an occupation will not adversely affect the wages of U.S. workers in that occupation?
7. What are some of the specific outside sources of prevailing wage information that employers would prefer to use over the SESA? Please give the names of any published surveys you recommend.
8. What suggestions do you have for improving the accuracy, timeliness, and consistency of SESA wage surveys and the wage rate determinations issued to employers.

SECTION IV. TELL US WHAT YOU THINK ABOUT THESE IDEAS FOR REENGINEERING THE PROCESS AND GIVE US YOUR IDEAS

1. Streamline the current process by having an upfront recruitment process, withholding the filing date until an application is complete with required documentation and correction of deficiencies, eliminating the Notice of Findings, and setting processing time limits.
2. Establish schedules of precertified occupations by geographic areas and strictly limit individual labor certifications.
3. Cease referring U.S. workers to specific jobs and make determinations based on labor market information for the occupation and the geographic area.
4. Shift authority to the States to determine whether or not certification of foreign workers should be granted for a particular job in the State with Federal concurrence and oversight.
5. Permit employers to determine the prevailing wage against criteria established by DOL. SESAs would determine the prevailing wage rate only in enforcement actions or litigation.
6. Charge a fee for each type of application, including separate fees for wage determinations and appeals.
7. Consolidate permanent labor certification processing and prevailing wage activities into fewer regions and States, such as 3 or 4 regions instead of the current 10 and 5 to 10 States instead of the current 54 States and Territories.
8. Your ideas.....

[FR Doc. 95–17481 Filed 7–14–95; 8:45 am]
BILLING CODE 4510–30–C

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 45)

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 50. Decommissioning of Nuclear Power Reactors.

3. The form number if applicable: Not applicable.

4. How often is the collection required: Periodically upon a licensee's decision to permanently cease operations.

5. Who will be required or asked to report: Part 50 licensees that have decided to permanently cease operations.

6. An estimate of the number of responses: 2 licenses per year are expected to decide to permanently cease operations.

7. An estimate of the reduction of the number of hours needed annually to complete the requirement or request: A reduction of 24,404 hours (12.202 per licensee).

8. An indication of whether Section 3504(h). Pub. L. 96–511 applies: Applicable.

9. Abstract: The proposed amendments would clarify ambiguities regarding decommissioning requirements and codify practices that have been used on a case-by-case basis. Nuclear power plant licensees desiring to decommission would be required to submit certifications of permanent cessation of operation and permanent fuel removal, submit a post shutdown decommissioning activities report and a license termination plan. Major decommissioning activities would be permitted by extending the 10 CFR 50.59 process to permanently shutdown reactors and include the recordkeeping and reporting requirements contained therein. For power reactor licensees, the license termination plan would be made part of the FSAR and would be subject to the FSAR updating documentation requirements. For non-power reactor licensees, the decommissioning plan would become part of the FSAR. Other Part 50 documentation and/or reporting requirements have been modified to reflect the permanent shutdown status of nuclear power reactors. These modifications clarify licensing conditions pertaining to permanently shutdown power reactors.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviwer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3884.

The NRC Clearance Officer is Brenda J. Shelton, (301) 415–7230.

Dated at Rockville, Maryland, this 10th day of July 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–17444 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of change of meeting schedule.

As announced on July 6, 1995 (60 FR 35240), the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on July 26–27, 1995. The purpose of the present notice is to provide a revised schedule, reflecting a shift of the Committee's July 27 meeting with the Commission from the morning to the afternoon. The location of the meeting on July 26 and the morning of July 27 will be the Severn Room at the Hyatt Regency Hotel. One Bethesda Metro, Bethesda, MD. The location of the July 27 afternoon portion of the meeting will be the Commission Conference Room in the One White Flint North (OWFN) Building, 11555 Rockville Pike, Rockville, MD.

The revised schedule is as follows:

Wednesday, July 26, a.m. (Severn Room, Hyatt Regency Hotel, Bethesda)

8:00–8:20 Introductory remarks

8:20–12:00 Overall research program plans and priorities

1:15–445 Subcommittee reports

4:45–6:00 Committee discussion in preparation for Commission briefing

Thursday, July 27, a.m. (Severn Room, Hyatt Regency Hotel, Bethesda)

8:00–10:15 Committee discussion in preparation for Commission briefing (continued)

10:30–12:00 Status update on steam generator tube integrity issues

Thursday, July 27, p.m. (Commission Conference Room, OWFN, Rockville)

2:00–3:30 Meeting with the Commission

3:30–4:00 Committee discussion: follow-up plans.

Any inquiries regarding this notice or any subsequent changes in the status and schedule of the meeting may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301–415–6593), between 8:15 am and 5:00 pm.

Dated at Rockville, Maryland this 11th day of July, 1995.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 95–17443 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactors (NPRs) a ''Format and Content for Applications for the Licensing of Non-Power Reactors'' (F&C) and a ''Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors'' (SRP). The NRC has made available a draft of Chapter 12, ''Conduct of Operations,'' of the F&C and SRP documents for comment. Other draft chapters will be made available for comment as they are completed.

Copies of these chapters have been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555. Single copies of these documents may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: 0–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by October 10, 1995, to the Director, Non-Power Reactors and Decommissioning Projects Directorate at the above address.

Dated at Rockville, Maryland, this July 7, 1995.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director Non-Power Reactors and Decommissioning Project Directorate Division of Project Support Office of Nuclear Reactor Regulation.

[FR Doc. 95–17447 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Exemption

In the matter of Entergy Operations, Inc. (River Bend Station, Unit 1).

I

Entergy Operations, Inc., (the licensee) is the holder of Facility Operating License No. NPF–47, which authorizes operation of the River Bend Station, Unit 1. The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site in West Feliciana Parish, Louisiana.

II

Title 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute and unreasonable risk to the public health and safety.''

10 CFR 73.55(d), ''Access Requirements,'' paragraph (I), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected areas which must be returned upon exit from the protected area* * *''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated October 24, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, employee and contractor identification/access control cards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the River Bend site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the River Bend Station, Unit 1 since the operating license was issued. Security personnel retain each identification access control card, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued a picture identification card which also serves as an access control card. This card allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is ''screened'' by the required detection equipment and by the issuing security officer. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry into areas if the preauthorized criteria are met.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badges in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area.

Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the ''signature'' template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive

verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges coupled with their associated access control cards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, as long as the licensee uses the hand geometry access control system, the Commission hereby grants Entergy Operations, Inc. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 30116). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17448 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Exemption; Notice

In the matter of PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company (Peach Bottom Atomic Power Station, Unit 3)

I

PECO Energy Company, et al. (PECo, the licensee), is the holder of Facility Operating License No. DPR–56, which authorizes operation of the Peach Bottom Atomic Power Station (PBAPS), Unit 3. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The PBAPS, Unit 3, facility consists of a boiling water reactor located in York County, Pennsylvania.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors by subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. Section III.D.1 of Appendix J to 10 CFR Part 50 requires that a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections (ISI). The Type A test is defined in 10 CFR Part 50, Appendix J, Section II.F, as ''tests intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter.'' The 10-year service period begins with the inservice date.

III

In its letter dated November 21, 1994, the licensee requested an exemption from the Commission's regulations. The subject exemption is from a requirement in Appendix J to 10 CFR Part 50 that a set of three Type A tests (Containment Integrated Leak Rate Tests (CILRTs)) be performed, at approximately equal intervals, during each 10-year service period. The exemption applies to the second 10-year service period; subsequent service periods are not changed.

The request for a one-time exemption would allow an extension of the second 10-year Type A test service period and would allow the performance of the three Type A tests in the second 10-year service period at intervals that are not approximately equal. It does not affect the third 10-year service period.

In its submittal, the licensee provided a table of historical leak test results for PBAPS Unit 3. Within the second 10-year service period, satisfactory Type A tests were performed in January 1986 and November 1989. In addition, an additional satisfactory Type A test was performed in December 1991 following certain plant modifications.

Current Technical Specifications (TS) and 10 CFR Part 50, Appendix J, would require the licensee to perform a Type A test during Unit 3 refueling outage 10 (3R010) scheduled for September 1995 in order to comply with the requirements to perform three Type A tests within the current service period at approximately equal intervals.

Furthermore, 10 CFR Part 50, Appendix J, also requires the licensee to perform a type A test during the next refueling outage (Unit 3 refueling outage 11 (3R011) scheduled for September 1997) in order to comply with the requirement of 10 CFR Part 50, Appendix J, Section III.D.1, that the third test be performed when the plant is shut down for the 10-year inservice inspections. The current 10-year ISI period ends in November 1997 and ISI inspections are scheduled for September 1997. Therefore, to fully comply with Appendix J, the licensee would have to perform CILRTs during the tenth and eleventh refueling outages for Unit 3.

The licensee proposed to perform the next Unit 3 Type A test during Unit 3 refueling outage 11 scheduled to start in September 1997. The effect of this proposal would be to extend the current Appendix J 10-year service period that would result in the interval between successive Type A tests being extended to approximately 70 months. Strict compliance with Section III.D.1 would require the interval between successive Type A tests to be approximately 40 months.

The licensee performed a review of the history of the PBAPS Unit 3 Type A test results to evaluate the risk of activity-based and time-based degradation. This review identified three activity-based component failures detected during past Type A tests. The measured mass point and total time leakage rates measured for the April 1977 CILRT stabilized at approximately 1.1% wt/day, which failed to meet the

TS and 10 CFR Part 50, Appendix J criterion of less than 0.375% wt/day (0.75 La). Following the completion of repairs of a leaking torus water level instrument, the CILRT was repeated with an as-left leakage of 0.322% wt/day. After this failure, the licensee modified the plant procedures so that a similar failure, in the future, would be detected by a local leak rate test (LLRT). The measured mass point and total time leakage rates measured for the September 1981 CILRT stabilized at approximately .389% wt/day, which failed to meet the TS and 10 CFR Part 50, Appendix J criterion of less than 0.375% wt/day (0.75 La). Following the completion of repairs to a missing instrument O-ring, the CILRT was repeated with an as-left leakage of 0.185% wt/day. After this failure, the licensee modified the plant procedures so that a similar failure, in the future, would be detected by a leak rate test following relevant instrument maintenance. The measured mass point and total time leakage rates measured for the August 1983 CILRT stabilized at approximately .784% wt/day, which failed to meet the TS and 10 CFR Part 50, Appendix J criterion of less than 0.375% wt/day (0.75 La). Following the completion of repairs to a valve packing leak, the CILRT was repealed with an as-left leakage of 0.058% wt/day. After this failure, the licensee modified the plant procedures so that similar valve packing is local leak rate tested and measured.

These failures were identified as activity based failures for which the licensee implemented corrective action. The licensee did not identify any time based failures.

The type B and C test (i.e., LLRT) program provides assurance that containment integrity has been maintained. LLRTs demonstrate operability of components and penetrations by measuring penetration and valve leakage. Additionally, there have been no modifications made to the plant, since the last Type A test, that could adversely affect the test results.

Current TS 4.7.A.2.h requires that the interior surfaces of the drywell and torus shall be visually inspected each operating cycle for evidence of deterioration. In addition, TS 4.7.A.2.h requires that the external surfaces of the torus below the water level be inspected on a routine basis for evidence of torus corrosion or leakage. TS 4.7.4 requires that a visual inspection of the suppression chamber interior be conducted at each major refueling outage. These inspections provide similar information as would be obtained to meet the requirement of Section V.A of 10 CFR Part 50, Appendix J. The licensee is required to perform these TS surveillances in the upcoming refueling outage 3R010.

The licensee further notes that the performance of consecutive Type A tests in refueling outages 3R010 and 3R011, to meet the requirements of the TS and Appendix J, would result in additional radiation exposure to personnel. Performing the Type A test during two consecutive refueling outages in order to comply with the TS and 10 CFR Part 50, Appendix J, would result in an unnecessary increase in personnel radiation exposure and an increase in cost by extending the length of one of the affected refueling outages. Omitting the test will result in additional dose savings by eliminating contamination and by reducing exposure from venting and draining and from setups and restorations of instrumentation required to perform the test. These factors and the costs associated with an additional test for a 24-month difference in interval are not offset by the benefits of the additional test.

IV

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.''

The licensee provided information regarding the requirements of 10 CFR 50.12(a)(2)(ii). The licensee stated that the underlying purpose of 10 CFR Part 50, Appendix J, Section III.D.1(a), is to establish and maintain a level of confidence that any primary containment leakage, during a hypothetical design basis accident, will remain less than or equal to the maximum allowable value, La, established by Appendix J through the performance of periodic Type A testing. The licensee stated that, for the technical justification discussed above, performance of Type A tests during the next two Unit 3 refueling outages was not necessary to meet the underlying purpose of the rule.

The NRC staff has reviewed the licensee's proposed exemption, including Type A test history, and concluded that the impact on safety of this deviation from the scheduler requirements of Appendix J is not significant. Accordingly, the staff finds that an additional test (during the scheduled 1995 refueling outage) would not provide substantially different information and that the intent of Appendix J would be met. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(ii), in that the additional Type A test is not necessary to achieve the underlying purpose of the rule.

The staff also finds, for the technical reasons discussed above, that extending the service period and extending the interval between Type A tests are acceptable.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, as discussed above, that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), such that application of 10 CFR Part 50, Appendix J, Section III.D.1(a) is not necessary in order to achieve the underlying purpose of this regulation. Therefore, the Commission hereby grants a one-time scheduler exemption from the requirements of 10 CFR Part 50, Appendix J, Section III.D.1.(a), to extend the second 10-year Type A test service period for Peach Bottom Atomic Power Station, Unit 3, such that the third periodic Type A test may be performed during Unit 3 refueling outage 11, currently scheduled for September 1997, and such that the three Type A tests in the second 10-year service period are performed at intervals that are not approximately equal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (60 FR 35239).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of July 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17446 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

Pennsylvania Power & Light Company; Correction

[Docket Nos. 50–387 and 50–388]

The July 5, 1995, **Federal Register** contained a ''Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing'' for the Susquehanna Steam Electric Station. This notice corrects the notice published in the **Federal Register** on July 5, 1995, (60 FR 35083). The notice in for Susquehanna Steam Electric Station, Unit 2, rather than Unit 1.

Dated at Rockville, Maryland this 10th day of July 1995.

For the Nuclear Regulatory Commission.

John Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17445 Filed 7–14–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on Proposed Changes to U.S. Harmonized Tariff Schedule

AGENCY: Office of the United States Trade Representative.

ACTION: Report on proposed changes to U.S. Harmonized Tariff Schedule (HTS) made available for review by the public.

SUMMARY: Notice is hereby given that the report submitted by the President under section 1206 of the Omnibus Trade and Tariff Act of 1988 (1988 Act) to Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate for the implementation of HTS changes is available for review in the public reading room at the Office of the United States Trade Representative.

DATES: The report was submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on May 16, 1995, and the President will proclaim the modifications outlined in the report after the required 60-legislative-day layover period.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director, Tariff Affairs, or Denby Misurelli at (202) 395–5097.

SUPPLEMENTARY INFORMATION: Sections 1205 and 1206 of the 1988 Act establish an administrative mechanism by which the President may proclaim certain modifications to the HTS. Section 1205 directs the U.S. International Trade Commission (ITC) to keep the HTS under continuous review and to recommend such modifications to the President when amendments to the Harmonized System (HS) nomenclature are adopted by the World Customs Organization (formerly known as the Customs Cooperation Council) and as other circumstances warrant.

Under section 1206, the President may proclaim modifications to the HTS, on the basis of recommendations by the ITC under section 1205, if he determines that the modifications are in conformity with U.S. obligations under the HS Convention and do not run counter to the national economic interest of the United States. The President may proclaim such modifications only after the expiration of a 60-legislative-day period beginning on the date the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modifications and the reasons therefor. Modifications proclaimed by the President may not become effective before the 15th day after the text of the proclamation is published in the Federal Register.

A copy of the report is available for public inspection in the USTR Reading Room. An appointment to review the report may be made by contacting Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. and 4 p.m., Monday through Friday, and is located in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–17439 Filed 7–14–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21196; File No. 812–9466]

The Equitable Life Assurance Society of the United States, et al.

July 10, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Equitable Life Assurance Society of the United States (''Equitable''), Separate Account A of The Equitable Life Assurance Society of the United States (the ''Separate Account''), and Equico Securities, Inc. (''Equico'').[1]

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge:

(1) From the assets of the Separate Account in connection with the offering of certain new series of group deferred variable annuity contracts and certificates, including certificate endorsements, issued by Equitable through the Separate Account (the contracts and certificates being referred to herein as the ''1995 Series Contracts'' and the ''New Series Contracts,'' respectively, and collectively as the ''Contracts''); and

(2) in connection with the offering in the future of deferred variable annuity contracts issued by Equitable through the Separate Account or any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by Equitable (''Other Account''), which contracts shall be substantially similar in all material respects to the 1995 Series or New Series Contracts (the ''Other Contracts'').

FILING DATE: The application was filed on February 3, 1995, and amended and restated on May 26, 1995, and June 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 4, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C., 20549.

[1] Applicants represent that, during the notice period, the application will be amended regarding the identity of the Applicants.

Equitable and its separate account(s), 787 Seventh Avenue, Area 36–K, New York, New York 10019. Equico, 1755 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patricia M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Equitable, a stock life insurance company organized under the laws of the State of New York, serves as depositor of the Separate Account. Equitable may establish one or more Other Accounts in the future, for which it will serve as depositor.

2. The Separate Account, established on August 1, 1968, is registered with the Commission under the 1940 Act as a unit investment trust. It is used to fund benefits under group variable annuity contracts and certificates, as well as individual variable annuity contracts, issued by Equitable. The Separate Account will be used to fund the variable benefits available under the 1995 Series Contracts and the New Series Contracts. Units of interest in the Separate Account under the Contracts will be registered under the Securities Act of 1933.

3. The portion of the assets of the Separate Account equal to the reserves and other liabilities relating to the contracts funded by the Separate Account, including the Contracts, is not chargeable with liabilities arising out of any other business Equitable conducts. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Account are, in accordance with the applicable contracts, credited to or charged against the Separate Account without regard to other income, gains or losses of Equitable.

4. The Separate Account currently is subdivided into thirteen subaccounts (''Investment Funds''), each of which will be available under the Contracts. Each Investment Fund invests solely in the shares of a corresponding portfolio of The Hudson River Trust (the ''Trust''). The Trust, an open-end management investment company registered under the 1940 Act, currently is divided into thirteen separate portfolios.

5. Contributions under the Contracts may be allocated to any one or more of the Investment Funds and the Guaranteed Interest Account, which is part of Equitable's General Account (together with the Investment Funds, the ''Investment Options''). The Contracts consist of a basic form of group annuity contract (the ''Group Contract''), a basic form of certificate (''Certificate'') issued under the Group Contract, and in the case of the New Series Contracts, forms of Certificate endorsements (''Endorsements'') to be used for specific forms of benefits under the Certificates. Certificates may be issued as individual contracts in certain states. The Contracts will be offered in the tax-qualified retirement plan markets and in non-qualified markets.

6. Equico, a wholly-owned subsidiary of Equitable, is the principal underwriter of the Separate Account and distributor of the Contracts. In the future, Equitable may organize other wholly-owned subsidiaries which are members of the National Association of Securities Dealers, Inc., and may act as principal underwriters for the Separate Account or Other Accounts (each, a ''Future Underwriter''). Equico is, and any Future Underwriter will be, registered as a broker-dealer under the Securities Exchange Act of 1934.

7. Equitable will deduct various fees and expenses under the Contracts. Except as otherwise noted, the charges and fees described below are the maximums that may be imposed under the Contracts. Different charge structures may apply to different markets, and some charges that apply to the New Series Contracts do not apply to the 1995 Series Contracts.

8. Deductions from account value include charges for (i) administration of the Contracts, (ii) loan processing, (iii) transfers among Investment Options and third party transfers and exchanges, (iv) premium taxes, and (v) distribution expenses through a contingent deferred sales charge (''withdrawal charge'').

9. Equitable may deduct an annual contract fee up to a maximum of $65 per contract year for administration of the New Series Contracts. Equitable currently intends to charge the lesser of $30 per contract year or 2% of account value for the first two contract years, and $30 per contract year thereafter under the New Series Contracts, and the lesser of $30 or 2% of account value in each contract year under the 1995 Series Contracts. Equitable has reserved the right to eliminate this charge for Certificates that have a specified minimum account value.

10. In markets that permit loans, Equitable has reserved the right, under the New Series Contracts, to assess a maximum loan set-up charge equal to the lesser of $150 or 1% of the loan amount, and a maximum loan recordkeeping charge of $65 per year.

11. Equitable may impose a charge for any transfer among Investment Options up to $65 per transfer under the New Series Contracts. Equitable currently makes no charge for transfers. Under the New Series Contracts, Equitable also may charge up to $65 for a direct transfer to a third party of amounts under a Certificate or an exchange for another contract of another insurance carrier. Equitable currently intends to charge $25 for such transfers or exchanges.

12. Although Equitable's current practice is to deduct a charge for premium taxes from the amount applied to provide an annuity benefit, it has reserved the right to deduct any such charge from contributions or from amounts withdrawn or surrendered. Equitable does not expect to profit from this charge.

13. Equitable also may assess a daily asset-based administrative charge against the Separate Account at an effective annual rate not to exceed .30% for administrative expenses associated with the New Series Contracts and .25% for administrative expenses associated with the 1995 Series Contracts.

14. Applicants do not expect that, over the period that the Contracts are in force, the total revenues from the administrative charges, including the annual contract fee, the daily asset-based administrative charge and, for the New Series Contracts, the loan processing charge and the transfer charges, will exceed the expected costs of the administrative services rendered under the 1995 Series or New Series Contracts, on average, excluding costs which are properly categorized as distribution expenses.

15. Equitable may assess each Investment Fund of the Separate Account a daily asset-based charge for mortality and expense risks not to exceed an effective annual rate of 1.25% (.65% for mortality risks and .60% for expense risks) under the New Series Contracts, and 1.15% (.60% for mortality risks and .55% for expense risks) under the 1995 Series Contracts.

16. Equitable assumes a mortality risk by its contractual obligation to pay a death benefit equal to the greater of (i) the account value as of the date Equitable receives due proof of death or (ii) the total value of all contributions made, less any applicable taxes, adjusted for withdrawals. Equitable assumes an additional mortality risk by its contractual obligation to make annuity payments for the entire life of the annuitant under guaranteed fixed annuity options involving life

contingencies, and by its contractual guarantees related to annuity purchase rates. Equitable also assumes a mortality risk by its contractual obligation to waive the withdrawal charge upon payment of the death benefit.

17. Equitable assumes the expense risk that the administrative charges deducted under the Contracts may be insufficient to cover actual administrative expenses.

18. Equitable expects a profit from the mortality and expense risk charge, and if the amount deducted proves more than sufficient, the excess will be profit to Equitable. If the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable.

19. No front-end sales charge will be imposed when contributions are made. A withdrawal charge will be assessed against certain full or partial withdrawals. Different withdrawal charges will apply to different markets. Under the New Series Contracts, the withdrawal charge will be no greater than either: (i) 7% of the amount withdrawn, declining to 0% at the end of the fifteenth contract year (subject to a maximum of 8% of all contributions made during the current and nine prior contract years); or (ii) 8% of contributions received in the current and eleven prior contract years. Under the 1995 Series Contracts, the withdrawal charge will be no greater than either: (i) 6% of the amount withdrawn, declining to 0% at the end of the twelfth contract year; or (ii) 6% of contributions received in the current and five prior contract years. Equitable has reserved the right to waive the withdrawal charge with respect to amounts withdrawn up to 30% of the account value at the time of the withdrawal (less any amounts previously withdrawn in that contract year) under the New Series Contracts, and up to 10% of the account value under the 1995 Series Contracts.

20. The amounts obtained from the withdrawal charge will be used to reimburse Equitable for sales expenses including commissions and other promotional or distribution expenses associated with printing and distributing prospectuses and sales literature. To the extent the withdrawal charge is insufficient to cover the actual costs of distribution, the expenses will be paid from Equitable's general assets, which will include profit, if any, derived from the mortality and expense risk charge.

Applciants' Legal Analysis

1. Applciants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Section 26(a)(2)(C) and 27(c)(2) thereof to the extent necessry to permit the assessment of a mortality and expense risk charge under the Contracts and Other Contracts.

2. Section 6(c) of the 1940 Act, in relevant part, provides that the Commission may issue an order exempting any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants believe that the requested exemptions meet the standards of Section 6(c) of the 1940 Act, and that the terms of the relief requested with respect to any Other Contracts funded by the Separate Account or any Other Account and distributed by Equico or any Future Underwriter are consistent with the standards set forth in Section 6(c) of the 1940 Act.

4. Applicants undertake that the Other Contracts funded by the Separate Account or any Other Account will be substantially similar in all material respects to the Contracts. Applicants state that, without the requested relief, Applicants may have to request and obtain exemptive relief in connection with Other Contracts and/or Other Accounts to the extent required. Any such additional requests for exemptive relief would present no issues under the 1940 Act that have not been addressed already in this Application.

5. Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Equitable to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair Equitable's ability effectively to take advantage of business opportunities as they arise. If Equitable were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of Equitable's increased overhead expenses.

6. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust, and any depositor thereof or principal underwriter therefor, from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified trustee or custodian and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

7. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based on Applicants' review of publicly available information regarding products of other companies, taking into consideration such factors as: Guaranteed minimum death benefits; the existence of guaranteed annuity purchase rates; market sector; current charge levels; the existence of charge level guarantees; and the manner in which charges are imposed. Equitable represents that it will maintain at its principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of Equitable's comparative review.

8. Applicants acknowledge that the withdrawal charge may be insufficient to cover all distribution costs relating to either the 1995 Series or the New Series Contracts, and that if a profit is realized over time from the mortality and expense risk charge, all or a portion of the mortality and expense risk charge might be viewed as providing for a portion of these distribution costs. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract owners. Equitable represents that it will maintain at its principal office and make available on request to the Commission or its staff, a memorandum setting forth the basis for that conclusion.

9. Similarly, Applicants represent, with respect to any Other Contracts, that the mortality and expense risk charges under any Other Contracts will be within the range of industry practice for comparable products and that, with regard to such Other Contracts, there will be a reasonable likelihood that the proposed distribution financing

arrangements will benefit the Separate Account (or Other Account) and owners of the Other Contracts. Equitable will maintain and make available on request to the Commission or its staff a memorandum setting forth in detail the products analyzed, and the methodology and results of, the comparative review.

10. Equitable also represents that the Separate Account will invest only in an underlying mutual fund which would undertake, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applciants submit, for the reasons stated herein, that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of the mortality and expense risk charge under the Contracts and Other Contracts meet the standards set out in Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17451 Filed 7–14–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2785]

Kentucky, Declaration of Disaster Loan Area; (Amendment #1)

The above-numbered Declaration is hereby amended, effective June 23, to include the following counties in the State of Kentucky as a disaster area due to damages caused by severe wind and hail storm, torrential rain, and flooding which occurred May 13 through May 19, 1995: Carter, Christian, Elliot, Floyd, Laurel and Pike.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Boyd, Caldwell, Clay, Greenup, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Letcher, Magoffin, Martin, McCreary, Muhlenberg, Pulaski, Rock Castle, Todd, Trigg, and Whittley Counties in Kentucky; Mingo County in West Virginia; Buchanan, Dickenson, and Wise Counties in Virginia; and Steward and Montgomery Counties in Tennessee.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 12, 1995, and for loans for economic injury the deadline is March 13, 1996.

The economic injury numbers are 854200 for Kentucky, 856500 for West Virginia, 856600 for Virginia, and 856700 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 6, 1995.

James W. Hammersley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–17375 Filed 7–14–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2794

Maryland, and Contiguous Counties in Pennsylvania and West Virginia; Declaration of Disaster Loan Area

Allegany County and the contiguous counties of Garrett and Washington in the State of Maryland; Bedford, Fulton, and Somerset Counties in Pennsylvania; and Hampshire, Mineral, and Morgan Counties in West Virginia constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred on June 27 and June 30, 1995. Applications for loans for physical damage may be filed until the close of business on September 11, 1995, and for economic injury until the close of business on April 11, 1996, 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
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 numbers assigned to this disaster for physical damage are 279406 for Maryland; 279506 for Pennsylvania; and 279606 for West Virginia. For economic injury the numbers are 856200 for Maryland; 856300 for Pennsylvania; and 856400 for West Virginia. Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 11, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–17429 Filed 7–14–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2793]

Virginia; Declaration of Disaster Loan Area

As a result of the President's major declaration on July 1, 1995, and amendments thereto on July 3 and July 6, I find that the following counties and independent cities in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding beginning on June 22, 1995 and continuing: Albermarle, Augusta, Campbell, Culpepper, Giles, Green, Halifax, Madison, Orange, Pittsylvania, Rappahannock, Rockbridge, and Warren Counties, and the Independent Cities of Buena Vista, Lexington, Lynchburg, Roanoke, and Staunton. Applications for loans for physical damages may be filed until the close of business on August 29, 1995, and for loans for economic injury until the close of business on April 3, 1996, 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. In addition, applications for economic injury loans from small businesses located in the following contiguous counties and independent cities may be filed until the specified date at the above location: Alleghany, Amerst, Appomattox, Bedford, Bland, Botetourt, Buckingham, Charlotte, Clarke, Craig, Fauquier, Fluvanna, Franklin, Frederick, Henry, Highland, Louisa, Mecklenburg, Montgomery, Nelson, Page, Pulaski, Roanoke, Rockingham, Shenandoah, Spotsylvania, and Stafford Counties and

the Independent Cities of Charlottesville, Danville, Salem, South Boston, and Waynesboro in Virginia; Greenbrier, Mercer, Monroe, Pocahontas, and Summers Counties in West Virginia; and Caswell, Granville, Person and Rockingham Counties in North Carolina.

Any counties contiguous to the above-named counties and not listed herein have been previously declared.

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 279306. For economic injury the numbers are 856100 for Virginia; 856800 for West Virginia; and 857000 for North Carolina.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: July 7, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–17374 Filed 7–14–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 30, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–266
Date filed: June 29, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1995
Description: Application of Air Nova, Inc., pursuant to 49 U.S.C. Section 41304, and Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: OST–95–268
Date filed: June 29, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1995
Description: Application of AirBC, Limited, pursuant to 49 U.S.C. Section 413404 of the Act and Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: OST–95–259
Date filed: June 28, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1995.
Description: Application of Alaska Airlines, Inc. for renewal and amendment of a certificate of public convenience and necessity permitting service between Anchorage, Alaska and the coterminal points Magadan, Khabarovsk, Vladivostok, and Petropavlovsk-Kamchatski, Russia.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–17416 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended June 30, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–276
Date filed: June 30, 1995
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 743; Korea-Thailand fares: r-1—043i, r-2—053i, r-3—061i, r-4—070t, r-5—085t
Proposed Effective Date: July 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–17417 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–043]

Annual Certification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude-oil tankers under the Prince William Sound Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Prince William Sound, Alaska.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of terminal facilities and crude-oil tankers.

Subsection 2732(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the terminal facilities in Prince William Sound, in lieu of a council of the type specified in subsection 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that if fosters the general goals and purposes of the Act and is broadly representative of the community and

interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Prince William Sound Regional Citizens' Advisory Council (RCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security, and Environmental Protection.

On May 11, 1995, in the **Federal Register,** the Coast Guard announced the availability of the application for recertification that it received from the RCAC and requested comments (60 FR 25257). It received twenty-four comments.

Discussion of Comments

Twenty-three comments support recertification of RCAC without reservation. However, a comment from a member of the oil-tanker industry argues that three issues need to be resolved if the RCAC is to be effective.

The comment states that, ''[d]uring the past year, RCAC has made a concerted effort to improve its relationship with the tanker industry.'' However, despite the positive notes, the comment presses those three issues. ''First, is acceptance of RCAC's role as advisory as defined in OPA '90. Second, is RCAC's efforts to influence decision making through political and lobbying efforts. Third, and most important, is trust between RCAC and industry.'' The Coast Guard has forwarded the comment to RCAC and asked the members to review the issues, consider what is necessary to resolve the issues, and provide a response to the Coast Guard.

It is the Coast Guard's position that those three issues can be addressed successfully by RCAC and that, in fact, progress has been made on the issues during the past year. In light of this, and the many positive comments received regarding RCAC's performance during the past year, the Coast Guard has determined that recertification of RCAC in accordance with the Act is appropriate. The Coast Guard has informed RCAC that documentation should be included in RCAC's recertification application next year indicating how each of the issues has been addressed.

Recertification: By letter dated June 23, 1995, the Chief, Office of Marine Safety, Security, and Environmental Protection certified that the RCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on June 30, 1996.

Dated: July 11, 1995.

J.C. Card,

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

[FR Doc. 95–17489 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[AC No. 20–AIR–DU]

Proposed Advisory Circular (AC) on Voluntary Industry Distributor/Dealer Accreditation Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: The proposed AC is intended to provide information and guidance regarding voluntary accreditation programs for distributors and dealers of civil aircraft parts.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Aircraft Maintenance Division Attention: AFS–350, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Richard E. Nowak, AFS–350, at the above address; telephone: (202) 267–7228 (8:30 a.m. to 5 p.m. EDT).

SUPPLEMENTARY INFORMATION: The guidance material in this AC describes voluntary programs in which distributors and dealers of civil aircraft parts can obtain accreditation of quality control systems, which would assure that the approval status of their parts is properly documented.

Issued in Washington, D.C. on June 30, 1995.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 95–17407 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 11, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28223
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 135.25(b) and (c)
Description of Relief Sought: To allow Executive Air Fleet, Inc., to operate its aircraft without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications.

Docket No.: 28224
Petitioner: Mr. W.H. Symmes
Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought: To permit Mr. Symmes to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28242
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.574(a)(1) and (3)
Description of Relief Sought: To permit Trans World Airlines, Inc., (TWA) to allow its passengers to use portable oxygen equipment that has not been supplied by TWA nor maintained by TWA in accordance with its FAA-approved maintenance program.

Dispositions Of Petitions

Docket No.: 15078
Petitioner: Drug Enforcement Administration
Sections of the FAR Affected: 14 CFR 91.117(a), (b), and (c); 91.127(c); 91.159(a); and 91.209 (a) and (d)
Description of Relief Sought/ Disposition: To extend Exemption No. 5506, which permits the DEA to conduct air operations in support of drug law enforcement and drug traffic interdiction. *GRANT, June 29, 1995, Exemption No. 5506A.*

Docket No.: 23465
Petitioner: Everts Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4296, as amended, which permits Everts Air Fuel, Inc., to operate its McDonnell Douglas DC–6 aircraft, registration numbers N351CE, N451CE, and N4390F, and its McDonnell Douglas DC–6B aircraft, registration numbers N151 and N251CE, at a 5 percent increased zero fuel weight and landing weight for the purpose of operating all-cargo aircraft that provide supplies to people in isolated villages in Alaska. The amendment adds McDonnell Douglas DC–6 aircraft, registration numbers N888DG, N555SQ, and N999SQ to the listing of aircraft to be operated under the terms of the exemption. *GRANT, June 7, 1995, Exemption No. 4296E.*

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 103.1 (a) and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To extend Exemption No. 3784, as amended, which permits individuals authorized by EAA to give instruction in powered ultralight vehicles that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power0off stall speed that does not exceed 35 knots calibrated airspeed. *GRANT, June 30, 1995, Exemption No. 3784G.*

Docket No.: 23869
Petitioner: The Relative Workshop, Inc.
Sections of the FAR Affected: 14 CFR 105.43
Description of Relief Sought/ Disposition: To amend Exemption No. 4943, as amended, which allows employees, representatives, and other adult volunteer parachute test jumpers of The Relative Workshop, Inc., to make tandem parachute jumps wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute, packed in accordance with § 105.43(a). The amendment is two-fold: to revise the name of ''The Relative Workshop, Inc.'', to ''The Uninsured Relative Workshop, Inc.'', and to permit Ms. Shawna Huang, a 15-year-old minor diagnosed with terminal cancer, to fulfill her ultimate wish to skydive. *GRANT, June 8, 1995, Exemption No. 4943E.*

Docket No.: 24770
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57 (c) and (d); 61.58(b)(2) and (c)(1); 61.63(c)(2) and (d) (2) and (3); 61.65 (d) and (g); 61.67(d)(2); 61.163(a); 61.191(c); and appendix B of part 61
Description of Relief Sought/ Disposition: To extend Exemption No. 5324, as amended, which allows FlightSafety International to use FAA-approved simulators to meet certain training and testing requirements of the above-listed sections. *GRANT, June 16, 1995, Exemption No. 5324B.*

Docket No.: 25120
Petitioner: Singapore Airlines Limited
Sections of the FAR Affected: 14 CFR 21.197(c)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4792, as amended, which permits the issuance to Singapore Airlines Limited of a special flight permit with a continuing authorization for seven specific Boeing 747–312 aircraft as delineated in your petition. The amendment removes aircraft N119KE, S/N 23030, and N120KF, S/N 23031. *GRANT, May 24, 1995, Exemption No. 4792E.*

Docket No.: 26237
Petitioner: MCI Telecommunications
Sections of the FAR Affected: 14 CFR 91.611
Description of Relief Sought/ Disposition: To extend Exemption No. 5332, as amended, which permits MCI to conduct certain ferry flights with one engine inoperative in its Falcon Trijet aircraft without obtaining a special flight permit for each flight. *GRANT, June 30, 1995, Exemption No. 5332B.*

Docket No.: 26608
Petitioner: Alaska Airlines, Inc./Atlantic Richfield Company/British Petroleum Exploration, Alaska, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a), 43.7(a), 91.213(a), 91.407(a)(2), 91.417(a)(2)(v), and 121.379
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5667, which permits Alaska Airlines, Inc., (ASA) to perform maintenance, preventive maintenance, alterations, inspections, major repairs, and major alterations, and, subsequently, to return to service the Boeing 737–200 series aircraft leased and operated by Atlantic Richfield Company (ARCO) and British Petroleum Exploration, Alaska, Inc., (BPX). In addition, that exemption allows ARCO and BPX, operating under part 91, to follow procedures specifically authorized for air carrier operations with respect to the use of ASA's FAA-approved minimum equipment list (MEL) and FAA-approved continuous airworthiness maintenance program (CAMP) for the Boeing 737–200 series aircraft leased by and operated by ARCO and BPX. The amendment includes a letter of deviation authority issued by ARCO and BPX that addresses certain issues that are normally covered by operations specifications. *GRANT, June 27, 1995, Exemption No. 5667A.*

Docket No.: 26704
Petitioner: Virginia State Police Aviation Unit
Sections of the FAR Affected: 14 CFR 91.127(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To amend Exemption No. 5548, which provides the Virginia State Police Aviation Unit relief from the pertinent provisions of part 91 in order to conduct law enforcement air support. The amendment addresses the need to perform certain aircraft operations in noncompliance with the above regulations governing operations on or in the vicinity of an airport in Class E airspace, visual flight rules (VFR) cruising altitudes, and the use of aircraft lights. *PARTIAL GRANT, June 15, 1995, Exemption No. 5548A.*

Docket No.: 27202
Petitioner: Skydive Arizona, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5725, which permits nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Skydive Arizona, Inc. (SAI)-sponsored parachuting events held at SAI's facilities without having to comply with certain parachute equipment and packing requirements. *GRANT, June 7, 1995, Exemption No. 5725A.*

Docket No.: 27251
Petitioner: American Bonanza Society/ Air Safety Foundation and Bonanza/ Baron Pilot Proficiency Programs, Inc.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5733, which permits American Bonanza Society/Air Safety Foundation (ABS/ASF) instructors to provide recurrent flight training and simulated instrument flight training in Beech Baron and Travel Air type aircraft, equipped with a functioning throwover control wheel, for the purpose of meeting recency of experience requirements contained in §§ 61.56 (a), (b), and (f), and 61.57 (e)(1) and (e)(2). The amendment addresses three issues: to revise the applicability of the exemption to include Bonanza/Baron Pilot Proficiency Programs (BPPP) and the instructors who conduct training in association with BPPP; to permit the training to be conducted in Beech Bonanzas, as well as in Barons and Travel Airs; and to limit operations conducted under the exemption to recurrent flight instruction and simulated instrument flight instruction in Beech Bonanza, Baron, and Travel Air type aircraft equipped with a functioning throwover control wheel and operable rudder pedals, in lieu of functioning dual controls. *GRANT, June 9, 1995, Exemption No. 5733A.*

Docket No.: 27276
Petitioner: Haines Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend Exemption No. 5678, which allows, when certificated mechanics are unavailable, appropriately trained and certificated pilots employed by Haines Airways, Inc., to remove and reinstall aircraft cabin seats in Piper PA–32 aircraft operated by Haines Airways, Inc. *GRANT, April 17, 1995, Exemption No. 5678A.*

Docket No.: 27309
Petitioner: Mr. David R. Abshire
Sections of the FAR Affected: 14 CFR 65.71(a)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5719, which enables Mr. Abshire to become eligible for a mechanic certificate and associated ratings although he cannot speak the English language. *GRANT, June 7, 1995, Exemption No. 5719A.*

Docket No.: 27330
Petitioner: Crow Executive Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend Exemption No. 5731, which permits pilots employed by Crow Executive Air, Inc. (CEA), to remove or replace the cabin seats on aircraft used in operations conducted by CEA under part 135. *GRANT, June 7, 1995, Exemption No. 5731A.*

Docket No.: 27570
Petitioner: HMT Sales
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5866, which permits appropriately trained and certificated pilots employed by HMT, a certificated part 135 operator, which operates an aircraft with fewer than 9 seats, to remove and reinstall aircraft cabin seats and stretchers in HMT's Piper PA 34–200T aircraft. The amendment changes the name of the petition from ''George A. Tomlinson, dba H.M.T., LTD.'', to ''Tomlinson, Inc., dba HMT Sales.'' *GRANT, May 24, 1995, Exemption No. 5866A.*

Docket No.: 27595
Petitioner: Garlick Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 36.1(a)(4)
Description of Relief Sought/ Disposition: To exempt the Restricted Category Type Certificate (TC) H13WE of Garlick Helicopters, Inc., from the applicable noise certification requirements of part 36. *DENIAL, June 26, 1995, Exemption No. 6116.*

Docket No.: 27833
Petitioner: Air Tractor Inc.
Sections of the FAR Affected: 14 CFR 91.313(d)
Description of Relief Sought/ Disposition: To permit a passenger to be carried in an Air Tractor AT–503A and AT–802 restricted category aircraft without that passenger performing one of the functions described in § 91.313(d). *DENIAL, June 1, 1995, Exemption No. 6095.*

Docket No.: 27844
Petitioner: Mr. James W. Smith, Jr.
Sections of the FAR Affected: 14 CFR 61.101a(a)(1)
Description of Relief Sought/ Disposition: To permit Mr. Smith to carry up to three passengers in a Cessna 172 aircraft. *DENIAL, June 22, 1995, Exemption No. 6112.*

Docket No.: 27881
Petitioner: TransNorthern Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To amend Exemption No. 6031 by changing the name of the petitioner from ''TransNorthern Air Service'' to ''TransNorthern Aviation, Inc.'', to reflect a name change that occurred as a result of the petitioner's incorporation. *GRANT, May 24, 1995, Exemption No. 6031A.*

Docket No.: 27931
Petitioner: Mr. Edward R. Thornton
Sections of the FAR Affected: 14 CFR 61.27
Description of Relief Sought/ Disposition: To permit issuance of a pilot certificate to Mr. Thornton at the grade of commercial pilot with instrument and multiengine ratings, and a flight instructor certificate with a glider rating, on the basis of oral tests and flight checks but without written testing. *DENIAL, May 24, 1995, Exemption No. 6091.*

Docket No.: 28043
Petitioner: Otis Spunkmeyer Air
Sections of the FAR Affected: 14 CFR 135.1(b)(2)
Description of Relief Sought/ Disposition: To permit Ortis Spunkmeyer Air to conduct sightseeing flights, under part 91, up to 55 statute miles from a departure airport rather than 25 statute miles as limited by § 135.1(b)(2). *DENIAL, June 7, 1995, Exemption No. 6096.*

[FR Doc. 95–17437 Filed 7–14–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Laws permit the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring

the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the New Jersey Transit intends to transfer the Union City Bus Maintenance Facility on New York Avenue in Union City, New Jersey to the City of Union City.

DATES: Any Federal agency interested in acquiring the land or facility must notify the FTA, Region II, of its interest, by August 16, 1995.

ADDRESSES: Interested parties should notify the Regional Office by writing the Federal Transit Administration, 26 Federal Plaza, Suite 2940, New York, N.Y. 10278.

FOR FURTHER INFORMATION CONTACT: Hans Point Du Jour, FTA, Region II, 212–264–8162 or Ann Catlin, Office of Grants Management at 202–366–1647.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. section 5334(g) (formerly, Section 12(k) of the FT Act, as amended) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

Section 5334 (g) Determinations

The provision also provides that before the FTA may authorize such a transfer, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the Federal Transit Laws for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. section 5334(g) (1) (D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 49 U.S.C. section 5334(g) (1) (A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The subject building is located at 2701 New York Avenue, Union City, New Jersey, on approximately 3 acres of land. The building was built in stages between 1896 and 1928 as a trolley maintenance facility. It has approximately 131,000 square feet of building area overall with 7 bus bays available for storage and service.

Issued On: July 11, 1995.

Thomas J. Ryan,

Regional Administrator, TRO–II.

[FR Doc. 95–17425 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Study of the United States Financial Services System

AGENCY: Department of the Treasury.

ACTION: Notice of public meeting of the Advisory Commission on Financial Services.

SUMMARY: The first meeting of the Advisory Commission on Financial Services will be held on Monday, July 31, 1995. The meeting will be held from 1–5 p.m in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

PUBLIC MEETING: The Advisory Commission meeting will be open to the public. Individuals wishing to attend the meeting should come to the 15th Street entrance of the Treasury Building. They also should provide complete identification, including their name, birth date, and social security number no later than by Friday, July 28, 1995, to the Office of Financial Institutions Policy, Department of the Treasury. Phone number 202/622–2740. Fax number 202/622–0256.

FOR FURTHER INFORMATION CONTACT: For further information contact Joan Affleck-Smith, Director, Office of Financial Institutions Policy, 202/622–2740.

SUPPLEMENTARY INFORMATION: Section 210 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 requires the Secretary of the Treasury to conduct a study assessing the strengths and weaknesses of the United States financial services system in meeting the needs of the system's users. The Act also requires the Secretary, in conducting the study, to appoint and consult with an Advisory Commission on Financial Services. On June 21, 1995, the Secretary announced the appointment of 13 members of the Advisory Commission and set July 31, 1995, as the date of the first meeting of the Commission. The Act requires the Secretary to report to Congress by December 29, 1995, on the results of the study, including any recommendations.

Dated: July 11, 1995.

Richard S. Carnell,

Assistant Secretary (Financial Institutions), Department of the Treasury.

[FR Doc. 95–17410 Filed 7–14–95; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Tax on Certain Imported Substances (Methyl Methacrylate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that methyl methacrylate be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by September 15, 1995. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on October 13, 1994. The petitioner is Rohm and Haas Texas, Inc., a manufacturer and exporter of this substance. The following is a

summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2916.14.00.20
CAS number: 80–62–6

Methyl methacrylate is derived from the taxable chemicals methane, ammonia, propylene, benzene, and sulfuric acid and is a liquid produced predominantly by the catalytic reaction of acetone cyanohydrin and methyl alcohol. The methyl methacrylate is then purified by distillation.

The stoichiometric material consumption formula for this substance is:

3 CH_4 (methane) + NH_3 (ammonia) + C_3H_6 (propylene) + C_6H_6 (benzene) + H_2SO_4 (sulfuric acid) + 2.5 O_2 (oxygen) ‰ $C_5H_8O_2$ (methyl methacrylate) + NH_4HSO_4 (ammonium bisulfate) + C_6H_6O (phenol) + CH_3OH (methanol) + H_2O (water) + 2 H_20 (hydrogen)

According to the petition, taxable chemicals constitute 77.9 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $10.12 per ton. This is based upon a conversion factor for methane of 0.47, a conversion factor for ammonia of 0.22, a conversion factor for propylene of 0.6, a conversion factor for benzene of 0.94, and a conversion factor for sulfuric acid of 1.63.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–17380 Filed 7–14–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Monoethanolamine, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include monoethanolamine, diethanolamine, triethanolamine, monoisopropanolamine, diisopropanolamine, triisopropanolamine, toluene diisocyanate, and chlorinated polyethylene.

EFFECTIVE DATE: This modification is effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether the substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 10, 1995, the Secretary determined that monoethanolamine, diethanolamine, triethanolamine, monoisopropanolamine, diisopropanolamine, triisopropanolamine, toluene diisocyanate, and chlorinated polyethylene should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1992.

The rate of tax prescribed for monoethanolamine, under section 4671(b)(3), is $3.63 per ton. This is based upon a conversion factor for ethylene of 0.59 and a conversion factor for ammonia of 0.29.

The rate of tax prescribed for diethanolamine, under section 4671(b)(3), is $3.85 per ton. This is based upon a conversion factor for ethylene of 0.70 and a conversion factor for ammonia of 0.17.

The rate of tax prescribed for triethanolamine, under section 4671(b)(3), is $3.96 per ton. This is based upon a conversion factor for ethylene of 0.75 and a conversion factor for ammonia of 0.12.

The rate of tax prescribed for monoisopropanolamine, under section 4671(b)(3), is $6.66 per ton. This is based upon a conversion factor for propylene of 0.62, a conversion factor for chlorine of 1.00, a conversion factor for sodium hydroxide of 1.20, and a conversion factor for ammonia of 0.23.

The rate of tax prescribed for diisopropanolamine, under section 4671(b)(3), is $7.08 per ton. This is based upon a conversion factor for propylene of 0.70, a conversion factor for chlorine of 1.10, a conversion factor for sodium hydroxide of 1.30, and a conversion factor for ammonia of 0.13.

The rate of tax prescribed for triisopropanolamine, under section 4671(b)(3), is $7.49 per ton. This is based upon a conversion factor for propylene of 0.74, a conversion factor for chlorine of 1.20, a conversion factor for sodium hydroxide of 1.40, and a conversion factor for ammonia of 0.10.

The rate of tax prescribed for toluene diisocyanate, under section 4671(b)(3), is $4.90 per ton. This is based upon a conversion factor for toluene of 0.53, a conversion factor for nitric acid of 0.7, and a conversion factor for chlorine of 0.8.

The rate of tax prescribed for chlorinated polyethylene, under section 4671(b)(3), is $5.05 per ton. This is based upon a conversion factor for ethylene of 0.65 and a conversion factor for chlorine of 0.70.

The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Monoethanolamine

HTS number: 2922.11.00.00
CAS number: 141–43–5

Monoethanolamine is derived from the taxable chemicals ethylene and ammonia and is a liquid produced predominantly by reacting ethylene oxide and aqueous ammonia.

The stoichiometric material consumption formula for this substance is:

2 C_2H_4 (ethylene)+2 NH_3 (ammonia)+O_2 (oxygen) ‰ 2 C_22H_7NO (monoethanolamine)

Monoethanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 73.7 percent by weight of the materials used in its production.

Diethanolamine

HTS number: 2922.12.00.00
CAS number: 111–42–2

Diethanolamine is derived from the taxable chemicals ethylene and ammonia and is a solid produced predominantly by reacting ethylene oxide and aqueous ammonia.

The stoichiometric material consumption formula for this substance is:

2 C_2H_4 (ethylene)+NH_3 (ammonia)+O_2 (oxygen) ‰ $C_4H_{11}NO_2$ (diethanolamine)

Diethanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 69.5 percent by weight of the materials used in its production.

Triethanolamine

HTS number: 2922.13.00.00
CAS number: 102–71–6

Triethanolamine is derived from the taxable chemicals ethylene and ammonia and is a liquid produced predominantly by reacting ethylene oxide and aqueous ammonia.

The stoichiometric material consumption formula for this substance is:

6 C_2H_4 (ethylene)+2 NH_3 (ammonia)+3 O_2 (oxygen) ‰ 2 $C_6H_{15}NO_3$ (triethanolamine)

Triethanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.7 percent by weight of the materials used in its production.

Monoisopropanolamine

HTS number: 2922.19.60.00
CAS number: 78–96–6

Monoisopropanolamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ammonia and is a liquid produced predominantly by the reaction of propylene oxide and ammonia.

The stoichiometric material consumption formula for this substance is:

2 C_3H_6 (propylene)+2 Cl_2 (chlorine)+2 NaOH (sodium hydroxide)+NH_3 (ammonia) +‰ C_3H_9NO (monoisopropanolamine)+$C_3H_6Cl_2$ (propylene dichloride)+2 NaCl (sodium chloride) + H_2O (water)

Monoisopropanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Diisopropanolamine

HTS number: 2922.19.60.00
CAS number: 110–97–4

Diisopropanolamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ammonia and is a solid produced predominantly by the reaction of propylene oxide and ammonia.

The stoichiometric material consumption formula for this substance is:

3 C_3H_6 (propylene)+2 Cl_2 (chlorine)+2 NaOH (sodium hydroxide)+NH_3 (ammonia) ‰ $C_6H_{15}NO_2$ (diisopropanolamine) + $C_3H_6Cl_2$ (propylene dichloride)+2 NaCl (sodium chloride)+H_2 (hydrogen)

Diisopropanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Triisopropanolamine

HTS number: 2922.19.60.00
CAS number: 122–20–3

Triisopropanolamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ammonia and is a solid produced predominantly by the reaction of propylene oxide and ammonia.

The stoichiometric material consumption formula for this substance is:

4 C_3H_6 (propylene)+3 Cl_2 (chlorine)+4 NaOH (sodium hydroxide)+NH_3 (ammonia) ‰ $C_9H_{21}NO_3$ (triisopropanolamine)+$C_3H_6Cl_2$ (propylene dichloride)+4 NaCl (sodium chloride)+H_2O (water)+H_2 (hydrogen)

Triisopropanolamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Toluene diisocyanate

HTS number: 2929.10.15.00
CAS number: 584–84–9

Toluene diisocyanate is derived from the taxable chemicals toluene, nitric acid, and chlorine and is a liquid produced predominantly by the phosgenation of primary amines.

The stoichiometric material consumption formula for this substance is:

C_7H_8 (toluene) + 2 HNO_3 (nitric acid) + 2 Cl_2 (chlorine) + 2 CO (carbon monoxide) + 6 H_2 (hydrogen) ———> $C_9H_6N_2O_2$ (toluene diisocyanate) + 6 H_2O (water) +4 HCl (hydrogen chloride)

Toluene diisocyanate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 84 percent by weight of the materials used in its production.

Chlorinated polyethylene

HTS number: 3901.90.50.00
CAS number: 064754–90–1

Chlorinated polyethylene is derived from the taxable chemicals ethylene and chlorine and is a solid produced predominantly by chlorination of polyethylene resins.

The stoichiometric material consumption formula for this substance is:

857 C_2H_4 (ethylene) + 375 Cl_2 (chlorine) ‰ $C_{1714}H_{3053}C_{l375}$ (chlorinated polyethylene) + 375 HCl (hydrogen chloride)

Chlorinated polyethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–17382 Filed 7–14–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Toluenediamine); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include toluenediamine.

EFFECTIVE DATE: This modification is effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 10, 1995, the Secretary determined that toluenediamine should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1995.

The rate of tax prescribed for toluenediamine, under section 4671(b)(3), is $5.59 per ton. This is based upon a conversion factor for toluene of 0.78, a conversion factor for methane of 0.26, and a conversion factor for ammonia of 0.34.

The petitioner is Air Products and Chemicals, Inc., a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 2921.51.10
CAS number: 95–80–7, 823–40–5, 2687–25–4, and 496–72–0

Toluenediamine is derived from the taxable chemicals toluene, methane, and ammonia and is a solid produced predominantly by a two-step process. The first step is mixed-acid nitration of toluene to produce dinitrotoluene. The second step is the catalytic reaction of hydrogen and dinitrotoluene to produce toluenediamine.

The stoichiometric material consumption formula for this substance is:

C_7H_8 toluene+1.5 CH_4 (methane)+ $2NH_3$ (ammonia)+4 O_2 (oxygen) ‰ $CH_3C_6H_3(NH_2)_2$ (toluenediamine)+$5H_2O$) (water)+1.5 CO_2 (carbon dioxide)

Toluenediamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 53.95 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–17381 Filed 7–14–95; 8:45 am]

BILLING CODE 4830–01–U–M

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

July 10, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0003.

Form Number: OTS Form 1601 (formerly OTS Form 366).

Type of Review: Revision of a Currently Approved Collection.

Title: Suspicious Activity Report.

Description: Information must be reported to the OTS, Department of Justice, Department of Treasury and other Federal agencies whenever a crime is committed at an OTS-regulated thrift. The information is used to determine if further investigation is warranted. Based on the investigation, a criminal, civil, or administrative action may be initiated.

Respondents: Savings and Loan Associations, Savings Banks.

Estimated Number of Respondents/Recordkeepers: 1,232.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 Hrs. Avg.

Frequency of Response: 2.25 Avg. Annually.

Estimated Total Recordkeeping Burden: 3,234 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–17420 Filed 7–14–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 10, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: New.

Form Number: OTS Form 1603.

Type of Review: Approval of Existing Collection.

Title: Measure Survey—Examination Process.

Description: This information collection is to obtain feedback on the examination process as part of the goals of the National Performance Review with respect to improving customer service.

Respondents: Savings and Loan Associations, Savings Banks.

Estimated Number of Respondents: 2,724.

Estimated Burden Hours Per Respondent: .25 Hrs. Avg.

Frequency of Response: Once per examination.

Estimated Total Reporting Burden: 681 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–17421 Filed 7–14–95; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 136

Monday, July 17, 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).

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Thursday, August 3, 1995, at 9:30 a.m. The meeting will be held at Eximbank in Room 1141, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: Reinventing Ex-Im Bank's Financing Indications and Commitments.

PUBLIC PARTICIPATION: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957, not later than Wednesday, August 2, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to Friday, July 28, 1995, Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3957 or TDD: (202) 535–3377.

MATERIAL WILL BE AVAILABLE ON JULY 24, 1995: If any person would like to get the material in advance of the Open Special Board Meeting, contact Barbara Lane, Room 1112, 811 Vermont Avenue, NW., Washington, DC, (202) 565–3957. If you would like the material faxed or mailed, leave your fax number or address on voice mail.

FURTHER INFORMATION: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957.

Fred H. Massy, Jr.,

Associate General Counsel.

[FR Doc. 95–17576 Filed 7–13–95; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 19, 1995, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. COO's Third Quarter FY 1995 Report

a. Client Server Update.

b. Third Quarter Financial Performance of FCA.

c. Exam Schedule and Funding Report.

C. New Business

1. Regulations

a. Eligibility and Scope of Financing [12 CFR part 613] (Proposed Rule).

Dated: July 12, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–17566 Filed 7–13–95; 12:07 pm]

BILLING CODE 6705–01–p

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 9:00 a.m., August 7, 1995.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

1:00 p.m. Meeting—Board of Regents

(1) Approval of Minutes—May 19, 1995; (2) Faculty Matters; (3) Departmental Reports; (4) Financial Report; (5) Report—President, USUHS; (6) Report—Dean, School of Medicine; (7) Comments—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: Bobby D. Anderson, Executive Secretary of the Board of Regents, 301/295–3116.

Dated: July 13, 1995.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17644 Filed 7–13–95; 3:20 pm]

BILLING CODE 5000–04–M

Corrections

Federal Register

Vol. 60, No. 136

Monday, July 17, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No. 950404087–5087–01]

RIN 0651–AA76

Changes to Implement 20–Year Patent Term and Provisional Applications

Correction

In rule document 95–9838 beginning on page 20195 in the issue of Tuesday, April 25, 1995, make the following corrections:

1. On page 20197, in the first column, in the fifth paragraph, in the fourth line, insert ''Official'' after ''Office''.

2. On page 20199, in the third column, in the first paragraph, in the first line, ''Section 1.136'' should read ''Section 1.316''.

3. On page 20207, in the third column, in the fourth paragraph, in the eighth line, ''35–year'' should read ''5–year''.

4. On page 20208, in the 2d column, in the 3d paragraph, in the 10th line, ''and'' should read ''a''.

5. On page 20209, in the first column, in the second paragraph, in the seventh line, ''field'' should read ''filed''.

6. On page 20210, in the second column, in the seventh paragraph, in the nineth and tenth lines, ''35 U.S.C. 11(b)(8).'' should read ''35 U.S.C. 111(b)(8).''

7. On page 20214, in the first column, in the first paragraph, in the fourth line, ''by'' should read ''be''.

8. On page 20217, in the third column, in the eighth paragraph, in the seventh line, ''time'' should read ''term''.

BILLING CODE 1505–01–D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

March 30, 1995

Correction

In notice document 95–8295 beginning on page 17322, in the issue of Wednesday, April 5, 1995, make the following correction:

On page 17323, in the table, under the heading Twelve-month restraint limit [1], the fifth line ''3,513,522 square meters.'' should read ''3,513,552 square meters.''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AGL-6]

Proposed Modification of Class E Airspace; Mount Vernon, IL

Correction

In proposed rule document 95–14173 beginning on page 30478 in the issue of Friday, June 9, 1995, make the following corrections:

On page 30478, in the second column, in the 12th line from the bottom, ''Comments'' should read ''Commenters''.

BILLING CODE 1505–01–D

Federal Register

Monday
July 17, 1995

Part II

Department of Energy

Bonneville Power Administration

1996 Proposed Wholesale Power Rate and Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

1996 Proposed Wholesale Power Rate and Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed wholesale power rates and transmission rates.

SUMMARY: *BPA File No:* WP–96 and TR–96. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation WP–96/TR–96.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review 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.

By this notice, BPA announces its proposed 1996 wholesale power rates and transmission rates to be effective on October 1, 1996, including new 2- and 5-year rates. BPA also will publish a separate notice in the **Federal Register** of its new transmission services terms and conditions.

DATES: Written comments by participants relating to WP–96/TR–96 must be received by October 2, 1995, to be considered in the Draft Record of Decision (ROD).

ADDRESSES: 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 immediately 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, S–700; 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; 1601 5th Avenue, Suite 1000; Seattle, WA 98101–1670 (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:

Table of Contents

I. Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's wholesale power and transmission 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. As noted above, this rate proceeding to adjust wholesale power rates has been combined with the proceeding for BPA's proposal to adjust transmission rates. This proceeding is governed by BPA's rule for general rate proceedings, § 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (hereinafter Procedures). These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

On December 28, 1994, BPA published a Notice of Intent to Revise Transmission Rates, 59 FR 66946 (1994), and Notice of Intent to Revise Wholesale Power Rates, 59 FR 66947 (1994). Subsequently, BPA published **Federal Register** Notices of Proposed Wholesale Power Rate Adjustment, 60 FR 8496 (1995), Proposed Transmission Rate Adjustment, 60 FR 8505 (1995), and Hearing and Opportunity for Public Comment Regarding Proposed Comparable Transmission Terms and Conditions, 60 FR 8511 (1995).

BPA's rate proceedings for 1995 and 1996, and the terms and conditions proceeding, began with a Prehearing Conference on February 13, 1995. The proceedings, originally in two dockets, WP–95/TR–95 (wholesale power and transmission rates) and TC–95 (transmission services terms and conditions), subsequently were separated into three different dockets as described below.

At the direction of the Hearing Officers at the February 13, 1995, prehearing conference, an additional prehearing conference was scheduled for March 15, 1995, and additional time was allowed for petitions to intervene. A **Federal Register** Notice for Additional Prehearing/Settlement Conference for March 15, 1995, 60 FR 11962 (1995), was published on March 3, 1995.

On February 14, 1995, BPA published a preliminary rate proposal in the **Federal Register**, 60 FR 8496. In that proposal, BPA noted that competitive forces are causing a fundamental and significant change in the Pacific Northwest wholesale power market. In light of these competitive forces, BPA determined that its initial proposal should include a 5-year rate as well as a 2-year rate. BPA anticipated that the work necessary to develop such a proposal would take until July 1995.

At the March 15, 1995, prehearing conference, the parties notified the hearing officers that they had been involved in negotiations for a settlement of issues that might affect the hearing schedule and requested additional time to complete the negotiations. The Hearing Officers acted on petitions to intervene received to that date and set a scheduling conference for March 22, 1995.

On March 17, 1995, most parties to the rate case signed a Settlement Agreement agreeing that BPA would propose to surcharge BPA's current rates for a 1-year period, October 1, 1995, through September 30, 1996, and to extend the Variable Industrial Power (VI) rate which was scheduled to expire on June 30, 1996, through September 30, 1996. The parties also agreed to conduct a separate subsequent process to establish a 2-year and a 5-year rate proposal, and a proposal for transmission services terms and conditions. The Settlement Agreement was an attempt to balance a number of interests, including concerns expressed by customer representatives to BPA's Power Sale Contract renegotiations.

In separate orders issued March 22, 1995, the Hearing Officers: (1) Adopted a service list for BPA's 1995 Wholesale Power and Transmission Rate Adjustment Proceeding, 1996 Wholesale Power and Transmission Rate Adjustment Proceeding, and 1996 Transmission Terms and Conditions Proceeding; and (2) ruled on other procedural matters concerning these proceedings. Copies of all orders, including the Order Establishing Schedules, may be obtained by contacting: Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212, (503) 230–4201.

In addition, the Hearing Officers ruled that intervenors who intervened in the dockets designated WP–95/TR–95 and TC–95 on or before March 15, 1995, were admitted as parties for all proceedings noted below.

As a result of the March 22, 1995, scheduling conference, the Hearing Officers issued an Order (the March 22 order) that divided the proceedings previously designated as WP–95, TR–95, and TC–95 into three separate dockets as follows:

A. The 1995 Wholesale Power and Transmission Rate Proceeding is designated WP–95/TR–95, and is a 90-day expedited rate proceeding conducted pursuant to Section 1010.10 of the Procedures. The proceeding began on May 1, 1995, when BPA issued its initial rate proposal and published it in the **Federal Register**, 60 FR 21132 (1995), and is scheduled to conclude on July 31, 1995, when BPA releases its Record of Decision (ROD). The proceeding proposes to extend current rates, including an extended VI rate, with a 4 percent surcharge, and establish the Southern Intertie Annual Cost rate and the Pacific Northwest Coordination Agreement (PNCA) rate.

B. The 1996 Wholesale Power Proceeding is designated WP–96 and the Transmission Rate Proceeding is designated TR–96, and both will be general rate proceedings conducted pursuant to Section 1010.9 of the Procedures. The March 22 Order established a hearing schedule beginning July 10, 1995, to establish BPA's power and transmission rates for the period beginning October 1, 1996, and new transmission services terms and conditions. The schedules adopted by the Hearing Officers for WP/TR–96 and TC–96 afford the parties a hearing process that encompasses a period of 8 months for establishment of BPA's new rate designs including new 2- and 5-year rates, and for establishment of transmission services terms and conditions.

C. The 1996 Transmission Services Terms and Conditions Proceeding is designated TC–96, and will be conducted pursuant to Section 1010.9 of the Procedures concurrently with WP–96/TR–96. The terms and conditions proceeding will be on the same schedule as the 1996 Wholesale Power and Transmission Rates proceedings.

BPA will file its 1996 initial rate proposal on July 10, 1995, and will publish its final ROD on April 30, 1996. The schedule established for WP/TR–96 provides an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. Consideration of comments may result in a final rate proposal differing from the rates proposed in this notice.

II. Purpose and Scope of Hearing

BPA is planning significant changes in the design of its power rates. BPA is proposing to offer a 2-year and a 5-year power rate for requirements service. To address the increasingly competitive market for power and energy services, BPA is proposing to offer a menu of unbundled (or separately priced) products in the 1996 rate case. BPA expects that most of the products offered will be available both under 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 BPA's 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. The 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.

BPA has assessed 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). The Draft Business Plan EIS was circulated for review and comment in July 1994. As a result of comments received, BPA prepared a Supplemental Draft Business Plan EIS, which was circulated for review and comment in February 1995. The Supplemental Draft Business Plan EIS evaluates several business structure alternatives. The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power and transmission services, and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's initial rate proposal falls within the range of alternatives evaluated in the Final Business Plan EIS. Comments on the Business Plan EIS were 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 1996 rates. The Business Plan EIS was completed in June 1995, and the Business Plan elaborating BPA's strategic action plans, will be released in the summer of 1995.

BPA's spending levels are developed as a part of its Business Plan, which includes a public comment process. They also are determined as a part of the Federal budget process. Consistent with the Draft Business Plan, the Administrator formally announced spending levels for Fiscal Years (FYs) 1996–2001 to the public on January 12, 1995. Since that time, BPA made the decision to reduce those spending levels by an average of $250 million per year for FYs 1996–2000. BPA currently is engaged in a budget process which will culminate in decisions on where these reductions will occur. BPA will continue to refine its strategic business objectives, goals, and spending levels, and inform the public accordingly, as part of its Business Plan development process. Therefore, except for the limited exceptions hereafter noted, spending level decisions will not be addressed in this rate case.

Pursuant to Section 1010.3(f) of the 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 in any way seek to visit the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's cost evaluation period of FY 1996 through FY 2001 and its test period revenue requirement for FYs 1997 through 2001. 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 for which no other review forum has been provided.

Comparable Transmission Access

In the Energy Policy Act of 1992, Congress approved amendments to the Federal Power Act that allow FERC to order access to transmitting utilities', including BPA's, systems. As a result, FERC has proposed standards for providing comparable transmission access, including developing guidelines for pricing such access. ''Comparable'' refers to FERC's undue discrimination analysis which is now focused on a determination of whether the transmitting utility is offering third parties access on the same or comparable terms and conditions, and at the same or comparable rates that the utility uses for itself. On March 29, 1995, FERC issued a Notice of Proposed Rulemaking, ''Promoting Wholesale Competition Through Open Access Non-discrimination Transmission Services by Public Utilities,'' and Supplemental Notice of Proposed Rulemaking, ''Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,'' (NOPR). 70 FERC 61,351 (1995). In that NOPR, FERC proposed to require all public utilities subject to FERC jurisdiction to file generic open access tariffs and to take transmission service, including ancillary services, for their own new wholesale electric sales and purchases under the open access tariffs. The NOPR also includes a supplemental proposed rule to permit the recovery of stranded costs associated with requiring open access tariffs.

In a process concurrent with the 1996 rate case, BPA is proposing terms and conditions of general applicability for Network Integration and Point-to-Point transmission service that are modeled on the tariffs included in the NOPR. (For further information about the terms and conditions process, please contact Mr. Dennis Metcalf, Transmission Rates Manager, (503) 230–3410 or Mr. Michael Hansen, Public Involvement and Information Specialist, (503) 230–4328.) In conjunction with the proposed transmission services, this transmission rate proposal includes two new rate schedules (the Network Integration Transmission and Point-to-Point Transmission rates) that correspond to the new tariffs. In addition to being available to wheeling customers, BPA is proposing that its full and partial requirements customers will use these new comparable transmission services and associated rates for the transmission portion of their wholesale power purchases from BPA. BPA's proposed Energy Transmission rate schedule also will be used to price short-term firm and nonfirm service under the Point-to-Point Transmission Service Tariff. To the extent practicable, BPA is proposing a transmission construct under which the transmission cost associated with purchasing power from BPA is the same as that associated with purchasing non-Federal power. To this end, the segmentation of BPA's transmission system has been revised as described in Section IV.C, below. In response to the NOPR, BPA also will offer the Ancillary Products and Services and associated rates necessary for the transmission of power from resources to load on the FCRTS.

Stranded Investment, Cost Recovery Options, and Process for Regional Discussion

If BPA is to succeed in its power marketing objectives, its power must be marketable in both the short- and the long-run. While many factors influence the marketability of power, the single most important factor is price: BPA's power will not be marketable if it is priced above market. BPA has succeeded in marketing its power over the past 50 years because, while priced at cost, its power was priced at or below market. In fact, the impetus for the Northwest Power Act was the threat of an impending regional ''civil war'' of litigation among contenders for access to BPA's low-cost Federal hydropower. However, while BPA enjoyed a 400 percent price advantage in the early 1980's when the Northwest Power Act was passed, that price advantage now has largely disappeared.

As a consequence of these market considerations, BPA has cut its costs dramatically and is proposing rates in its 1996 rate case that are calculated to meet market demand, while comporting with statutory ratemaking requirements. At their most rudimentary level, rates are a function of costs divided by sales. Hence, assuming costs do not change, greater sales result in lower rates, and less sales mean higher rates. However, significantly higher rates also result in less sales. The sales that BPA has forecasted for purposes of setting its proposed 1996 rates is based on the assumption that BPA's power rates are competitive and will thus achieve BPA's marketing objective to retain sales and thereby stabilize rates and cost recovery.

The power rates that BPA is proposing in its 1996 rate case may be as high as they can be before BPA suffers significant sales loss. A critical issue in the 1996 rate case will be whether BPA's power rates for each customer class are at, above, or below that sustainable revenue point. Misjudgment on that issue could result in significant sales loss by BPA. BPA currently believes its proposed rates are set at a level that will indeed meet market demand.

If, however, customers reduce the amount of purchases they make from BPA significantly below the sales that BPA projected it would make when it set its rates, BPA runs a serious risk of revenue underrecovery. In previous proceedings establishing rates, BPA has factored risk of sales loss into its establishment of rates. Consequently, for the last 6 years BPA's power rates have included an Interim Rate Adjustment Clause or Cost Recovery Adjustment Clause (IRA) that would come into play and increase BPA's rates if they were not recovering BPA's costs. There were two primary reasons BPA's rates included these clauses. First, BPA's rate directives require that the Administrator establish rates based on BPA's total system costs and to assure repayment of the U.S. Treasury over a reasonable number of years. Second, market conditions enabled BPA to include these clauses in its power rates, *i.e.*, BPA's power rates were still viable after consideration of the clauses.

In its 1996 rate proposal, BPA has set its net revenues for risk to factor in the possibility of load loss, and it has not included an IRA or similar clause in its power rates. The reason is that the wholesale power market currently demands certainty and stability in price. Power prices without those features, *i.e.*, prices that are subject to change, will not be viable in the current power market.

If BPA experiences, or is faced with the possibility of sales loss, but cannot increase its rates directly or conditionally (such as through an IRA) to recover its costs, the issue arises of what actions BPA should take to prudently address the cost recovery problem. From a rates perspective, BPA has an obligation to establish its rates—power and transmission rates combined—to assure cost recovery, among other objectives. As discussed below, that would suggest the alternative of looking to transmission rates to assure cost recovery. From a broader perspective, the Northwest Power Act charges the Administrator with the responsibility of implementing the Act in a sound and business-like

manner. That would suggest consideration of not just rate alternatives, but other alternatives as well, such as alternatives that might moderate sales loss in an amount that would not be significant to the degree of resulting in a BPA cost underrecovery.

BPA does not have a specific proposal concerning this issue to make at this time for purposes of the 1996 wholesale power and transmission rates proceedings. This issue is of such critical importance to BPA's cost recovery, its various statutory missions, its business relationship with its customers, and its relationship with non-customers such as fish and wildlife interests, that BPA believes it would be intolerable if, without the benefit of advance regional discussion, it were to make a formal rate case proposal and then limit dialogue on the issue by taking comment only through the formal process of the rate case. If the appropriate solution to the problem turns out to be a rates solution, prudent business judgment dictates that BPA first should have engaged its customers and interested third parties in a consensus-seeking dialogue on the issue. The dialogue should be sufficiently long to consider and evaluate parties' opinions with a view to forging consensus, and short enough to integrate the results of the discussions in the Administrator's final establishment of rates at the conclusion of this rate case, if that is necessary.

Consequently, BPA hereby advises interested parties that it is discussing this cost recovery issue with its customers and interested third parties throughout the region. Initial discussions already have occurred in the context of negotiations over new power sales contracts. Parties wishing to be advised of future public discussions should contact BPA Corporate Communications at the address listed in Section I of this notice. BPA anticipates that discussions on rate options will conclude by the end of July or early August 1995. In the event the discussions result in a rate proposal by BPA, concluding discussions by the beginning of August should enable BPA to prepare and publish its rate proposal by October of 1995. The ensuing section 7(i) process would be timed to conclude so that the outcome could be integrated into the rates finally established at the conclusion of BPA's 1996 wholesale power and transmission rate proceedings. Consequently, pending resolution of this cost recovery issue, all transmission and wholesale power rates proposed at this time should be considered subject to a possible cost recovery adjustment.

Apart from the possibility of some sort of a negotiated phased load loss or other contractual solution that avoids the cost recovery problem, BPA currently is considering two rate options to deal with the cost recovery issue. Each option is described below. The descriptions are provided not as a BPA proposal, but rather to enhance understanding of the issues and the expected discussion of them.

In the first rate option, BPA would designate a portion of its proposed power rates as a charge to mitigate the revenue exposure BPA faces from potential loss of sales to alternative suppliers. All customers would pay that amount whether they continued to purchase power from BPA or not. The charge would be collected from utility customers that leave BPA in whole or in part, by terminating or by reducing their load on BPA through Section 12 of the utility power sales contract, and from Direct Service Industry (DSI) customers that reduce or eliminate load on BPA for any reason under the DSI contracts. For example, the amount could be 2 mills of a proposed 24 mill power rate—the assumption being that, if the customer purchasing at 24 mills departs, BPA may only recover 22 mills, leaving 2 mills ''stranded.'' This stranded cost component would be applied to the rates of all power customers, similar to a customer charge. If the customer decides to depart, then the customer may avoid the 22 mill power rate but would continue to pay the 2 mill customer charge on the transmission component of the departing customer's power rates (if the customer continues to purchase some part of its requirements from BPA) and wheeling rates. BPA' DSI customers may be anticipated to argue that this option runs counter to their contractual rights to take load off BPA on 1 year's notice if they pay BPA ''unrecoverable costs'' as defined through their contractual relationship with BPA.

The second rate option (the cost recovery surcharge option) takes a different approach. This option does not target recovery only from customers that terminate their contracts or reduce their load, but rather would directly or conditionally impose a ''cost recovery'' surcharge on the transmission or wheeling rates of all existing and former power customers regardless of their then-current purchasing status. This approach is premised on the fact that BPA is obligated to recover all costs, not just those that are ''stranded'' by departing customers. The basis for the transmission surcharge in this option is that it is designed to recover costs that otherwise cannot be recovered through power rates, from all customers that have benefited from the power system, consistent with BPA's statutory obligation.

The cost recovery surcharge would recover the amount of costs that, while otherwise properly allocable to power rates, cannot be recovered in a timely fashion through power rates. The surcharge would be developed in a manner that is equitable in relation to past power usage by BPA's requirements power customers in the Pacific Northwest, including residential exchange power customers. Such equitability could be, but would not necessarily be, achieved as follows: A first step would be to determine the average annual amount of Federal power purchased by each requirements power customer of BPA during the period 1980 to 1994 or some other relevant period. All customers' annual average purchases then would be summed, and each customer's percentage share of the total would be determined. Each individual customer's percentage then would be multiplied by the total amount of the cost recovery surcharge amount (an amount that would vary with BPA load loss) to determine the customer's surcharge recovery responsibility. The adder to transmission rates could be designed to assure that each customer directly or indirectly pays the amount of its surcharge responsibility.

Under both options, the payment could be indirect where the customer is served only by another power supplier that uses the FCRTS for any purpose. In that case, the power supplier would be assessed the surcharge or customer charge by BPA, with the expectation that the power supplier would recover the cost from the former BPA power customer. Power suppliers falling into that category are hereby put on notice of the possibility that BPA may levy such a charge. This notice is provided in the event they wish to structure pricing arrangement with the customer that fully recovers, or pass through, BPA's transmission charge.

III. Public Participation

The procedural history of this rate proceeding is described in Section I, above. Petitions to intervene as parties have been received and acted upon by the Hearing Officers.

BPA continues to conduct workshops on subjects relevant to its ratemaking. The purpose of the workshops is to identify, simplify, and reduce the number of issues that might become part of the 1996 rate case, and to reduce the amount of discovery normally required during the formal rate proceedings.

Opportunity is provided for workshop participants to address the impacts of BPA's proposed 5-year rate, transmission issues, risk mitigation, and rate design issues. The workshops provide opportunity for informal public comment on issues prior to the formal hearing process.

BPA's procedures allow submission of 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 Draft ROD if they are received by October 2, 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 Addresses Section of this notice. In addition, BPA will hold several public field hearings in the Pacific Northwest Region.

Public field hearings are an opportunity for participants to have their views included in the official record. Participants may appear at the field hearings and present oral testimony. Written transcripts will be made at all of the field hearings. The transcripts of these hearings will be part of the record upon which the Administrator makes final rate decisions. Following are the tentative dates and locations for the field hearings. All of the field hearings are scheduled to begin at 7 p.m. Registration begins at 6:30 p.m. Confirmation of these hearing dates and times will be made through mailings and public advertising or by calling BPA Corporate Communications at the telephone number listed in Section I above.

September 19, 1995
Best Western Burley Inn, 800 N. Overland Avenue, Burley, Idaho 83318
September 20, 1995
Cavanaugh's, Ballroom B, 200 North Main, Kalispell, Montana 59901
September 21, 1995
Red Lion GateWay, 3280 Gateway Drive, Springfield, Oregon 97477
September 26, 1995
Howard Johnson Plaza Hotel, Whidbey-Camano Room, 3105 Pine, Everett, Washington
September 27, 1995
Cavanaugh's, East 110 Fourth Avenue, Spokane, Washington 99202
September 28, 1995
Pasco Red Lion, Design Room, 2525 North 20th, Pasco, Washington 99301

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 thereon, 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 a decision.

The Administrator will develop final 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 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 wholesale power and transmission rates together with the record with the Federal Energy Regulatory Commission (FERC) for confirmation and approval. Consideration of comments and more current data may result in the final rates differing from the rates proposed in this Notice.

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.

IV. Major Studies

The studies that have been prepared to support the 1996 initial proposal will be served on all parties of record and will be available for examination on or about July 10, 1995, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th, Portland, Oregon. The studies and documents are:

A. Loads and Resources Study and Documentation
B. Revenue Requirement Study and Documentation
C. Segmentation Study
D. Marginal Cost Analysis Study and Documentation
E. Wholesale Power Rate Development Study and Documentation
F. Section 7(b)(2) Rate Test Study and Documentation
G. Transmission Rate Design Study
H. Wholesale Power and Transmission Rate Schedules

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.'')

A. Loads and Resources Study

BPA's forecasts of regional loads by customer group are the basis from which public utility and 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 conservation programs and utility purchases from alternative (non-BPA) power suppliers

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 DSI purchases from alternative (non-BPA) power suppliers. Forecasted non-aluminum DSI purchases from BPA are prepared by analyzing historical and technical plant information, forecasted market conditions, and potential purchases from alternative power suppliers.

The ratemaking load/resource balance represents BPA's projected service to firm loads during the test years under 1930 water conditions. The ratemaking load/resource balance is used in the calculation of the supply of surplus firm power in the region and on the Federal system during the test period. A related hydro regulation study incorporates the operation of thermal plants, exports and imports of power, projected resource acquisitions, and system constraints such as ''flow augmentation'' for fish mitigation. For this proposal, a 50-year hydro study was completed, which includes assumptions regarding the flow augmentation. The hydro study starts in August 1995. The 50-year study determines expected nonfirm energy availability for the region based on 50 years of streamflow data.

B. Revenue Requirement Study

The BPA 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 of 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 a 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. Separate generation and transmission revenue requirements are developed in the Revenue Requirement Study. 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 at proposed rates to recover the Federal investment in the FCRPS over the allowable repayment period. 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 1996 Initial Rate Proposal is based on cost and revenue estimates for FYs 1997–2001. The cost estimates include an undistributed reduction averaging $250 million for each year. This reflects BPA's decision to reduce revenue requirements to enable it to set rates at a level which recovers its costs but also meets current market conditions (although specific program and/or organizational spending cuts have not been finalized). This study also includes planned net revenues to mitigate financial risk, to ensure that cash flows are adequate to demonstrate timely repayment of the Federal investment including irrigation assistance, as well as to finance a portion of BPA's capital investments. 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 program costs.

Also part of the Revenue Requirement Study is a risk analysis that evaluates the impact that various economic and generation resource capability conditions could have on BPA's ability to make annual U.S. Treasury payments during the rate test period. The risk analysis measures the financial risks surrounding the revenue and expense forecasts used to set rates. It also is used to determine the amount of cash required for risk that is needed to meet the target Treasury payment probability, and is used to determine the Treasury payment probability resulting from inclusion of cash for risk in the revenue requirement.

C. Segmentation Study

BPA operates and maintains the FCRTS to provide transmission services throughout the region. Because most services do not require the use of the entire system, BPA has historically segmented the FCRTS into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Fringe; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; and delivery segments for public agency, DSI, and IOU customers. Although BPA is proposing different segmentation in its initial rate proposal, the Segmentation Study for the initial rate proposal will maintain the historic segments. Re-segmentation of the revenue requirement for the initial proposal will be done as part of the Transmission Rate Design Study.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services BPA provides on such facilities. 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 are divided among distinct services for use in developing the Formula Power Transmission rate. 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.

In this proceeding, BPA proposes to reclassify the BPA transmission facilities formerly classified as fringe to the network segment to reflect the realignment of the transmission business. In addition, the former IOU Delivery segment is now included in the network segment. The definition of Delivery facilities also has been revised. BPA plans to reflect these changes to segmentation in the Segmentation Study in the supplemental rate proposal.

D. Marginal Cost Analysis

The Marginal Cost Analysis (MCA) estimates the marginal cost that BPA incurs to supply peak demand on heavy load hours, and 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) guarantee a maximum rate of delivery of energy (demand); (3) provide energy at guaranteed prices; and (4) 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 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 marginal 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 peaking demand on heavy load hours, and energy at different times. These estimates provide the basis for determining the generation component of BPA's demand charge. The estimates also provide the basis for the seasonal and hourly time-differentiation of energy charges, 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 suggest that BPA's rates be different for six seasons. The results also suggest that BPA's energy rates be differentiated between heavy and light load hours, which was not a feature of previous rate designs. The analysis does not include any quantitative estimate of marginal costs incurred on the transmission system.

E. 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 development is a two step process. First, BPA allocates the test period generation revenue requirements and then adjusts these results to reflect various rate design objectives and statutory requirements.

1. Allocation of BPA's Generation Revenue Requirements

BPA allocates the test year generation revenue requirements to customer classes based on the use of specific services by each customer class and the rate directives of the Northwest Power Act.

BPA is proposing to recognize three different categories of generation costs as part of its effort to unbundle generation services: peak demand, rights to energy, and delivered energy. Generation energy cost allocations reflect the relative use of services and resources needed to serve load. Costs recovered from the sales of peak demand and rights to energy products are treated as a credit against BPA's generation costs prior to allocating the generation revenue requirements.

2. Adjustments to Allocated Costs

The remaining steps in the rate design process use the allocated costs developed in the Cost of Service Analysis (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:

a. 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. Because no generation costs are allocated to nonfirm energy (NF) service, the generation portion of forecasted NF revenues are credited against costs allocated to firm loads.

b. 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.

c. 7(c)(2) Adjustment

The rates applicable to the DSIs are set according to the rate directives contained in Section 7(c) of the Northwest Power Act. In 1987, BPA adopted a methodology for setting the DSI rate known as the IP-PF (Industrial Firm Power-Priority Firm Power) rate link. The link is essentially a formula that quantifies the rate directives. The components of the formula are the typical margin, a character of service adjustment, a value of reserves credit, and an inflation adjustment. The link has been used to set rates since the 1987 rate case. However, it will expire with the expiration of the current VI rate contract on September 30, 1996, and cannot be used to set rates in this rate proceeding.

Therefore, BPA is recalculating the factors of the link. The first factor is the typical margin that BPA's preference customers include in their retail industrial rates. The second factor is the character of service adjustment that accounts for the fact that a portion of the DSI load is not served as firm on a planning basis. The third factor is the credit that reflects the value of reserves provided to BPA by its restriction rights on the DSI load. In this proposal an inflation adjustment is not included because its purpose in the current link is to escalate the other factors to each rate case so they do not have to be recalculated. It is not necessary to include an inflation adjustment because new values are being determined in this rate proceeding.

Using the factors described above, a DSI rate calculation is performed that links it to the preference customer rate. The revenues from this linked DSI rate are less than the costs initially allocated to the DSIs. The difference is called the ''7(c)(2) delta'' and is allocated to other power customers.

The foregoing list of rate design adjustments identifies some of the major cost adjustments and is not intended to be all-inclusive. As a final step in rate design, BPA develops seasonal and diurnally differentiated energy charges based on allocated costs and scaled based on the results of the MCA. The final step in the WPRDS is to combine the revenues projected for energy, capacity, rights to energy, and transmission. These total revenues by customer class are divided by the relevant billing determinants to calculate average rates.

3. Changes in Rate Design

A major change that BPA is proposing is the introduction of separate 5-year duration rate schedules for PF, IP, and NR rates. Other rate design changes include the elimination of an Interim Rate Adjustment, changes to demand charges, development of a composite rate for some small customers, changes to the Low Density Discount, elimination of the Irrigation Discount, changes to the unauthorized increase charge, changes to the NF contract rate, and development of a rate phase-in adjustment for full or metered requirements customers.

a. 5-Year Rate

BPA is proposing to introduce a 5-year rate, available by subscription for all purchasers under the PF, IP, and NR rate schedules. The 5-year duration is available for power purchases, as well as related unbundled products, to purchasers under both the current and new power sales contracts. The longer-term rate is intended to provide customers with price certainty for the products needed to supply their entire electricity portfolio. BPA will continue to offer a 2-year rate for products and services. The 5-year rate will have the same seasonal and diurnal shape as the 2-year rate, and will be constant over the 5-year period. In most cases, customers will be able to choose to place a portion of their load on the 2-year rate and a portion on the 5-year rate. Utilities serving New Large Single Loads (NLSLs) must elect to have their NLSLs served at either the 2-year or the 5-year rate. The 5-year rate will not be available to utilities participating in the exchange under section 5(c) of the Northwest Power Act.

b. Power Demand Charges

BPA is proposing a number of changes to the demand charge. Customers will be billed for transmission service for their Federal power deliveries, assessed under the appropriate transmission rate schedules. Further discussion of the proposed transmission rates is in Section E, below. There also will be a ''generation'' demand charge in the PF, IP, NR, and FPS rate schedules. This charge will be assessed to power purchases that occur during the same hour as the transmission system peak. BPA has proposed to eliminate the Demand Ratchet included in previous rate cases. It has not proved to be effective, and with the other demand rate design changes, is unnecessary.

c. The Composite Rate

A composite rate is being proposed for utility purchasers who choose to purchase their entire power requirements from BPA at the composite rate under the PF–96.5 rate schedule. Only customers whose forecasted average annual energy loads during the 5-year purchase period are 25 average annual megawatts or less are eligible to purchase at this rate. The composite rate is a weighted average rate based on the relative cost of generation demand, energy, load shaping and load regulation. Customers will be billed for transmission service for their Federal power deliveries, assessed under the appropriate transmission rate schedules.

d. Low Density Discount

BPA is proposing to change the eligibility criteria and calculation of the Low Density Discount. In determining eligibility, the total electric energy requirement now will include nonfirm sales to firm retail and nonfirm loads. The calculation proposes using a sliding scale of percentage discounts based on both (1) the utility's number of customers per pole-mile and (2) the utility's ratio of total electric energy requirements to investment. Separate discounts resulting from each of the two ratios will be added to result in the utility's total discount, which is capped at 7 percent. The proposed discount will apply to total power purchases under both current and new power sales contracts, and will not apply to transmission-related charges.

e. Unauthorized Increase for Power Sales

BPA proposes to change the unauthorized increase charge to eliminate seasonal differentiation. This reflects treating the charge as a penalty rate, applicable to purchasers taking demand and energy in excess of their contractual entitlement, rather than a cost-based rate. This unauthorized increase charge will apply both to current and new power sales contracts. In addition, there is an unauthorized deviation charge for partial requirements purchases purchasing under the new power sales contract. This rate is the same as the unauthorized increase charge.

f. Nonfirm Rate Schedule Contract Rate

BPA also is proposing to modify the contract rate in the NF rate schedule. The contract rate will be equal to the average cost of nonfirm energy.

g. Rate Phase-in Adjustment

BPA is proposing a rate phase-in mitigation for full or metered requirements preference customers, who, as a result of all of BPA's rate design changes, will see a rate increase greater than 9 percent. This phase-in adjustment is available only to customers who choose to purchase all of their power from BPA at the 5-year rate, and meet other eligibility requirements.

4. Unbundled Products

For service under both the 1981 and 1996 power sales contracts, BPA is proposing separate charges under the PF, IP, and NR rate schedules for firm energy demand, load shaping, partial load shaping, and load regulation. Load shaping allows BPA to meet customer load variations from forecasts. Load regulation follows variations in the customers' loads on an instantaneous basis. BPA is unbundling, i.e., separately pricing, many products, generally available under two new rate schedules.

5. Ancillary Services

BPA is proposing the Ancillary Products and Services (APS) rate schedule for those services necessary to support the transmission of electric power from resources to load on the FCRTS. These services are: control area reserves for resources; control area reserves for interruptible purchases; scheduling and dispatch; load regulation, and transmission losses.

6. Firm Power Products and Services

BPA also has developed the Firm Power Products and Services (FPS) rate schedule. 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 various unbundled products. 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.

F. 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 4 years, are no higher than the costs of power to those customers would be 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 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 4 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, if any, is used as an adjustment to the allocated costs in the rate case test period.

The Section 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The Priority Firm rate applied to the general requirements of the 7(b)(2) customers has been reduced by the 7(b)(2) amount while all other rates, including the PF rate applied to customers purchasing under the Residential and Small Farm Power Exchange program, have been increased by an allocation of the 7(b)(2) amount.

G. Transmission Rate Design Study (TRDS)

For the first time, rates for Federal and non-Federal use of the transmission system are developed in the TRDS. BPA's construct in developing the proposed transmission rates is to make transmission services available to power customers, wheeling customers, and its own power business at the same terms, conditions, and rates.

The transmission service required for BPA power sales is offered under the new Network Integration (NT) rate and Point-to-Point (PTP) rate. These rates also are available for transmission of non-Federal power. BPA's full requirements customers must take transmission service at the NT rate; other BPA power customers may choose the NT or PTP rate. Consistent with the power rates, 2-year and 5-year NT and PTP rates have been developed. The 2-year NT and PTP rate may be used by power customers only if they are not purchasing power under the 5-year power rates. The remaining transmission rates are developed for a 2-year rate period only.

As part of implementing the transmission rate construct, the segmentation of BPA's transmission system also is being revised: BPA transmission facilities formerly in the Fringe now are included in the Network segment. Facilities at 34.5 kV and below are classified now as Delivery; facilities that are above 34.5 kV are segmented to the Network. Charges for Utility Delivery and DSI Delivery are developed in the TRDS to apply to all power delivered over these facilities. This new segmentation is performed in the TRDS for the initial rate proposal; the Segmentation Study should reflect the new segmentation in the supplemental proposal.

To calculate rates in the TRDS, the segmented transmission revenue requirements are allocated to Federal and non-Federal power forecasted to use the FCRTS. The factors for allocating Network cost to loads are the billing determinants for the Network transmission services. Prior to allocating Network cost, BPA identifies the cost associated with transmission load shaping, a feature of Network Integration service, and removes it from Network cost. After allocation, this transmission load shaping cost is added to the costs to be recovered from the NT rate. Southern Intertie and Northern Intertie costs are allocated based on forecast energy use.

Rate charges based on the allocated costs are calculated, and individual rate schedules are designed. In addition to the NT and PTP rates, all of BPA's traditional rates are calculated. BPA also is proposing the Advance Funding rate to allow BPA to recover the cost of specified transmission facilities through advance payment. Finally, BPA is proposing a Reservation Fee for Transmission Capacity, and a Reactive Power Charge that takes the place of the current Power Factor Adjustment.

V. Wholesale Power Rate Schedules and Transmission Rate Schedules

A. Introduction

The rate schedules are divided into three sections. The first section (Section C below) contains the wholesale power rate schedules. The second section (Section D below) contains the transmission rate schedules. The third section (Section E below) is the combined GRSPs for power and transmission rates.

The proposed wholesale power and transmission rate schedules were prepared in accordance with BPA's statutory authority to develop rates, including the BPA 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 Northwest Power Act, 16 U.S.C. 839 (1982).

The 1996 proposed wholesale power and transmission rate schedules and the GRSPs associated with those rate schedules will supersede BPA's 1995 rate schedules (which BPA proposes to become effective October 1, 1995) to the extent stated in the Availability section of each 1996 rate schedule. BPA proposes that its wholesale power and transmission rate schedules, including the GRSPs associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. BPA currently anticipates that it will request FERC approval of its revised rates effective October 1, 1996.

B. Summary of Wholesale Power Rate Schedules

WHOLESALE POWER RATE SCHEDULES

PF–96	Priority Firm Power Rate.
NR–96	New Resource Firm Power Rate.
IP–96	Industrial Firm Power Rate.
VI–96	Variable Industrial Power Rate.
NF–96	Nonfirm Energy Rate.
RP–96	Reserve Power Rate.
PS–96	Power Shortage Rate.
FPS–96	Firm Power and Services Rate.
APS–96	Ancillary Products and Services Rate.

A summary of the proposed 1996 Wholesale Power Rate Schedules is provided below. Each rate schedule includes sections specifying the customer class and the service available under the rate schedule, the rates for the products and services offered under the schedule, the applicable billing factors, applicable transmission rate schedules, and other special provisions for rate

adjustments, such as any discounts or penalties that apply to that rate schedule.

1. Priority Firm Power Rate (PF–96.2 and PF–96.5)

The proposed PF–96.2 rate schedule would be available for a 2-year period beginning October 1, 1996, and would replace the PF–95 rate schedule. The proposed PF–96.5 rate schedule would be available for a 5-year period beginning October 1, 1996. Power is available under the proposed PF–96 rate schedule to public bodies, cooperatives, and Federal agencies. Utilities participating in the residential exchange under section 5(c) of the Northwest Power Act may purchase power only under PF–96.2. Priority Firm power must be used to meet firm loads within the Pacific Northwest. The proposed PF rate consists of seasonally and diurnally differentiated energy charges, and charges for demand, load shaping, load regulation, and transmission. Rate adjustments include a Conservation Surcharge, Low Density Discount, Energy Return Surcharge, Deviation Adjustment, Phase-In Mitigation, Preschedule Change Charge, Reactive Power Charge, Transitional Service, Unauthorized Increase, and Industrial Exemption and Curtailment.

2. New Resource Firm Power Rate (NR–96.2 and NR–96.5)

The proposed NR–96.2 rate schedule would be available for a 2-year period beginning October 1, 1996, and would replace the NR–95 rate schedule. The proposed NR–96.5 rate schedule would be available for a 5-year period beginning October 1, 1996. The proposed NR–96 rate schedules are available to investor-owned utilities under net requirements contracts for resale to consumers, and to publicly owned utilities for New Large Single Loads. The proposed NR rate consists of seasonally and diurnally differentiated energy charges, and charges for demand, load shaping, load regulation, and transmission. Rate adjustments include a Conservation Surcharge, Low Density Discount, Energy Return Surcharge, Deviation Adjustment, Phase-In Mitigation, Preschedule Change Charge, Reactive Power Charge, Transitional Service, and Unauthorized Increase.

3. Industrial Firm Power Rate (IP–96.2 and IP–96.5)

The proposed IP–96.2 rate schedule would be available for a 2-year period beginning October 1, 1996, and would replace the IP–95 rate. The proposed IP–96.5 rate schedule would be available for a 5-year period beginning October 1, 1996. The proposed IP–96 rate schedules are available to BPA's DSI customers for firm power to be used in their industrial operations. The proposed IP rate consists of seasonally and diurnally differentiated energy charges, and charges for demand, load shaping, load regulation, and transmission. Rate adjustments include a Conservation Surcharge, Curtailment Charge, Deviation Adjustment, First Quartile Discount, Operating Reserves Credit, Preschedule Change Charge, Reactive Power Charge, and Unauthorized Increase.

4. Variable Industrial Power Rate (VI–96)

The proposed Variable Industrial Power (VI–96) rate schedule would replace the VI–95 rate. The proposed VI–96 rate is available to BPA's DSI customers who enter into a separate variable rate contract with BPA for power to be used in their aluminum and nickel smelting operations. Purchasers under this rate schedule must first elect service under the proposed IP rate schedule for either the 2-year period or the 5-year period, both beginning October 1, 1996. The variable rate will be based on the IP rate under which the purchaser has elected service. The demand charge for the variable rate will be the same as in the applicable IP rate, but the monthly energy charge will vary with the price of the metal used in the purchaser's smelting operation. Because BPA plans to hedge the risk of aluminum or nickel price fluctuations, individualized variable rates will be designed at the time each purchaser enters into a variable rate contract. The contracts will be designed so that BPA will receive revenues, either from the DSI or the hedging financial institution, equal to those that would be received under the IP–96 rate schedule. The purchaser can choose to have an initial variable rate formula in effect for any period from 1 to 2 years under the 2-year rate option or from 1 to 5 years under the 5-year rate option. At the expiration of the rate formula, a new one can be established based on then-prevailing market conditions for aluminum or nickel, or the purchaser may purchase power under the applicable IP rate. Rate adjustments include a Preschedule Change Charge, Reactive Power Charge, and Unauthorized Increase.

5. Nonfirm Energy Rate (NF–96)

The proposed Nonfirm Energy (NF–96) rate schedule replaces the NF–95 rate. The proposed NF–96 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 proposed NF–96 rate schedule includes four rate components: a flexible Standard rate; a flexible Market Expansion rate; a flexible Incremental rate; and a fixed Contract rate. Adjustments include a Guaranteed Delivery, Preschedule Charge, and Reactive Power Charges. The NF Rate Cap continues to apply to all sales under the proposed NF–96 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 Average System Cost and California fuel costs.

6. Reserve Power Rate (RP–96)

The proposed Reserve Power (RP–96) rate schedule replaces the RP–95 rate schedule. The proposed 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 RP–96 rate consists of a demand charge, transmission charges, and seasonally and diurnally differentiated energy charges. Adjustments include a Reactive Power Charge.

7. Power Shortage Rate (PS–96)

The proposed Power Shortage (PS–96) rate schedule is available for sales under the Share-the-Shortage agreement or when BPA arranges for purchased energy at the request of a Northwest customer. BPA is not obligated to make Shortage Power available or to broker power under the proposed PS–96 rate schedule unless specified by contract. The proposed PS rate contains two rate components: a flexible Power Rate not to exceed 100 mills/kWh; and a flexible Brokering Rate not to exceed 1 mill/kWh. Adjustments include the Energy Return Surcharge, Deviation Adjustment, and Reactive Power and Unauthorized Increase Charges.

8. Firm Power and Services Rate (FPS–96)

The proposed Firm Power Products and Services (FPS–96) rate schedule will be available for the purchase of Firm Power and certain unbundled products including supplemental control area services, shaping and load factoring services, and resource support services. Firm power products and

services that may be marketed by BPA under the proposed FPS–96 rate schedule are intended to be priced so that BPA has the flexibility to provide purchasers with customized products and services that are not available under other rate schedules. The proposed FPS–96 rate contains fixed and negotiable rates for Firm Power. The rates for products and services other than firm power may be negotiated between BPA and the purchaser. The proposed FPS–96 rate schedule supersedes the SP–93 and CE–95 rates.

9. Ancillary Products and Services Rate (APS–96)

The proposed Ancillary Products and Services (APS–96) rate schedule will be available for the ancillary services that are necessary to support the firm or nonfirm delivery of power that uses FCRTS facilities. The following ancillary services may be purchased under the proposed APS–96 rate: control area reserves for resources; control area reserves for interruptible purchases; load regulation; transmission losses; and scheduling and dispatch. The proposed APS–96 rate also will be available for ancillary services of a similar nature that FERC may order BPA to provide pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k).

C. Wholesale Power Rate Schedules

These schedules and GRSPs shall be applicable to BPA's 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 will be effective for extended periods of time. The GRSPs are an integral part of each rate schedule.

Schedule PF–96.2

Priority Firm Power

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest for a 2-year period, October 1, 1996, through September 30, 1998. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers for direct consumption. This schedule is available for all PF power purchases not subscribed at the PF–96.5 rate.

Rates in this schedule are applicable to purchases under requirements sales contracts effective on or before September 30, 1996 (hereinafter termed the ''*1981*'' contracts, although some are actually dated ''1984'' or later), and under contracts that may be effective on or after October 1, 1996 (''*1996*'' contracts). Customers that purchase under 1981 contracts may buy either firm power or capacity without energy under this rate schedule. Customers that purchase under 1996 contracts may buy only firm power. These and other products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs). Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

This rate schedule is also available to utilities participating in the residential and small farm exchange under section 5(c) of the Northwest Power Act pursuant to their Residential Purchase and Sale Agreement. All Priority Firm Power made available to utilities participating in the section 5(c) exchange shall be purchased under Section E of this rate schedule.

This rate schedule supersedes Schedule PF–95, which went into effect on October 1, 1995. Sales under the PF–96.2 rate schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for each PF product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified in separate sections of the rate schedule. The rates for each customer designation are identical except for Section E; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains five subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to Metered Requirements customers who purchase under a ''1981'' power sales contract.

Section II.B Applies to Full Requirements customers who purchase under a ''1996'' power sales contract.

Section II.C Applies to Computed Requirements customers who purchase under a ''1981'' power sales contract.

Section II.D Applies to Partial Requirements customers who purchase under a ''1996'' power sales contract.

Section II.E Applies to customers who purchase under a Residential Purchase and Sale Agreement (RPSA).

A. PF Rates for Metered Requirements Customers who Purchase Under a ''1981'' Power Sales Contract

Metered Requirements customers purchasing power under a ''1981'' power sales contract are required to buy Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. Priority Firm Power

1.1. Rates

1.1.1 Demand Charge

Applicable months	Rate
All months of the year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 2-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.2. HLH Billing Energy

For purchasers of 2-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's HLH Measured Energy minus the Purchaser's 5-year HLH Billing Energy.

1.2.3. LLH Billing Energy

For purchasers of 2-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power

Purchaser's LLH Measured Energy minus the Purchaser's 5-year LLH Billing Energy.

2. Full Load Shaping

2.1. Rate

0.30 mills/kWh multiplied by the Utility Factor.

2.2. Billing Factor

For purchasers of 2-year power only.
Purchaser's total HLH and LLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load shaping under the PF–96.2 rate schedule.

3. Load Regulation

3.1. Rate
0.25 mills/kWh multiplied by the Utility Factor.
3.2. Billing Factor
For purchasers of 2-year power only.
Purchaser's total HLH and LLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load regulation under the PF–96.2 rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Low Density Discount	II.I.
Reactive Power Charge	II.N.
Transitional Service	II.P.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost contributions	II.B.
Utility factor	II.R.

B. PF Rates for Full Requirements Customers who Purchase Under a ''1996'' Power Sales Contract

Full Requirements Purchasers purchasing power under a ''1996'' power sales contract are required to buy Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 2-year power only.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.2. HLH Billing Energy

For purchasers of 2-year power only.
Purchaser's HLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's HLH Measured Energy *minus* the Purchaser's 5-year HLH Billing Energy.

1.2.3. LLH Billing Energy

For purchasers of 2-year power only.
Purchaser's LLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's LLH Measured Energy *minus* the Purchaser's 5-year LLH Billing Energy.

2. Full Load Shaping

2.1 Rate

0.30 mills/kWh.

2.2 Billing Factor

For purchasers of 2-year power only.
Purchaser's Retail Load minus the Purchaser's Industrial Exemption, if any.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load shaping under the PF–96.2 rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For purchasers of 2-year power only.
0.25 mills/kWh multiplied by Purchaser's Retail Load.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load regulation under the PF–96.2 rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation surcharge	II.A.
Deviation adjustment	II.D.
Industrial exemption/curtailment	II.H.
Low density discount	II.I.
Reactive power charge	II.N.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost contributions	II.B.

C. PF Rates for Computed Requirements Customers who Purchase Under a ''1981'' Power Sales Contract

Actual Computed Requirements Purchasers purchasing power under a ''1981'' power sales contract are required to buy Load Shaping and Network Integration Transmission service at the Network Integration (NT) rate. Planned and Contracted Computed Requirements Purchasers are not allowed to buy Load Shaping. Load Regulation is required if the customer is in BPA's load control area, regardless of whether the customer is purchasing on the basis of actual, planned, or contracted computed requirements. Planned and Contracted Computed Requirements customers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 2-year power only.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.
For purchasers of a combination of 2-year and 5-year power
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load *minus* the Purchaser's 5-year Billing Demand.

1.2.1.2 Without Load Shaping

For purchasers of 2-year power only.
Purchaser's Computed Peak Requirement.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's Computed Peak Requirement *minus* the Purchaser's 5-year Billing Demand.

1.2.2. Billing Energy

1.2.2.1 For Purchasers of 2-Year Power Only

For Energy Delivered September–March

The HLH Billing Energy is the Purchaser's HLH Measured Energy.
The LLH Billing Energy is:
a. 76 percent of the Purchaser's Measured Energy, *plus* 24 percent of the Purchaser's Computed Energy Maximum, *minus*
b. The Purchaser's HLH Measured Energy.

For Energy Delivered April–August

The HLH Billing Energy is the Purchaser's HLH Measured Energy.
The LLH Billing Energy is:
a. 63 percent of the Purchaser's Measured Energy, plus 37 percent of the Purchaser's Computed Energy Maximum, minus
b. The Purchaser's HLH Measured Energy.

1.2.2.2 For Purchasers of a Combination of 2-Year and 5-Year Power

The HLH Billing Energy is the Purchaser's HLH Computed Energy Maximum minus the Purchaser's 5-year HLH Billing Energy.
The LLH Billing Energy is the Purchaser's LLH Computed Energy Maximum minus the Purchaser's 5-year LLH Billing Energy.

2. Firm Capacity Without Energy

2.1. Rate

Applicable months	Rate
September–December	$1.11/kW-mo.
January–March	1.15/kW-mo.
April	0.82/kW-mo.
May–June	1.17/kW-mo.
July	1.23/kW-mo.
August	1.31/kW-mo.

2.2. Billing Factors

Purchaser's Computed Peak Requirement associated with the purchase of Firm Capacity Without Energy.

3. Full Load Shaping

3.1. Rate

0.30 mills/kwh multiplied by the Utility Factor.

3.2. Billing Factor

For purchasers of 2-year power only.
Purchaser's total HLH and LLH Billing Energy.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load shaping under the PF–96.2 rate schedule.

4. Load Regulation

4.1. Rate

0.25 mills/kWh multiplied by the Utility Factor.

4.2. Billing Factor

For purchasers of 2-year power only.
Purchaser's total HLH and LLH Billing Energy.
For purchasers of a combination of 2-year and 5-year power.
There is no charge for load regulation under the PF–96.2 rate schedule.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Energy Return Surcharge	II.F.
Low Density Discount	II.I.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

6.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

D. PF Rates for Partial Requirements Customers Who Purchase Under A ''1996'' Power Sales Contract

Partial Requirements customers purchasing power under a 1996 power sales contract may purchase Load Shaping. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation. Partial Requirements customers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH Rate
September–December	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 2-year power only.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.1.1 Without Load Shaping

Purchaser's 2-year Demand Subscription.

1.2.2. HLH Billing Energy

1.2.2.1 With Load Shaping

For purchasers of 2-year power only.
Purchaser's HLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
Purchaser's HLH Measured Energy minus the Purchaser's 5-year HLH Billing Energy.

1.2.2.2 Without Load Shaping

Purchaser's 2-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

1.2.3.1 WITH Load Shaping

For purchasers of 2-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's LLH Measured Energy minus the Purchaser's 5-year LLH Billing Energy.

1.2.3.2 Without Load Shaping

Purchaser's 2-year LLH Energy Subscription.

2. Full Load Shaping

2.1 Rate

0.30 mills/kWh.

2.2 Billing Factor

For purchasers of 2-year power only.

Purchaser's Retail Load minus the Purchaser's Industrial Exemption, if any.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for load shaping under the PF–96.2 rate schedule.

3. Load Regulation

3.1 Rate and Billing Factor

For purchasers of 2-year power only.

0.25 mills/kWh multiplied by Purchaser's Retail Load.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for load regulation under the PF–96.2 rate schedule.

4. Partial Load Shaping

4.1 Rate

$3.05/MWhr-hr.

4.2 Billing Factor

For purchasers of 2-year power only.

MWhr-hr amount of Partial Load Shaping Subscribed for the month.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for partial load shaping under the PF–96.2 rate schedule.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment	II.H.
Low Density Discount	II.I.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

6.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

E. PF Rates for Customers Who Purchase Under a Residential Purchase and Sale Agreement (RPSA)

The rate for RPSA customers includes Load Shaping and Load Regulation. RPSA customers are required to purchase transmission service under the Network Integration (NT) rate.

1. Rates

1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.2 Energy Charge

Applicable months	Rate
September–December	31.95
January–March	33.14
April	29.72
May–June	19.59
July	22.88
August	28.93

2. Billing Factors

2.1. Billing Demand

The Billing Demand shall be the demand calculated by applying the load factor, determined as specified in the RPSA, to the Billing Energy for each billing period.

2.2. Billing Energy

The Billing Energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's RPSA.

3. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

4. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

Rate adjustment	Section
Conservation Surcharge	II.A.
Low Density Discount	II.I.

Schedule PF–96.5

Priority Firm Power

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest for a 5-year period, October 1, 1996, through September 30, 2001. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers for direct consumption. At their election, public body, cooperative, and Federal agency customers may purchase all or any designated portion of their power under this rate schedule as an alternative to purchasing power under the PF–96.2 rate schedule. Customers making such an election shall agree to purchase the designated amount of power exclusively from BPA for 5 years. Such election shall be a one-time irrevocable election and, as to the amount of power so designated, shall constitute a waiver of all rights to purchase power under any other power rate schedule for the 5-year period. The election process is described in section II.E. of the GRSPs.

Rates in this schedule are available for purchases under requirements sales contracts effective on or before September 30, 1996 (hereinafter termed the ''*1981*'' contracts, although some are actually dated ''1984'' or later), and under contracts that may be effective on or after October 1, 1996 (''*1996*'' contracts). Customers electing to purchase power under this rate schedule and continuing to receive service pursuant to their 1981 power sales contract further waive any rights under that contract to modify their Firm Resources Exhibit in such a manner that reduces or interferes with their ability to purchase power for loads dedicated for service under this rate schedule. Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

Sales under the PF–96.5 rate schedule are subject to BPA's General Rate Schedule Provisions (GRSPs). Products available under this rate schedule are defined in the GRSPs. For sales under

this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for Each PF Product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified below. The rates for each customer designation are identical; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains five subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to Metered Requirements customers who purchase under a ''1981'' power sales contract.

Section II.B Applies to customers who elect to purchase on a composite rate basis.

Section II.C Applies to Full Requirements customers who purchase under a ''1996'' power sales contract and not on a composite rate basis.

Section II.D Applies to Computed Requirements customers who purchase under a ''1981'' power sales contracts.

Section II.E Applies to Partial Requirements customers who purchase under a ''1996'' power sales contracts.

A. PF Rates for Metered Requirements Customers who Purchase Under a ''1981'' Power Sales Contract

Metered Requirements customers purchasing power under a ''1981'' power sales contract are required to buy Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. Priority Firm Power

1.1. Rates

1.1.1 Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December ..	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 5-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

The lower of: Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

For purchasers of 5-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of: Purchaser's HLH Measured Energy or Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

For purchasers of 5-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of: Purchaser's LLH Measured Energy or Purchaser's 5-year LLH Energy Subscription.

2. Full Load Shaping

2.1. Rate

0.30 mills/kWh multiplied by the Utility Factor.

2.2. Billing Factor

Purchaser's total HLH and LLH Measured Energy.

3. Load Regulation

3.1. Rate

0.25 mills/kWh multiplied by the Utility Factor.

3.2. Billing Factor

Purchaser's total HLH and LLH Measured Energy.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Low Density Discount	II.I.
Phase-In Mitigation	II.L.
Reactive Power Charge	II.N.
Transitional Service	II.P.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

B. PF Rates for Customers who Elect to Purchase Power on a Composite Rate Basis

Only customers whose average annual retail loads during the 1996 rate period, as forecasted by BPA, are 25 average annual MW or less are eligible to purchase at this rate. The composite rate charge includes the PF–96.5 charges for demand, energy, Load Shaping, and Load Regulation. Purchasers at the composite rate also must purchase Network Integration Transmission service at the Network Integration (NT) rate.

1. Rate

Applicable months	Daily period	Rate (mills/kWh)
All Months of the Year	All hours .	23.54

2. Billing Factor

Purchaser's Measured Energy.

3. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

4. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

4.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Low Density Discount	II.I.
Phase-In Mitigation	II.L.
Reactive Power Charge	II.N.

4.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

C. PF Rates for Full Requirements Customers who Purchase Under a ''1996'' Power Sales Contract and not on a Composite Rate Basis

This customer category includes all Full Requirements customers whose forecasted loads exceed 25 aMW and those Full Requirements customers with forecasted loads of 25 aMW or less who decide not to purchase on a composite rate basis. Full Requirements Purchasers purchasing power under a —1996— power sales contract are required to buy Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September-December	22.20	19.64
January-March	23.02	20.28
April	20.65	19.46
May-June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 5-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

For purchasers of 5-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's HLH Measured Energy or Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

For purchasers of 5-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's LLH Measured Energy or Purchaser's 5-year LLH Energy Subscription.

2. Full Load Shaping

2.1. Rate

0.30 mills/kWh.

2.2 Billing Factor

Purchaser's Retail Load minus the Purchaser's Industrial Exemption, if any.

3. Load Regulation

3.1. Rate and Billing Factor

0.25 mills/kWh multiplied by Purchaser's Retail Load.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial.	
Exemption/Curtailment	II.H.
Low Density Discount	II.I.
Phase-In Mitigation	II.L.
Reactive Power Charge	II.N.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

D. PF Rates for Computed Requirements Customers Who Purchase Under a ''1981'' Power Sales Contract

Actual Computed Requirements Purchasers purchasing power under a ''1981'' power sales contract are required to buy Load Shaping and Network Integration Transmission service at the Network Integration (NT) rate. Planned and Contracted Computed Requirements Purchasers are not allowed to buy Load Shaping. Load Regulation is required if the customer is in BPA's load control area, regardless of whether the customer is purchasing on the basis of actual, planned, or contracted computed requirements. Planned and Contracted Computed Requirements purchasers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September-December	22.20	19.64
January-March	23.02	20.28
April	20.65	19.46
May-June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 5-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or Purchaser's 5-year Demand Subscription.

1.2.1.2 Without Load Shaping

For purchasers of 5-year power only.

Purchaser's 5-year Computed Peak Requirement.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's Computed Peak Requirement or Purchaser's 5-year Demand Subscription.

1.2.2. Billing Energy

1.2.2.1 For purchasers of 5-year power only

For Energy Delivered September-March

The HLH Billing Energy is the Purchaser's HLH Measured Energy.

The LLH Billing Energy is:

a. 76 percent of the Purchaser's Measured Energy, plus 24 percent of the Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy

For Energy Delivered April-August

The HLH Billing Energy is the Purchaser's HLH Measured Energy.

The LLH Billing Energy is:

a. 63 percent of the Purchaser's Measured Energy, plus 37 percent of the

Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy

1.2.2.2 For purchasers of a combination of 2-year and 5-year power

The HLH Billing Energy is the lower of:

Purchaser's HLH Computed Energy Maximum or

Purchaser's 5-year HLH Energy Subscription.

The LLH Billing Energy is the lower of:

Purchaser's LLH Computed Energy Maximum or Purchaser's 5-year LLH Energy Subscription.

2. Full Load Shaping

2.1. Rate

0.30 mills/kWh multiplied by the Utility Factor.

2.2. Billing Factor

Purchaser's total HLH and LLH Billing Energy.

3. Load Regulation

3.1. Rate

0.25 mills/kWh multiplied by the Utility Factor.

3.2. Billing Factor

Purchaser's total HLH and LLH Billing Energy.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Energy Return Surcharge	II.F.
Low Density Discount	II.I.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

E. PF Rates for Partial Requirements Customers who Purchase Under a ''1996'' Power Sales Contract

Partial Requirements customers purchasing power under a 1996 power sales contract may purchase Load Shaping. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation. Partial Requirements customers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Priority Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.20	19.64
January–March	23.02	20.28
April	20.65	19.46
May–June	13.61	10.78
July	15.90	12.79
August	20.10	16.63

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 5-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power

The lower of: Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or Purchaser's 5-year Demand Subscription.

1.2.1.1 Without Load Shaping

Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

1.2.2.1 With Load Shaping

For purchasers of 5-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of: Purchaser's HLH Measured Energy or Purchaser's 5-year HLH Energy Subscription.

1.2.2.2 Without Load Shaping

Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

1.2.3.1 With Load Shaping

For purchasers of 5-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of: Purchaser's LLH Measured Energy or Purchaser's 5-year LLH Energy Subscription.

1.2.3.2 Without Load Shaping

Purchaser's 5-year LLH Energy Subscription.

2. Full Load Shaping

2.1 Rate

0.30 mills/kWh.

2.2 Billing Factor

Purchaser's Retail Load minus the Purchaser's Industrial Exemption, if any.

3. Load Regulation

3.1 Rate and Billing Factor

0.25 mills/kWh multiplied by Purchaser's Retail Load.

4. Partial Load Shaping

4.1 Rate

$3.05/MWhr-hr.

4.2 Billing Factor

MWhr-hr amount of Partial Load Shaping Subscribed for the month.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment	II.H.
Low Density Discount	II.I.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

6.2. Special Rate Provisions

Special Rate Provisions	Section
Cost Contributions	II.B.

Schedule NR–96.2

New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest for a 2-year period, October 1, 1996, through September 30, 1998. New Resource Firm Power is available to investor-owned utilities (IOUs) under net requirements contracts for resale to ultimate consumers. New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any New Large Single Load (NLSL), as defined by the Northwest Power Act. Any power purchased by a customer to serve its New Large Single Load(s) must be purchased under either this rate schedule or under the NR–96.5 rate schedule.

Rates in this schedule are applicable to purchases under requirements sales contracts effective on or before September 30, 1996 (hereinafter termed the ''1981'' contracts, although some are actually dated ''1984'' or later), and under contracts that may be effective on or after October 1, 1996 (''1996'' contracts). Customers purchasing power under ''1981'' contracts may buy either firm power or capacity without energy under this rate schedule. Customers purchasing power under ''1996'' contracts may buy only firm power. Products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs). Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

This schedule supersedes Schedule NR–95, which went into effect on October 1, 1995. Sales under this schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for Each NR Product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified below. The rates for each customer designation are identical; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains four subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to public agency Metered Requirements customers who purchase under ''1981'' power sales contracts and serve new large single loads.

Section II.B Applies to Full Requirements customers who purchase under ''1996'' power sales contracts.

Section II.C Applies to Computed Requirements customers who purchase under ''1981'' power sales contracts.

Section II.D Applies to Partial Requirements customers who purchase under ''1996'' power sales contracts.

A. NR Rates for Metered Requirements Customers Who Purchase Under ''1981'' Power Sales Contracts and Serve New Large Single Loads

Metered Requirements customers purchasing power under a ''1981'' power sales contract serving a New Large Single Load (NLSL) are required to buy New Resource Firm Power (as needed for that NLSL), Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH Rate	LLH Rate
September–December ..	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

Purchaser's Measured Demand.

1.2.2. HLH Billing Energy

Purchaser's HLH Measured Energy.

1.2.3. LLH Billing Energy

Purchaser's LLH Measured Energy.

2. Full Load Shaping

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate

Rate

0.30 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.25 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate Adjustment	Section
Conservation Surcharge	II.A.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Transitional Service	II.P.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

B. NR Rates For Full Requirements Customers Who Purchase Under ''1996'' Power Sales Contracts

Full Requirements Purchasers purchasing power under a ''1996'' power sales contract are required to buy

Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/ kW-mo.

1.1.2. Energy Charge

Applicable months	HLH Rate	LLH rate
September—December	36.61	32.39
January—March	37.97	33.45
April	34.05	32.09
May—June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

Purchaser's Measured Demand.

1.2.2. HLH Billing Energy

Purchaser's HLH Measured Energy.

1.2.3. LLH Billing Energy

Purchaser's LLH Measured Energy.

2. Full Load Shaping

2.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.30 mills/kWh multiplied by Retail Load minus Industrial Exemption, if any.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.25 mills/kWh multiplied by Retail Load.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment .	II.H.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

C. NR Rates for Computed Requirements Customers who Purchase Under ''1981'' Power Sales Contracts

Actual Computed Requirements Purchasers purchasing power under a ''1981'' power sales contract are required to buy Load Shaping and Network Integration Transmission service at the Network Integration (NT) rate. Planned and Contracted Computed Requirements Purchasers are not allowed to buy Load Shaping, and must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-To-Point (PTP) rate. Load Regulation is required if the customer is in BPA's load control area.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December ..	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand With Load Shaping

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

Without Load Shaping

Purchaser's Computed Peak Requirement.

1.2.2. Billing Energy

1.2.2.1 For Energy Delivered September–March

The HLH Billing Energy is the Purchaser's HLH Measured Energy.

The LLH Billing Energy is:

a. 55 percent of the Purchaser's Measured Energy, plus 45 percent of the Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy

1.2.2.2 For Energy Delivered April–August

The HLH Billing Energy is the Purchaser's Measured Energy.

The LLH Billing Energy is:

a. 43 percent of the Purchaser's Measured Energy, plus 57 percent of the Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy

2. Firm Capacity Without Energy

2.1. Rate

Applicable months	Rate
September–December	$1.47/kW-mo.
January–March	$1.54/kW-mo.
April	$0.98/kW-mo.
May–June	$1.57/kW-mo.
July	$1.67/kW-mo.
August	$1.80/kW-mo.

2.2. Billing Factor

Purchaser's Computed Peak Requirement associated with the purchase of Firm Capacity Without Energy.

3. Full Load Shaping

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.30 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

4. Load Regulation

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.25 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustments	Section
Conservation Surcharge	II.A.
Energy Return Surcharge	II.F.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Transitional Service	II.P.
Unauthorized Increase Charge	II.Q.

6.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

D. NR Rates for Partial Requirements Customers who Purchase Under ''1996'' Power Sales Contracts

Partial Requirements customers purchasing power under a ''1996'' power sales contract may purchase Load Shaping and must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation.

1. New Resource Firm Power

1.1. Rates

1.1.1 Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

With Load Shaping: Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

Without Load Shaping: Purchaser's Demand Subscription.

1.2.2. HLH Billing Energy

With Load Shaping: Purchaser's HLH Measured Energy.

Without Load Shaping:
Purchaser's HLH Energy Subscription.

1.2.3. LLH Billing Energy

With Load Shaping:
Purchaser's LLH Measured Energy.

Without Load Shaping:
Purchaser's LLH Energy Subscription.

2. Full Load Shaping

2.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.30 mills/kWh multiplied by Retail Load minus Industrial Exemption, if any.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.25 mills/kWh multiplied by Retail Load.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates .

There is no charge for Load Regulation under the NR rate schedule.

4. Partial Load Shaping

4.1 Rate

$3.05 per MWhr-hr.

4.2 Billing Factor

MWhr-hr amount of Partial Load Shaping Subscribed for the month.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment	II.H.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

6.2. Special Rate Provisions

Special rate provision	Section
Cost Contributions	II.B.

Schedule NR–96.5—New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest for a 5-year period, October 1, 1996, through September 30, 2001. New Resource Firm Power is available to investor-owned utilities (IOUs) under net requirements contracts for resale to ultimate consumers. At their election, IOUs may purchase all or any designated portion of their power under this rate schedule as an alternative to purchasing power under the NR–96.2 rate schedule. IOU customers making such an election shall agree to purchase the designated amount of power exclusively from BPA for 5 years. New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any New Large Single Load (NLSL), as defined by the Northwest Power Act. Any power purchased by a customer to serve its New Large Single Load(s) must be purchased under either this rate schedule or under the NR–96.2 rate schedule. Public body, cooperative, or Federal agency customers electing to be served under this rate schedule shall agree to purchase power for service to the designated consumer NLSL facilities exclusively from BPA for 5 years. Such election by IOUs or preference customers shall be a one-time irrevocable election and, as to the

amount of power so designated, shall constitute a waiver of all rights to purchase power under any other power rate schedule for the 5-year period. The election process is described in section II.E. of the GRSPs.

Rates in this schedule are available for purchases under requirements sales contracts effective on or before September 30, 1996 (hereinafter termed the ''1981'' contracts, although some are actually dated ''1984'' or later), and under contracts that may be effective on or after October 1, 1996 (''*1996*'' contracts). Customers electing to purchase power under this rate schedule and continuing to receive service pursuant to their 1981 power sales contract further waive any rights under that contract to modify their Firm Resources Exhibit in such a manner that reduces or interferes with their ability to purchase the amount of power dedicated for service under this rate schedule. Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

Products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs).

Sales under this schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for Each NR Product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified below. The rates for each customer designation are identical; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains five subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to public agency Metered Requirements customers who purchase under ''1981'' power sales contracts and serve new large single loads.

Section II.B Applies to Full Requirements customers who purchase under ''1996'' power sales contracts.

Section II.C Applies to Computed Requirements customers who purchase under ''1981'' power sales contracts.

Section II.D Applies to Partial Requirements customers who purchase under ''1996'' power sales contracts.

A. NR Rates for Metered Requirements Customers who Purchase Under ''1981'' Power Sales Contracts and Serve New Large Single Loads

Metered Requirements customers purchasing power under a ''1981'' power sales contract serving a New Large Single Load (NLSL) are required to buy New Resource Firm Power (as needed for that NLSL), Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

Purchaser's Measured Demand.

1.2.2. HLH Billing Energy

Purchaser's HLH Measured Energy.

1.2.3. LLH Billing Energy

Purchaser's LLH Measured Energy.

2. Full Load Shaping

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.30 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.25 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Phase-In Mitigation	II.L.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Transitional Service	II.P.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

B. NR Rates for Full Requirements Customers Who Purchase Under ''1196'' Power Sales Contracts

Full Requirements Purchasers purchasing power under a ''1996'' power sales contract are required to buy Load Shaping, Load Regulation, and Network Integration Transmission service at the Network Integration (NT) rate.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

Purchaser's Measured Demand.

1.2.2. HLH Billing Energy

Purchaser's HLH Measured Energy.

1.2.3. LLH Billing Energy

Purchaser's LLH Measured Energy.

2. Full Load Shaping

2.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.30 mills/kWh multiplied by Retail Load minus Industrial Exemption, if any.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.25 mills/kWh multiplied by Retail Load.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment	II.H.
Phase-In Mitigation	II.L.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

C. NR Rates for Computed Requirements Customers Who Purchase Under ''1981'' Power Sales Contracts

Actual Computed Requirements Purchasers purchasing power under a ''1981'' power sales contract are required to buy New Resource Firm Power (as needed), Load Shaping, and Network Integration Transmission service at the Network Integration (NT) rate. Planned and Contracted Computed Requirements Purchasers are not allowed to buy Load Shaping, and must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate. Load Regulation is required if the customer is in BPA's load control area.

1. New Resource Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

With Load Shaping:

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

Without Load Shaping:

Purchaser's Computed Peak Requirement.

1.2.2. Billing Energy

1.2.2.1 For Energy Delivered September–March

The HLH Billing Energy is the Purchaser's HLH Measured Energy.

The LLH Billing Energy is:

a. 55 percent of the Purchaser's Measured Energy, plus 45 percent of the Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy.

1.2.2.2 For Energy Delivered April–August

The HLH Billing Energy is the Purchaser's Measured Energy.

The LLH Billing Energy is:

a. 43 percent of the Purchaser's Measured Energy, plus 57 percent of the Purchaser's Computed Energy Maximum, minus

b. The Purchaser's HLH Measured Energy.

2. Full Load Shaping

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.30 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

Rate

0.25 mills/kWh multiplied by the Utility Factor.

Billing Factor

Purchaser's HLH and LLH Measured Energy.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Energy Return Surcharge	II.F.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

Rate adjustment	Section
Transitional Service	II.P.
Unauthorized Increase Charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.
Utility Factor	II.R.

D. NR Rates for Partial Requirements Customers who Purchase Under ''1996'' Power Sales Contracts

Partial Requirements customers purchasing power under a ''1996'' power sales contract may purchase New Resource Firm Power (as needed) and Load Shaping, and must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation.

1. New Resource Firm Power

1.1. Rates

1.1.1 Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2. Billing Factors

1.2.1. Billing Demand

With Load Shaping:
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.
Without Load Shaping:
Purchaser's Demand Subscription.

1.2.2. HLH Billing Energy

With Load Shaping:
Purchaser's HLH Measured Energy.
Without Load Shaping:
Purchaser's HLH Energy Subscription.

1.2.3. LLH Billing Energy

With Load Shaping:
Purchaser's LLH Measured Energy.
Without Load Shaping:
Purchaser's LLH Energy Subscription.

2. Full Load Shaping

2.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.30 mills/kWh multiplied by Retail Load minus Industrial Exemption, if any.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Shaping under the NR rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For Purchasers whose Requirements Service is Provided Exclusively under the NR Rate.

0.25 mills/kWh multiplied by Retail Load minus Industrial Exemption, if any.

For Purchasers whose Requirements Service is Provided under Both the PF and NR Rates.

There is no charge for Load Regulation under the NR rate schedule.

4. Partial Load Shaping

4.1 Rate

$3.05/MWhr-hr.

4.2 Billing Factor

MWhr-hr amount of Partial Load Shaping Subscribed for the month.

5. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

6. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

6.1. Rate Adjustments

Rate adjustment	Section
Conservation Surcharge	II.A.
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment	II.H.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

6.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

Schedule IP–96.2—Industrial Firm Power Rate

Section I. Availability

This schedule is available to BPA's direct-service industrial (DSI) customers for firm power to be used in their industrial operations for a 2-year period, October 1, 1996, through September 30, 1998. If a DSI requests that BPA serve a portion of its load under another rate schedule and if BPA agrees, the IP–96.2 rate shall apply to only that portion of its load that is not served under the other schedule.

Both DSIs that purchase power under power sales contracts that were effective on or before September 30, 1996 (hereinafter termed the ''1981'' contracts), and DSIs that purchase power under new contracts (hereinafter termed the ''1996'' contracts) are eligible to purchase under this rate schedule. Products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs). Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

This rate schedule supersedes Schedule IP–95, which went into effect on October 1, 1995. Sales under the IP–96.2 rate schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments shall be due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for Each IP Product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified in separate sections of the rate schedule. The rates for each customer designation are identical; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Under the power sales contracts, the DSIs provide operating reserves and stability reserves. The credit for these reserves is reflected in the level of the applicable energy charges specified in this rate schedule. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains three subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to DSI purchasers who purchase under ''1981'' power sales contracts.

Section II.B Applies to Full Requirements DSI purchasers who purchase under ''1996'' contracts.

Section II.C Applies to Partial Requirements DSI purchasers who purchase under ''1996'' contracts.

A. IP Rates for DSI Purchasers who Purchase Under ''1981'' Power Sales Contracts

DSI Purchasers purchasing power under a ''1981'' power sales contract are required to buy Load Regulation and either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September—December	22.29	19.72
January—March	23.11	20.36
April	20.73	19.54
May—June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 2-year power only.

Purchaser's BPA Operating Level that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's BPA Operating Level that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.2. HLH Billing Energy

For purchasers of 2-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's HLH Measured Energy minus the Purchaser's 5-year HLH Billing Energy.

1.2.3. LLH Billing Energy

For purchasers of 2-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's LLH Measured Energy minus the Purchaser's 5-year LLH Billing Energy.

2. Load Regulation

2.1. Rate and Billing Factor

For purchasers of 2-year power only.

0.25 mills/kWh multiplied by Purchaser's Retail Load.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for Load Regulation under the IP–96.2 rate schedule.

3. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

4. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

4.1. Rate Adjustments

Rate adjustment	Section
Curtailment Charge	II.C.
Operating Reserves Adjustment ..	II.K.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Transitional Service	II.P.
Unauthorized Increase Charge	II.Q.

4.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

B. IP Rates for Full Requirements DSI Purchasers who Purchase Under ''1996'' Power Sales Contracts

Full Requirements customers purchasing power under a ''1996'' power sales contract are required to buy Load Shaping, Load Regulation, and either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September—December	22.29	19.72
January—March	23.11	20.36
April	20.73	19.54
May–June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 2-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.2. HLH Billing Energy

For purchasers of 2-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power

Purchaser's HLH Measured Energy minus the Purchaser's 5-year HLH Billing Energy.

1.2.3. LLH Billing Energy

For purchasers of 2-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's LLH Measured Energy minus the Purchaser's 5-year LLH Billing Energy.

2. DSI Load Shaping

2.1. Rate

$187/aMW.

2.2 Billing Factor

For purchasers of 2-year power only.

Purchaser's Calculated Energy Capacity minus the Purchaser's Industrial Exemption, if any.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for Load Shaping under the IP–96.2 rate schedule.

3. Load Regulation

3.1. Rate and Billing Factor

For purchasers of 2-year power only.

0.25 mills/kWh multiplied by Purchaser's Retail Load.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for Load Regulation under the IP–96.2 rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the

Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Industrial Exemption/Curtailment .	II.H.
Operating Reserves Adjustment ..	II.K.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

C. IP Rates for Partial Requirements DSI Purchasers who Purchase Under ''1996'' Power Sales Contracts

Partial Requirements customers purchasing power under a ''1996'' power sales contract may purchase Load Shaping. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation. Partial Requirements customers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.29	19.72
January–March	23.11	20.36
April	20.73	19.54
May–June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 2-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load minus the Purchaser's 5-year Billing Demand.

1.2.1.1 Without Load Shaping

Purchaser's 2-year Demand Subscription.

1.2.2. HLH Billing Energy

1.2.2.1 With Load Shaping

For purchasers of 2-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's HLH Measured Energy minus the Purchaser's 5-year HLH Billing Energy.

1.2.2.2 Without Load Shaping

Purchaser's 2-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

1.2.3.1 With Load Shaping

For purchasers of 2-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

Purchaser's LLH Measured Energy minus the Purchaser's 5-year LLH Billing Energy.

1.2.3.2 Without Load Shaping

Purchaser's 2-year LLH Energy Subscription.

2. DSI Load Shaping

2.1 Rate

$187/aMW.

2.2 Billing Factor

For purchasers of 2-year power only.

Purchaser's Calculated Energy Capacity minus the Purchaser's Industrial Exemption, if any.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for Load Shaping under the IP–96.2 rate schedule.

3. Load Regulation

3.1 Rate and Billing Factor

For purchasers of 2-year power only.

0.25 mills/kWh multiplied by Purchaser's Retail Load.

For purchasers of a combination of 2-year and 5-year power.

There is no charge for Load Regulation under the IP–96.2 rate schedule.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Deviation Adjustment	II.D.
Industrial Exemption/Curtailment .	II.H.
Operating Reserves Adjustment ..	II.K.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

Schedule IP–96.5—Industrial Firm Power Rate

Section I. Availability

This schedule is available to BPA's direct-service industrial (DSI) customers for firm power to be used in their industrial operations for a 5-year period, October 1, 1996, through September 30, 2001. At their election, customers may purchase all or any designated portion of their power under this rate schedule as an alternative to purchasing power under the IP–96.2 rate schedule. Customers making such an election shall agree to purchase the designated amount of power exclusively from BPA for 5 years. Such election shall be a one-time irrevocable election and, as to the amount of power so designated, shall constitute a waiver of all rights to purchase power under any other power rate schedule for the 5-year period. The election process is described in section II.E. of the GRSPs.

Both DSIs that purchase power under power sales contracts that were effective on or before September 30, 1996 (hereinafter termed the ''1981'' contracts), and DSIs that purchase power under new contracts (hereinafter termed the ''1996'' contracts) are eligible to purchase under this rate schedule. Customers electing to purchase power under this rate schedule and continuing to receive service pursuant to their ''1981'' power sales contract further waive any rights to terminate service under that contract upon 12 months' notice. This waiver does not, however, preclude customers from signing ''1996'' power sales contracts for an amount of power equal to or greater than the

amount designated to be purchased under the 5-year rate. Products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs). Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges.

Sales under the IP–96.5 rate schedule are subject to BPA's GRSPs. For sales under this rate schedule, bills shall be rendered and payments shall be due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments for Each IP Product

For each customer designation, the rate(s) for each product along with the associated billing factor(s) are identified in separate sections of the rate schedule. The rates for each customer designation are identical; the billing factors, however, vary according to the customer designation. Applicable adjustments and special rate provisions are listed for each customer designation. Under the power sales contracts, the DSIs provide operating reserves and stability reserves. The credit for these reserves is reflected in the level of the applicable energy charges specified in this rate schedule. Network Integration transmission service at the Network Integration (NT) rate or Point-to-Point transmission service at the Point-to-Point (PTP) rate is required for purchases under this rate schedule.

This rate schedule contains three subsections, corresponding to the customer categories to which this rate schedule applies:

Section II.A Applies to DSI purchasers who purchase under ''1981'' power sales contracts.

Section II.B Applies to Full Requirements DSI purchasers who purchase under ''1996'' contracts.

Section II.C Applies to Partial Requirements DSI purchasers who purchase under ''1996'' contracts.

A. IP Rates for DSI Purchasers who Purchase Under ''1981'' Power Sales Contracts

DSI Purchasers purchasing power under a ''1981'' power sales contract are required to buy Load Regulation and either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.29	19.72
January–March	23.11	20.36
April	20.73	19.54
May–June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 5-year power only.

Purchaser's BPA Operating Level that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's BPA Operating Level that occurs during the hour of the Monthly Transmission Peak Load or

Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

For purchasers of 5-year power only.

Purchaser's HLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's HLH Measured Energy or

Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

For purchasers of 5-year power only.

Purchaser's LLH Measured Energy.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's LLH Measured Energy or

Purchaser's 5-year LLH Energy Subscription.

2. Load Regulation

2.1. Rate and Billing Factor

0.25 mills/kWh multiplied by Purchaser's Retail Load.

3. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

4. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

4.1. Rate Adjustments

Rate adjustment	Section
Curtailment Charge	II.C.
Operating Reserves Adjustment ..	II.K.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Transitional Service	II.P.
Unauthorized Increase Charge	II.Q.

4.2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

B. IP Rates for Full Requirements DSI Purchasers who Purchase Under ''1996'' Power Sales Contracts

Full Requirements customers purchasing power under a ''1996'' power sales contract are required to buy Load Shaping, Load Regulation, and either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.29	19.72
January–March	23.11	20.36
April	20.73	19.54
May–June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

For purchasers of 5-year power only.

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

For purchasers of a combination of 2-year and 5-year power.

The lower of:

Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or

Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

For purchasers of 5-year power only.
Purchaser's HLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
The lower of:
Purchaser's HLH Measured Energy or
Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

For purchasers of 5-year power only.
Purchaser's LLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
The lower of:
Purchaser's LLH Measured Energy or
Purchaser's 5-year LLH Energy Subscription.

2. DSI Load Shaping

2.1. Rate

$187/aMW.

2.2 Billing Factor

Purchaser's Calculated Energy Capacity minus the Purchaser's Industrial Exemption, if any.

3. Load Regulation

3.1. Rate and Billing Factor

0.25 mills/kWh multiplied by Purchaser's Retail Load.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Page
Industrial Exemption/Curtailment .	II.H.
Operating Reserves Adjustment ..	II.K.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Page
Cost Contributions	II.B.

C. IP Rates for Partial Requirements DSI Purchasers who Purchase Under ''1996'' Power Sales Contracts

Partial Requirements customers purchasing power under a ''1996'' power sales contract may purchase Load Shaping. All customers in BPA's load control area are required to buy Load Regulation, and customers outside of BPA's load control area may not buy Load Regulation. Partial Requirements customers must elect either Network Integration Transmission service at the Network Integration (NT) rate or Point-to-Point Transmission service at the Point-to-Point (PTP) rate.

1. Industrial Firm Power

1.1. Rates

1.1.1. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	22.29	19.72
January–March	23.11	20.36
April	20.73	19.54
May–June	13.67	10.82
July	15.96	12.84
August	20.18	16.69

1.2. Billing Factors

1.2.1. Billing Demand

1.2.1.1 With Load Shaping

For purchasers of 5-year power only.
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.
For purchasers of a combination of 2-year and 5-year power.
The lower of:
Purchaser's Measured Demand that occurs during the hour of the Monthly Transmission Peak Load or Purchaser's 5-year Demand Subscription.

1.2.1.1 Without Load Shaping

Purchaser's 5-year Demand Subscription.

1.2.2. HLH Billing Energy

1.2.2.1 With Load Shaping

For purchasers of 5-year power only.
Purchaser's HLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
The lower of:
Purchaser's HLH Measured Energy or
Purchaser's 5-year HLH Energy Subscription.

1.2.2.2 Without Load Shaping

Purchaser's 5-year HLH Energy Subscription.

1.2.3. LLH Billing Energy

1.2.3.1 With Load Shaping

For purchasers of 5-year power only.
Purchaser's LLH Measured Energy.
For purchasers of a combination of 2-year and 5-year power.
The lower of:
Purchaser's LLH Measured Energy or
Purchaser's 5-year LLH Energy Subscription.

1.2.3.2 Without Load Shaping

Purchaser's 5-year LLH Energy Subscription.

2. DSI Load Shaping

2.1 Rate

$187/aMW.

2.2 Billing Factor

Purchaser's Calculated Energy Capacity minus the Purchaser's Industrial Exemption, if any.

3. Load Regulation

3.1 Rate and Billing Factor

0.25 mills/kWh multiplied by Purchaser's Retail Load.

4. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

5. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

5.1. Rate Adjustments

Rate adjustment	Section
Deviation adjustment	II.D.
Industrial exemption/curtailment ..	II.H.
Operating reserves adjustment	II.K.
Preschedule change charge	II.M.
Reactive power charge	II.N.
Unauthorized increase charge	II.Q.

5.2. Special Rate Provisions

Special rate provisions	Section
Cost contributions	II.B.

Schedule VI–96—Variable Industrial Power Rate

Section I. Availability

This schedule is available to BPA's direct-service industrial (DSI) customers for firm power to be used in their aluminum and nickel smelting operations). Only DSIs that purchase power under the 1996 Contract) and that have signed a new Variable Industrial Rate Contract are eligible to purchase under this rate schedule. BPA is not

obligated to sell power under this rate schedule. Products available under this rate schedule are defined in BPA's General Rate Schedule Provisions (GRSPs).

A customer electing to purchase power under this rate schedule must first elect service to its entire load under either the IP–96.2 rate schedule or the IP–96.5 rate schedule. The purchaser may not purchase power under both rate schedules pursuant to the election process described in section II.E. of the GRSPs. Any variable rate established pursuant to this rate schedule will apply to the purchaser's entire load.

At the expiration of the variable rate formula, a new one can be established, or the customer may purchase power under the applicable IP rate. However, the total term of all variable rate formulas for any DSI customer shall not be longer than 2 years under the IP–96.2 rate schedule and five years under the IP–96.5 rate schedule.

This rate schedule supersedes Schedule VI–95, which went into effect on October 1, 1995. Sales under the VI–96 rate schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments shall be due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments

A. Variable Industrial Firm Power

1. Rates

The variable rate formula will be based on the IP rate under which the customer has elected service. The Demand Charge for the variable rate will be the same as the Demand Charge in the applicable IP rate. The Base Energy Charge will be the average annual charge that results from applying the Energy Charges and the Load Regulation charge from the applicable IP rate to the customer's forecasted load. For customers that have elected service under the IP–96.2 rate schedule, upon the expiration of such schedule the Base Energy Charge shall be such annual average charge from any subsequent Industrial Firm Power Rate Schedule under which such customer elects service.

The monthly Energy Charge varies with the price of aluminum, in the case of customers engaged in primary aluminum reduction, and with the price of nickel, in the case of customers engaged in primary nickel reduction. Individual rate formulas will be established for each customer. Each rate formula shall be such that, at the time BPA enters into a Variable Industrial Rate Contract with the individual customer incorporating such formula, BPA has the ability to hedge the aluminum or nickel price risk inherent in such rate formula, at zero cost to BPA, by entering into transactions with one or more substantial financial institutions.

(''Zero cost to BPA'' means that either a) BPA will incur no cost to hedge the price risk of the variable rate, or b) BPA will recover the sum it pays to hedge the price risk of the variable rate from the applicable customer, either as a lump sum paid at the time BPA and the customer enter into the Variable Rate Contract, or over a time period no longer than the term of the variable rate formula incorporated in such contract. In the event that such sum is recovered over time, it shall bear interest at the rate payable on the Bonneville Fund in the United States Treasury at the time BPA and the customer enter into the Variable Rate Contract.)

Individual rate formulas may be established for any period from one to two years, in the case of customers purchasing power under the IP–96.2 rate schedule, and for any period from one to five years, in the case of customers purchasing power under the IP–96.5 rate schedule. At the expiration of any rate formula, a new rate formula for that customer may be established pursuant to the guidelines stated in this section, or the customer may purchase power under the applicable Industrial Firm Power rate schedule. However, the total term of all variable rate formulas for any single DSI purchaser shall not be longer than two years in the case of customers that have elected service under the IP–96.2 rate schedule, and five years in the case of customers that have elected service under the IP–96.5 rate schedule.

The monthly Energy Charge shall be based on the monthly billing aluminum or nickel price. The monthly billing aluminum or nickel price shall be the average price of aluminum or nickel, in dollars per metric ton, on the London Metal Exchange (LME) during the calendar month immediately preceding the billing month. The average price during the month shall equal the average of all official LME daily cash settlement prices during such month rounded to the nearest dollar. BPA and each customer may agree to base the monthly energy charge on the average price of aluminum or nickel during a month other than the immediately preceding month.

In the case of variable industrial rate formulas that contain pivot prices, the monthly Energy Charge shall be the Base Energy Charge when the monthly billing aluminum or nickel price is between the Lower Pivot Aluminum or Nickel Price and the Upper Pivot Aluminum or Nickel Price inclusive. In the case of variable industrial rate formulas that do not contain pivot prices, the monthly Energy Charge shall be the Base Energy Charge when the monthly billing aluminum or nickel price equals the price established in the customer's Variable Industrial Rate Contract at which the Base Energy Charge applies.

The Lower Pivot Aluminum or Nickel Price is the aluminum or nickel price established in an individual customer's Variable Industrial Rate Contract such that the monthly energy charge decreases when the monthly billing aluminum or nickel price is below such price.

The Upper Pivot Aluminum or Nickel Price is the aluminum or nickel price established in an individual customer's Variable Industrial Rate Contract such that the monthly energy charge increases when the monthly billing aluminum or nickel price is above such price.

2. Billing Factors

2.1. Billing Demand

Purchaser's Demand Subscription.

2.2. Billing Energy

Purchaser's Energy Subscription.

B. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

C. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

1. Rate Adjustments

Rate adjustment	Section
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

2. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

Schedule NF–96—Nonfirm Energy Rate

Section I. Availability

This schedule is available for the purchase of nonfirm energy to be used both inside and outside the United

States including sales under the Western Systems Power Pool (WSPP) agreements and sales to consumers. BPA is not obligated to offer nonfirm energy to any purchaser that results in displacement of firm power purchases under BPA's ''1981'' or ''1996'' Power Sales Contracts. The offer of nonfirm energy under this schedule shall be determined by BPA. For purchases under this rate schedule, transmission service over FCRTS facilities shall be available at the applicable transmission rate schedule.

This rate schedule supersedes schedule NF–95, which went into effect on October 1, 1995. Sales under the NF–96 rate schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments

The average cost of nonfirm energy is 20.92 mills per kilowatt-hour. The NF–96 rate schedule provides for upward and downward pricing flexibility from this average nonfirm energy cost. All rates and any subsequent adjustments contained in this rate schedule shall not exceed in total the NF Rate Cap calculated in accordance with the methodology specified in the Adjustments, Charges, and Special Rate Provisions section of this document.

A. Rates for Nonfirm Energy

1. Standard Rate

The Standard rate is any offered rate not to exceed 25.12 mills per kilowatt-hour.

2. Market Expansion Rate

The Market Expansion rate is any offered rate below the Standard rate in effect. BPA may have one or more Market Expansion rates in effect simultaneously.

3. Incremental Rate

The Incremental Rate is the Incremental Cost of energy plus 2.00 mills per kilowatt-hour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatt-hour) that BPA would have avoided had it not produced or purchased the energy being sold under this rate.

4. Contract Rate

The Contract Rate is 20.92 mills per kilowatt-hour.

B. Billing Factor for Nonfirm Energy

The billing factor for nonfirm energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified by contract.

C. Adjustments for Nonfirm Energy

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

1. Rate Adjustments

Rate adjustment	Section
Guaranteed Delivery Charge	II.G.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.

2. Special Rate Provisions

Special rate provision	Section
Cost Contributions	II.B.
NF Rate Cap	II.J.

Section III. Determination of the Applicable NF Rate

Any time that BPA has nonfirm energy for sale, the Standard rate, the Market Expansion rate, the Incremental rate, the Contract rate, or any combination of these rates may be in effect.

A. Standard Rate

The Standard rate:

1. is available for all purchases of nonfirm energy; and

2. applies to nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the ''1981'' utility power sales contract.

B. Market Expansion Rate

1. Application of the Market Expansion Rate

The Market Expansion rate applies when BPA determines that all markets at the Standard rate have been satisfied and BPA offers additional nonfirm energy.

2. Market Expansion Rate Qualification Criteria

In order to purchase nonfirm energy at the Market Expansion rate, a purchaser must:

a. have a displaceable resource, displaceable purchase of electricity, or

b. be an end-user load with a displaceable alternative fuel source. In addition, a purchaser must demonstrate one of the following:

a. shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Market Expansion rate energy purchased; or

b. reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Market Expansion rate energy purchased; or

c. shutdown or reduction of the identified output of the resource(s) indirectly in an amount equal to the amount of Market Expansion rate energy purchased (for example, the purchase may be used to run a pumped storage unit); or

d. decrease of an end-user alternate fuel source in an amount equivalent to the amount of Market Expansion rate energy purchased.

3. Eligibility Criteria for Market Expansion Rate

a. When only one Market Expansion rate is offered: Purchasers satisfying the Market Expansion Rate Qualifying Criteria specified in section III.B.2, above, who purchased nonfirm energy directly from BPA are eligible to purchase power under the Market Expansion rate offered if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.00 mills per kilowatt-hour.

Purchasers qualifying under section III.B.2 who purchase nonfirm energy through a third party are eligible to purchase power under the Market Expansion rate offered if the cost of the qualifying alternative fuel source is lower than the Standard rate in effect plus 4.00 mills per kilowatt-hour.

b. When more than one Market Expansion rate is offered: Purchasers qualifying under section III.B.2 who purchase nonfirm energy directly from BPA are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.00 mills per kilowatt-hour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below the purchaser's qualifying decremental cost minus 2.00 mills per kilowatt-hour.

Purchasers qualifying under section III.B.2 who purchase nonfirm energy through a third party are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying alternative fuel source is lower than the Standard rate plus 4.00 mills per kilowatt-hour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below purchaser's qualifying decremental cost minus 4.00 mills per kilowatt-hour.

C. Incremental Rate

The Incremental rate applies to sales of energy:

1. that is produced or purchased by BPA concurrently with the nonfirm energy sale;
2. that BPA may at its option not produce or purchase; and
3. that has an Incremental Cost greater than the Standard rate (plus the Intertie Charge, if applicable) less 2.00 mills per kilowatt-hour.

D. Contract Rate

The Contract rate applies to contracts (except power sales contracts offered pursuant to sections 5(b), 5(c), and 5(g) of the Northwest Power Act) that refer to the Contract rate:
1. for the sale of nonfirm energy; or
2. for determining the value of energy.

E. Western Systems Power Pool Transactions (WSPP)

BPA may make available nonfirm energy for transactions under the WSPP agreement. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement and shall be consistent with regional and public preference. The rate for transactions under the WSPP agreement is any rate within the limits specified by the Standard, Market Expansion, and Incremental rates but may not exceed the maximum rate specified in the WSPP Agreement. The rate for WSPP sales may differ from the actual rate offered for non-WSPP transactions in any hour. The rate for WSPP transactions is independent of any other rate offered concurrently under this rate schedule outside that agreement.

F. End-User Rate

BPA may agree to a rate or rate formula for nonfirm energy purchases by end-users. Such rate or rate formula shall be within the limits specified for the Standard and Market Expansion rates but may differ from the actual rates offered during any hour.

Section IV. Delivery

A. Rate of Delivery

BPA shall determine the amount of nonfirm energy to be made available for each hour. Such determination shall be made for each applicable nonfirm energy rate.

B. Guaranteed Delivery

1. Availability

BPA will determine the amount and duration of nonfirm energy to be offered on a guaranteed basis. Such daily or hourly amounts may be as small as zero or as much as all the nonfirm energy that BPA plans to offer for sale on such days.

2. Conditions

Scheduled amounts of guaranteed nonfirm energy may not be changed except:

a. when BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

b. when BPA must reduce nonfirm energy deliveries in order to serve firm loads.

Schedule RP–96—Reserve Power Rate

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; or

C. To serve a purchaser's firm power load in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied.

This rate schedule may be applied to power purchased by entities outside the United States. This rate schedule supersedes Schedule RP–95, which went into effect on October 1, 1995. Sales under this schedule are subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

A. Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

B. Energy Charge

Applicable months	HLH rate	LLH rate
September–December	24.3 mills/kWh	21.5 mills/kWh.
January–March	25.2 mills/kWh	22.2 mills/kWh.
April	22.6 mills/kWh	21.3 mills/kWh.
May–June	14.9 mills/kWh	11.8 mills/kWh.
July	17.4 mills/kWh	14.0 mills/kWh.
August	22.0 mills/k	18.2 mills/kWh.

Section III. Billing Factors

A. Billing Demand

If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise, the billing demand shall be the Measured Demand that occurs during the hour of the Monthly Transmission Peak Load.

B. Billing Energy

The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise, the Billing Energy for such purchasers shall be the HLH and LLH Measured Energy.

Section IV. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

A. Rate Adjustments

Rate adjustment	Section
Reactive Power Charge	II.N.

B. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

Schedule PS–96—Power Shortage Rate Schedule

Section I. Availability

This schedule is available inside the Pacific Northwest for the purchase of Shortage Power by signatories to the Share-the-Shortage Agreement, or a similar substitute agreement. Any transactions entered into by BPA pursuant to a Share-the-Shortage Agreement shall be subject to the terms and conditions specified in that agreement. The PS–96 rate does not incorporate the Agreement, but the Agreement controls if there is any conflict between the PS–96 rate and the Agreement. The PS–96 rate shall not be available for transactions with a party

who triggers the Share-the-Shortage Agreement if BPA elects to meet its required service obligations under the agreement by entering into an alternative agreement.

This rate schedule is also available inside the Pacific Northwest when BPA arranges for the purchase of energy at the request of, and for the account of, a customer pursuant to a Share-the-Shortage Agreement.

BPA is not obligated either to make Shortage Power available or to broker power under this rate schedule unless specified by contract.

This schedule supersedes schedule PS–95, which went into effect on October 1, 1995. Sales under the PS–96 rate schedule are subject to BPA's General Rate Schedule Provisions (GRSPs), and BPA's Billing Procedures.

Section II. Rates

A. Power Rate

The power rate is any offered rate not to exceed the lesser of:

1. 100.00 mills per kilowatt-hour; or

2. the maximum rate specified in the Share-the Shortage Agreement. The offered rate may be specified as an energy charge only or as demand and energy charges.

B. Brokering Rate

The brokering rate may be up to 1.00 mill per kilowatt-hour for services provided when BPA arranges for energy purchases for a customer from a seller other than BPA.

Section III. Billing Factors

A. Power Purchases

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the agreement initiating the Share-the-Shortage sales transaction.

B. Brokering Services

When BPA arranges for energy purchases at the request of a customer, the purchaser shall be billed for such services based on the total number of kilowatt-hours purchased.

The charge for power brokering only applies to the service provided by BPA of finding purchased power for a customer from a seller other than BPA. BPA may agree to provide other services in addition to finding purchased power, but these services shall be billed separately at charges specified in the appropriate rate schedule(s) or agreement(s). Such services may include, but are not limited to, wheeling and load shaping.

Section IV. Transmission

The transmission charge for deliveries under this rate shall be the charge for Network Integration service under the Network Integration (NT) rate or the charge for Point-to-Point service under the Point-to-Point (PTP) rate.

Section V. Adjustments, Charges, and Special Rate Provisions

All adjustments are described in the GRSPs. The applicable sections are identified in parentheses for each adjustment.

A. Rate adjustments

Rate Adjustment	Section
Deviation Adjustment	II.D.
Reactive Power Charge	II.N.

B. Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

Schedule FPS–96—Firm Power Products and Services

Section I. Availability

This rate schedule is available for the purchase of Firm Power, Control Area Services that are not defined as ancillary services, and Shaping Services for use inside and outside the Pacific Northwest during the period beginning October 1, 1996, and ending September 30, 2005.

Products and services available under this rate schedule are described in the ''Definitions'' section of BPA's General Rate Schedule Provisions (GRSPs). BPA is not obligated to enter into agreements to sell products and services under this rate schedule or make power or energy available under this rate schedule if such power or energy would displace sales under the PF–96.2, PF–96.5, NR–96.2, NR–96.5, IP–96.2, IP–96.5, or VI–96 rate schedules or their successors. Sales under the FPS–96 rate schedule are subject to BPA's GRSPs. For purchases under this rate schedule, transmission service over FCRTS facilities shall be available under the applicable transmission rate schedule, and ancillary services shall be available under the Ancillary Products and Services (APS) rate schedule.

This rate schedule supersedes the Surplus Firm Power (SP–93) and Emergency Capacity (CE–95) rate schedules. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates, Billing Factors, and Adjustments

This section of the rate schedule is organized as follows:

Section II.A. Rates, billing factors, and adjustments for Firm Power.

Section II.B. Rates, billing factors, and adjustments for Supplemental Control Area Services.

Section II.C. Rates, billing factors, and adjustments for Shaping Services.

A. Firm Power

1. Rates

1.1 Contract Rate

1.1.1 Demand Charge

Applicable months	Rate
All Months of the Year	$0.56/kW-mo.

1.1.2 Energy Charge

Applicable months	HLH rate	LLH rate
September–December	36.61	32.39
January–March	37.97	33.45
April	34.05	32.09
May–June	22.45	17.78
July	26.22	21.09
August	33.15	27.42

1.2 Flexible Rate

Demand and/or energy charges may be specified at a higher or lower average rate as mutually agreed by BPA and the Purchaser.

1.3 Reservation Charge

The reservation charge for reserving the right to change future delivery of firm energy and/or capacity may be as established by BPA or as mutually agreed by BPA and the Purchaser.

2. Billing Factors

2.1 Billing Demand

The Billing Demand for Firm Power shall be the Contract Demand unless otherwise agreed by BPA and the Purchaser.

2.2 Billing Energy

The Billing Energy for Firm Power shall be the Contract Energy unless otherwise agreed by BPA and the Purchaser.

2.3 Billing Factor for Reserved Firm Power

The billing factor for reserved Firm Power shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

3. Adjustments

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

3.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.F.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

3.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

B. Control Area Services That Are Not Ancillary Services

1. Rates

The rate(s) shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

2. Billing Factors

The billing factor(s) for control area services shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

3. Adjustments

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

3.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.F.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	I.Q.

3.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

C. Shaping Services

1. Rate

1.1 Rate for Shaping and Load Factoring Service

The rate shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

1.2 Reservation Charge

The reservation charge for reserving the right to take future delivery of shaping services shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

2. Billing Factor

2.1 Billing Factor for Shaping Services

The Billing Factor(s) shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

2.2 Billing Factors for Reservation of the Right to Purchase Shaping Services

The Billing Factor(s) shall be as specified by BPA or as mutually agreed by BPA and the Purchaser.

3. Adjustments

All adjustments are described in the GRSPs. The applicable sections are identified for each adjustment.

3.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.F.
Preschedule Change Charge	II.M.
Reactive Power Charge	II.N.
Unauthorized Increase Charge	II.Q.

3.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.B.

APS–96—Ancillary Products and Services

Section I. Availability

This rate schedule is available for ancillary services necessary to support the firm or non-firm delivery of power from resources to loads using the Federal Columbia River Transmission System (FCRTS) facilities. The ancillary products and services available under this rate schedule are: Scheduling and Dispatching; Control Area Reserves for Resources; Control Area Reserves for Interruptible Purchases; Load Regulation; and Transmission Losses. These services are defined in the ''Definitions'' section of BPA's General Rate Schedule Provisions (GRSPs). This schedule is also available for ancillary services of a similar nature as BPA may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k).

To the extent that FERC allows transmitting utilities subject to the Federal Power Act to sell ancillary services at rates other than stated rates, the provisions providing for a flexible rate for the ancillary products or services provided in this schedule may apply.

Sales under this schedule are made subject to BPA's General Rate Schedule Provisions. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rates and Billing Factors

This section of the rate schedule is organized as follows:

Section II.A Identifies the rates and billing factors for Scheduling and Dispatching.

Section II.B Identifies the rates and billing factors for Control Area Reserves for Resources.

Section II.C Identifies the rates and billing factors for Control Area Reserves for Interruptible Purchases.

Section II.D Identifies the rates and billing factors for Load Regulation.

Section II.E Identifies the rates and billing factors for Transmission Losses.

A. Scheduling and Dispatching

1. Rates

1.1 Rate for Scheduling and Dispatching

The rate for scheduling and dispatching service shall be $71 per Preschedule.

1.2 Rate for Preschedule Change

The rate for Preschedule Changes shall be $33 per change.

2. Billing Factors

2.1 Billing Factor for Scheduling and Dispatch

The billing factor shall be the sum of Preschedules made for each of the Purchaser's scheduling accounts per billing month.

2.2 Billing Factor for Preschedule Change

The billing factor shall be the sum of Preschedule Changes made for each of the Purchaser's scheduling accounts per billing month.

B. Control Area Reserves for Resources

1. Rates

The rates below for Control Area Reserves For Resources apply to all hydro-electric and non-hydroelectric generating resources located in BPA—s control area. The rates below do not apply to such resources with generating capacity of less than one MW.

1.2 Rate for Control Area Reserves for Hydroelectric Resources

1.2.1 Stated Rate

The rate shall be $0.35 per kilowatt-month of billing demand.

1.2.2 Flexible Rate

The rate shall be specified by BPA for such service.

1.3 Rate for Control Area Reserves for Non-Hydroelectric Resources

1.3.1 Stated Rate

The rate shall be $0.50 per kilowatt-month of billing demand.

1.3.2 Flexible Rate

The rate shall be specified by BPA for such service.

2. Billing Factors

2.1 Billing Demand

If the Purchaser's resource(s), regardless of resource type, have appropriate metering equipment, the billing demand shall be determined as specified in section 2.1.1 below. Otherwise, for the purchaser's hydroelectric resource(s) the billing demand shall be determined in accordance with section 2.1.2, and for the purchaser(s) thermal and any other non-hydroelectric resource(s) the billing demand shall be determined in accordance with section 2.1.3.

2.1.1 Billing Demand for Metered Resources

For service applicable to the Purchaser's resource(s) regardless of type, having appropriate metering equipment, the billing demand shall be the average metered energy for each resource for the billing month.

2.1.2 Billing Demand for Hydroelectric Resources

For service applicable to the Purchaser's hydroelectric resource(s) the billing demand shall be the total Resource Capability, as specified in section B.2.1.4, for the Purchaser's hydroelectric resource(s), multiplied by a capacity factor of 0.60.

2.1.3 Billing Demand for Non-Hydroelectric Resources

For service applicable to the Purchaser's thermal resource(s) and any other non-hydro-electric resource(s), the billing demand shall be the total Resource Capability for the Purchaser's thermal resource(s) and any other non-hydroelectric resource(s), multiplied by a capacity factor of 0.90.

2.1.4 Resource Capability

For service under 1981 power sales contracts, the Resource Capability, expressed in kilowatts, shall be equal to the Assured Peaking Capability of the Purchaser's resource(s). For 1996 contracts and all other agreements, the Resource Capacity shall be the Monthly Resource Peaking Capability as specified in the Agreement.

C. Control Area Reserves for Interruptible Purchases

1. Rates

1.1 Rate for Control Area Reserves for Interruptible Purchases

1.1.1 Stated Rate

The rate shall be 4.00 mills per kilowatt-hour.

1.1.2 Flexible Rate

The rate shall be specified by BPA for such service.

2. Billing Factor

The billing factor shall be the sum of scheduled amounts of Interruptible Energy per billing month.

D. Load Regulation

1. Rate

1.1 Stated Rate

The rate shall be 0.25 mills per kilowatt-hour of billing energy.

1.2 Flexible Rate

The rate shall be specified by BPA for such service.

2. Billing Factor

The billing factor for load regulation shall be the measured monthly kilowatt-hours of the purchaser's Retail Load.

E. Transmission Losses

1. RATE

1.1 Stated Rate

For agreements that provide the option of purchasing transmission losses, the rate shall be 29.34 mills per kilowatt-hour.

1.2 Flexible Rate

The rate shall be specified by BPA for such service.

2. Billing Factor

The Billing Factor shall be the amount of losses for the billing month calculated as specified in the applicable Agreement.

D. Summary of Transmission Rate Schedules

FPT–96—Formula Power Transmission Rate
FPT–96.3—Formula Power Transmission Rate
IR–96—Integration of Resources Rate
NT–96.2—Network Integration Transmission Rate
NT–96.5—Network Integration Transmission Rate
PTP–96.2—Point-to-Point Firm Transmission Rate
PTP–96.5—Point-to-Point Firm Transmission Rate
ET–96—Energy Transmission Rate
IS–96—Southern Intertie Transmission Rate
IN–96—Northern Intertie Transmission Rate
IE–96—Eastern Intertie Transmission Rate
MT–96—Market Transmission Rate
UFT–96—Use-of-Facilities Transmission Rate
AF–96—Advance Funding Rate
TGT–96—Townsend-Garrison Transmission Rate

A summary of the proposed 1996 Transmission Rate Schedules is provided below. Each of the rate schedules includes sections specifying the service available under the rate schedule, the rates for the products and services offered under the schedule, the billing factors, and other special provisions for rate adjustments, such as the discounts or penalties that apply to that rate schedule.

Three new transmission rates are proposed: the Network Integration Transmission rate; the Point-to-Point Transmission rate; and the Advance Funding rate. Nonfirm rates in the proposed Southern Intertie, Northern Intertie, Eastern Intertie, and Energy Transmission rate schedules are revised to allow for downward flexibility from the stated cost. A Reservation Fee 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. The Ancillary Products and Services rate schedule which specifies the charges for ancillary services that may be required to use BPA's transmission system is included in BPA's wholesale power rate proposal.

1. Formula Power Transmission (FPT–96)

The FPT–96 rate 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. The rate schedule provides for annual and seasonal service. Two FPT rate schedules are developed—one for rates that cannot be changed more frequently than once a year, and one for rates that cannot be changed more frequently than once every 3 years. Revised rates are proposed for both rate schedules.

2. Integration of Resources (IR–96)

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 Network facilities. The IR–96 rate is structured as a postage-stamp (independent of distance) rate. The proposed IR–96 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 rate has traditionally included both demand and energy charges; BPA is proposing that the IR–96 rate be a demand-only rate.

3. Network Integration (NT–96)

Network Integration transmission service allows customers to serve their load located in the PNW region. The proposed NT–96 rate is designed to conform generally with the pricing provisions of the FERC NOPR Network Integration tariff. The proposed NT–96 rate includes a Network demand charge that is applied to a customer's total retail load occurring at the hour of the monthly BPA transmission system peak, with a credit for the utility's transmission facilities. For customers with 1981 contracts, the Network charge will be applied to power delivered under those contracts on the hour of the monthly BPA transmission peak and no credit is given for customer transmission facilities. The rate schedule also includes delivery charges for customers served over Utility or DSI Delivery facilities. The NT rate also provides for a charge or credit to compensate for redispatching of resources. The NT rate will apply to BPA full requirements customers; partial requirements customers may elect either Network Integration Transmission service using the NT rate or Point to Point Transmission service using the Point to Point rate (see below). Residential Purchase and Sale Agreement purchasers shall take service under the 2-year NT rate.

4. Point-to-Point (PTP–96)

Point-to-Point transmission service allows customers to serve their retail load and/or transactions with third parties and off-system sales over the Network. BPA also will apply this rate for sale to, and purchases for, its own customers which are not native load customers. The proposed PTP–96 rate is designed to conform generally with the pricing provisions of the FERC NOPR Point-to-Point tariff. The proposed PTP–96 rate includes a Network demand charge that is applied to the greater of: (1) the sum of the monthly Point of Integration Transmission Demands; or (2) the sum of the monthly Point of Delivery Transmission Demands. The PTP rate may apply to firm transmission service of 1 month or longer. The rate schedule also includes delivery charges for customers served over Utility or DSI Delivery facilities.

5. Energy Transmission (ET–96)

The ET rate applies to firm service of less than a month and to nonfirm service over FCRTS facilities excluding the Interties. The rate may be used for service taken under the Point-to-Point tariff. The firm rate is a take-or-pay energy charge. The nonfirm rate is specified as a cap with flexibility below that level.

6. Southern Intertie (IS–96), Northern Intertie (IN–96), and Eastern Intertie (IE–96)

The IS rate and IN rate are available for service over those respective facilities. The rates are structured similarly: a nonfirm energy-only rate; and a firm rate with separate demand and energy components. The nonfirm rates are specified as a cap with flexibility below those levels. The IE rate is available for nonfirm transmission on the Eastern Intertie and is structured as an energy-only rate with downward flexibility.

7. Market Transmission (MT–96)

BPA is continuing the MT 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.

8. Use of Facilities Transmission (UFT–96) and Townsend-Garrison Transmission (TGT–96)

The UFT–96 and TGT–96 rate schedules are formula rates that are being proposed unchanged from the current 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.

9. Advance Funding (AF–96)

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.

10. Reservation Fee for Transmission Capacity and Reactive Power Charge

The proposed Reservation Fee 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 postpone the commencement of such service while maintaining the availability of transmission capacity. Payment of the Reservation Fee for Transmission Capacity would allow a customer to postpone service for a year at a time for up to 5 years. This proposed Reservation Fee is modeled on the one in FERC's Point-to-Point tariff. 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 and points of interconnection.

E. Transmission Rate Schedules

Schedule FPT–96.2—Formula Power Transmission Rate

Section I. Availability

This schedule supersedes schedule FPT–95.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The monthly charge shall be A or B.

A. Embedded Cost

1. Full-Year Service

The monthly charge per kilowatt of Billing Demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.

a. Main Grid Charge: The Main Grid Charge per kilowatt of Billing Demand shall be the sum of one or more of the following component factors as specified in the agreement:

(1) Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0526 per mile.
(2) Main Grid Interconnection Terminal Factor: $0.36.
(3) Main Grid Terminal Factor: $0.59.
(4) Main Grid Miscellaneous Facilities Factor: $2.79.
b. Secondary System Charge The Secondary System Charge per kilowatt of Billing Demand shall be the sum of one or more of the following component factors as specified in the agreement:
(1) Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.3769 per mile.
(2) Secondary System Transformation Factor: $5.37.
(3) Secondary System Intermediate Terminal Factor: $1.70.
(4) Secondary System Interconnection Terminal Factor: $1.17.

2. Partial-Year Service

The monthly charge per kilowatt of Billing Demand shall be as specified in section II.A.1 for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The monthly charge shall be:
a. During months for which service is specified, the monthly charge defined in section II.A.1, and
b. During other months, the monthly charge defined in section II.A.1 multiplied by 0.2.

B. Opportunity Cost

For applications for new service or increases in current service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A.

Section III. Billing Factors

A. Embedded Cost

Unless otherwise stated in the agreement, the Billing Demand for the rates specified in section II.A. shall be the largest of:
1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

B. Opportunity Cost

Billing factors for the rate specified in section II.B. shall be specified in the agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support FPT transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

C. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Provisions.

D. Rates Applicable to FPT Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

Schedule FPT–96.3—Formula Power Transmission Rate

Section I. Availability

This schedule supersedes schedule FPT–95.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every three years. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The monthly charge shall be A or B.

A. Embedded Cost

1. Full-Year Service

The monthly charge per kilowatt of Billing Demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.
a. Main Grid Charge: The Main Grid Charge per kilowatt of Billing Demand shall be the sum of one or more of the following component factors as specified in the agreement:
(1) Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0526 per mile.
(2) Main Grid Interconnection Terminal Factor: $0.36.
(3) Main Grid Terminal Factor: $0.59.
(4) Main Grid Miscellaneous Facilities Factor: $2.79.
b. Secondary System Charge: The Secondary System Charge per kilowatt of Billing Demand shall be the sum of one or more of the following component factors as specified in the agreement:
(1) Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.3769 per mile.
(2) Secondary System Transformation Factor: $5.37.
(3) Secondary System Intermediate Terminal Factor: $1.70.
(4) Secondary System Interconnection Terminal Factor: $1.17.

2. Partial-Year Service

The monthly charge per kilowatt of Billing Demand shall be as specified in section II.A.1 for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The monthly charge shall be:
a. During months for which service is specified, the monthly charge defined in section II.A.1, and
b. During other months, the monthly charge defined in section II.A.1 multiplied by 0.2.

B. Opportunity Cost

For applications for new service or increases in current service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A.

Section III. Billing Factors

A. Embedded Cost

Unless otherwise stated in the agreement, the Billing Demand for the rates specified in section II.A. shall be the largest of:
1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

B. Opportunity Cost

Billing factors for the rate specified in section II.B. shall be specified in the agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support FPT transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

C. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

D. Rates Applicable to FPT Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

Schedule IR–96—Integration of Resources Rate

Section I. Availability

This schedule supersedes IR–95 and is available for transmission of non-Federal power for full-year firm transmission service and nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand using Federal Columbia River Transmission System Network facilities. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The monthly charge shall be A or B.

A. Embedded Cost

The monthly charge shall be:

1. $1.188 per kilowatt of Billing Demand; or

2. For Points of Integration (POI) specified in the Agreement as being short distance POIs, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies: [0.2 + (0.8 × transmission distance/75)] * $0.594 per kilowatt of billing demand.

Where the Billing Demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery serving load of the customer. Short distance POIs are determined by BPA after considering factors in addition to transmission distance.

B. Opportunity Cost

For applications for new service or increases in current service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A.

Section III. Billing Factors

To the extent that the agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the agreement, at the Energy Transmission rate, such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatment and BPA approves in accordance with the prescribed provisions in the agreement.

A. Embedded Cost

The Billing Demand shall be the largest of:

1. The Transmission Demand, or, if defined in the agreement, the Total Transmission Demand;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

B. Opportunity Cost

Billing factors shall be specified in the agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support IR transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

C. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

D. Rates Applicable to IR Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

Schedule NT–96.2 Network Integration Transmission Rate

Section I. Availability

This schedule is available to each customer that executes a Network Integration Service Agreement (Agreement) and does not elect the 5-year rate option. Such Agreement provides for delivery of Federal and non-Federal power to the customer's Network Load over Federal Columbia River Transmission System Network and Utility/DSI Delivery facilities. Terms and conditions of service are specified in the Network Integration Service Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). This schedule is available to utilities participating in the residential exchange under section 5(c) of the Northwest Power Act pursuant to their Residential Purchase and Sale Agreements (RPSA). Service under this schedule is not available for transmission of non-Federal power to customers taking service concurrently under the Integration of Resources rate or Formula Power Transmission rate. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The monthly charge shall be the sum of A and B.

A. Network Charge

$1.597 per kilowatt per month of Billing Demand.

B. Delivery Charges

1. Utility

For service over Utility Delivery facilities, the charge is $1.143 per kilowatt per month of Billing Demand.

2. DSI

For service over DSI Delivery facilities, the charge is $0.404 per kilowatt per month of Billing Demand.

C. Redispatch Credit/Cost

When BPA implements redispatch procedures pursuant to the Network Integration Service Tariff, the total cost impact of such procedures shall be shared among Network Integration customers based on the ratio of each customer's NT Network Charge Billing Demand to the sum of all NT Network Charge Billing Demands. Such Billing Demands shall be for the month in which the redispatch cost is incurred. Redispatch cost shall be charged on NT customers' monthly bills in a lump sum amount.

To the extent that the cost borne by the NT customer whose resource was redispatched is greater than such customer's cost share (as determined above), a credit shall be given on the affected NT customer's monthly bill. To the extent that the cost borne by the affected NT customer is less than such customer's cost responsibility, the difference shall be charged on the affected NT customer's monthly bill.

Section III. Billing Factors

A. Network Charge

1. Billing Demand

The monthly Billing Demand for the charge specified in section II.A. shall be the Customer's Load.

Where ''Customer's Load'' is the customer's Network Load measured during the hour of the Monthly Transmission Peak Load. For customers with 1981 Contracts, ''Customer's Load'' is the power taken under 1981 Contracts during the hour of the Monthly Transmission Peak Load. ''Monthly Transmission Peak Load'' is the monthly peak loading on the FCRTS for the billing month.

''Network Load'' is the designated load of a Transmission Customer including the entire load of all designated Member Systems. A Transmission Customer's Network Load shall not be reduced to reflect any portion of such load served by the output of any generating facilities owned, or generation purchased, by the Transmission Customer, its Member Systems, or other customers served by the Transmission Customer under the Network Integration Service Tariff.

The Network Load is the Transmission Customer's actual total system load, including distribution losses. No distinction is made between load that is served with BPA power and load that is served with power from other sources. To the extent the Transmission Customer is served with resources remote from their system, Network Load shall be measured at specified Points of Delivery.

2. Residential Exchange

For RPSA utilities, the Billing Demand shall be the demand calculated by applying the load factor, determined as specified in the RPSA, to the energy associated with the utility's residential load for each billing period. Residential load shall be determined in accordance with the provisions of the purchaser's RPSA.

3. Network Billing Demand Adjustment

The Network Charge Billing Demand determined under section III.A.1. shall be decreased by the power delivered under any BPA power sales contract, not including 1981 Contracts and 1996 Contracts, during the hour of the Monthly Transmission Peak Load. Adjustments shall be made for power delivered under contracts executed prior to October 1, 1996, that bundle the price for transmission with the price for power, or specify a transmission rate different than this NT Network rate.

B. Delivery Charge

The monthly billing demand for the charges specified in section II.B. shall be the Customer's Load that occurs during the hour of the Monthly Transmission Peak Load at the Points of Delivery specified in BPA's Segmentation Study as Utility Delivery or DSI Delivery facilities.

C. Adjustment for Metering

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall equal the highest hourly peak demand during the billing month at the Point of Delivery multiplied by 0.76.

Section IV. Adjustments and Other Provisions

A. Customer Facilities Credit

Monthly bills for the Network Charge specified in section II.A. shall be reduced by a Customer Facilities Credit, if contractually specified. The Customer Facilities Credit is based on the annual cost of customer-owned transmission facilities which would be included in BPA's revenue requirement for the Network segment if BPA owned such customer facilities. The specification of which customer-owned transmission facilities shall be included in the Customer Facilities Credit shall be based on a determination of whether BPA would be responsible for providing such facilities, in accordance with BPA's Customer Service Policy, if the requesting party were a BPA full requirements power customer. The annual cost of the identified customer-owned transmission facilities shall be based on the customer's costs. The Customer Facilities Credit will be specified as a monthly amount in an exhibit to the contract. The Customer Facilities Credit is not available to Metered and Computed Requirements Customers.

B. Credit to NT Network Charge Bill

A credit shall be made to the monthly bill for Network Integration Transmission Service for Partial Requirements Customers who purchase transmission service under Integration of Resources (IR) or Formula Power Transmission (FPT) rate schedules. Such credit shall equal the portion of the monthly bill for IR or FPT service to the customer's Network Load.

C. Credit to Delivery Charges

A credit shall be made to the monthly bill for Network Integration Transmission Service for customers who pay for Utility Delivery or DSI Delivery facilities under the Use-of-Facilities (UFT) rate schedule. The credit shall equal the monthly UFT charges for such Delivery facilities.

D. Ancillary Services

Ancillary services that may be required to support NT transmission service are available under the APS rate schedule.

E. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

F. Direct Assignment Facilities

BPA shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Integration Transmission customer under an applicable rate schedule.

G. Rates Applicable to NT Service

The rates specified in section II are applicable to service over available transmission capacity. NT customers that integrate new Network Resources, new Member Systems, or new native load customers that would require BPA to construct Network Upgrades shall be

subject to the higher of the rates specified in section II or incremental cost rates for service over such facilities. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, this rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to this rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC-order granting final approval of this rate schedule for FERC ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under this rate schedule prior to the effective date of such prospective modification.

Schedule NT–96.5—Network Integration Transmission Rate

Section I. Availability

This schedule is available to each customer that executes a Network Integration Service Agreement (Agreement) and elects the 5-year rate option. Such Agreement provides for delivery of Federal and non-Federal power to the customer's Network Load over Federal Columbia River Transmission System Network and Utility/DSI Delivery facilities. Terms and conditions of service are specified in the Network Integration Service Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is not available for transmission of non-Federal power to customers taking service concurrently under the Integration of Resources rate or Formula Power Transmission rate. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The monthly charge shall be the sum of A and B.

A. Network Charge

$1.656 per kilowatt per month of Billing Demand.

B. Delivery Charges

1. Utility

For service over Utility Delivery facilities, the charge is $1.164 per kilowatt per month of Billing Demand.

2. DSI

For service over DSI Delivery facilities, the charge is $0.415 per kilowatt per month of Billing Demand.

C. Redispatch Credit/Cost

When BPA implements redispatch procedures pursuant to the Network Integration Service Tariff, the total cost impact of such procedures shall be shared among Network Integration customers based on the ratio of each customer's NT Network Charge Billing Demand to the sum of all NT Network Charge Billing Demands. Such Billing Demands shall be for the month in which the redispatch cost is incurred. Redispatch cost shall be charged on NT customers' monthly bills in a lump sum amount.

To the extent that the cost borne by the NT customer whose resource was redispatched is greater than such customer's cost share (as determined above), a credit shall be given on the affected NT customer's monthly bill. To the extent that the cost borne by the affected NT customer is less than such customer's cost responsibility, the difference shall be charged on the affected NT customer's monthly bill.

Section III. Billing Factors

A. Network Charge

1. Billing Demand

The monthly billing demand for the charge specified in section II.A. shall be the Customer's Load.

Where ''Customer's Load'' is the customer's Network Load measured during the hour of the Monthly Transmission Peak Load. For customers with 1981 Contracts, ''Customer's Load'' is the power taken under the 1981 Contracts during the hour of the Monthly Transmission Peak Load. ''Monthly Transmission Peak Load'' is the monthly peak loading on the FCRTS for the billing month.

''Network Load'' is the designated load of a Transmission Customer including the entire load of all designated Member Systems. A Transmission Customer's Network Load shall not be reduced to reflect any portion of such load served by the output of any generating facilities owned, or generation purchased, by the Transmission Customer, its Member Systems, or other customers served by the Transmission Customer under the Network Integration Service Tariff.

The Network Load is the Transmission Customer's actual total system load, including distribution losses. No distinction is made between load that is served with BPA power and load that is served with power from other sources. To the extent the Transmission Customer is served with resources remote from their system, Network Load shall be measured at specified Points of Delivery.

2. Network Billing Demand Adjustment

The Network Charge Billing Demand determined under section III.A.1. shall be decreased by the power delivered under any BPA power sales contract, not including 1981 Contracts and 1996 Contracts, during the hour of the Monthly Transmission Peak Load. Adjustments shall be made for power delivered under contracts executed prior to October 1, 1996, that bundle the price for transmission with the price for power, or specify a transmission rate different than this NT Network rate.

B. Delivery Charge

The monthly Billing Demand for the charges specified in section II.B. shall be the Customer's Load that occurs during the hour of the Monthly Transmission Peak Load at the Points of Delivery specified in BPA's Segmentation Study as Utility Delivery or DSI Delivery facilities.

C. Adjustment for Metering

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall equal the highest hourly peak demand during the billing month at the Point of Delivery multiplied by 0.76.

Section IV. Adjustments and Other Provisions

A. Customer Facilities Credit

Monthly bills for the Network Charge specified in section II.A. shall be reduced by a Customer Facilities Credit, if contractually specified. The Customer Facilities Credit is based on the annual cost of customer-owned transmission facilities which would be included in BPA's revenue requirement for the Network segment if BPA owned such customer facilities. The specification of

which customer-owned transmission facilities shall be included in the Customer Facilities Credit shall be based on a determination of whether BPA would be responsible for providing such facilities, in accordance with BPA's Customer Service Policy, if the requesting party were a BPA full requirements power customer. The annual cost of the identified customer-owned transmission facilities shall be based on the customer's costs. The Customer Facilities Credit will be specified as a monthly amount in an exhibit to the contract. The Customer Facilities Credit is not available to Metered and Computed Requirements Customers.

B. Credit to NT Network Charge Bill

A credit shall be made to the monthly bill for Network Integration Transmission Service for Partial Requirements customers who purchase transmission service under Integration of Resources (IR) or Formula Power Transmission (FPT) rate schedules. Such credit shall equal the portion of the monthly bill for IR or FPT service to the customer's Network Load.

C. Credit to Delivery Charges

A credit shall be made to the monthly bill for Network Integration Transmission Service for customers who pay for Utility Delivery or DSI Delivery facilities under the Use-of-Facilities (UFT) rate schedule. The credit shall equal the monthly UFT charges for such Delivery facilities.

D. Ancillary Services

Ancillary services that may be required to support NT transmission service are available under the APS rate schedule.

E. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section N of the General Rate Schedule Provisions.

F. Direct Assignment Facilities

BPA shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Integration Transmission customer under an applicable rate schedule.

G. Rates Applicable to NT Service

The rates specified in section II are applicable to service over available transmission capacity. NT customers that integrate new Network Resources, new Member Systems, or new Native Load Customers that would require BPA to construct Network Upgrades shall be subject to the higher of the rates specified in section II or incremental cost rates for service over such facilities. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, this rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to this rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of this rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under this rate schedule prior to the effective date of such prospective modification.

Schedule PTP–96.2—Point-to-Point Transmission Rate

Section I. Availability

This schedule is available to each Customer that executes a Point-to-Point Transmission Service Agreement (Agreement) and does not elect the 5-year rate option. Such Agreement provides for firm transmission service for Federal and non-Federal power for one calendar month or longer and for nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand over Federal Columbia River Transmission System (FCRTS) Network and Utility/DSI Delivery facilities. Terms and conditions of service are specified in the Point-to-Point Transmission Service Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule for the transmission of non-Federal power is not available to customers taking service concurrently under the Integration of Resources rate or Formula Power Transmission rate. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

A. Network Charge

The charge shall be 1 or 2.

1. Embedded Cost

$1.315 per kilowatt per month of Billing Demand.

2. Opportunity Cost

For applications for new service or increases in current service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A.1.

B. Delivery Charge

1. Utility

For service over Utility Delivery facilities, the charge is $1.143 per kilowatt per month of Billing Demand.

2. DSI

For service over DSI Delivery facilities, the charge is $0.404 per kilowatt per month of Billing demand.

Section III. Billing Factors

The monthly Transmission Demands shall be contractually specified.

A. Network Charge

1. Embedded Cost

The monthly Billing Demand for the rate specified in section II.A.1. shall be the greater of:

a. the sum of the monthly Point of Integration Transmission Demands (including monthly peak subscriptions designated pursuant to 1996 Contracts and computed peak requirements pursuant to 1981 Contracts) that correspond to the current billing month, or

b. the sum of the monthly Point of Delivery Transmission Demands (including monthly peak subscriptions designated pursuant to 1996 Contracts and computed peak requirements pursuant to 1981 Contracts) that correspond to the current billing month.

2. Opportunity Cost

The billing factor for the rate in section II.A.2. shall be specified in the Agreement.

B. Delivery Charge

The monthly Billing Demand for the charges specified in section II.B. shall be the Measured Demand that occurs during the hour of the Monthly

Transmission Peak Load at the Points of Delivery specified in BPA's Segmentation Study as Utility Delivery or DSI Delivery facilities.

At those points of delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall equal the highest hourly peak demand during the billing month at the Point of Delivery multiplied by 0.76.

Section IV. Other Provisions

A. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

B. Ancillary Services

Ancillary services that may be required to support PTP transmission service are available under the APS rate schedule.

C. PTP Unauthorized Transmission Increase Charge

Customers who exceed their monthly Point of Integration (POI) or Point of Delivery (POD) Transmission Demand on any hour shall be subject to the PTP Unauthorized Transmission Increase Charge.

1. Rate

$16.78 per kilowatt of Billing Demand.

2. Billing Factor

The Billing Demand shall be the number of kilowatts that exceeds the monthly Transmission Demand at any POI or POD, or exceeds the sum of monthly POI or POD Transmission Demands, on any hour.

D. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

E. Direct Assignment Facilities

BPA shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Point-to-Point Transmission customer under an applicable rate schedule.

F. Redispatch

When BPA determines that capacity constraints that may be relieved more economically through redispatching the system rather than by building new facilities or upgrading existing facilities to eliminate such constraints, the customer taking Point-to-Point Transmission Service shall be responsible for such costs to the extent consistent with FERC policy.

G. Rates Applicable to PTP Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, this rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to this rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of this rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under this rate schedule prior to the effective date of such prospective modification.

Schedule PTP–96.5—Point-to-Point Firm Transmission Rate

Section I. Availability

This schedule is available to each Customer that executes a Point-to-Point Transmission Service Agreement (Agreement) and elects the 5-year rate option. Such Agreement provides for firm transmission service for Federal and non-Federal power for one calendar month or longer and for nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand over Federal Columbia River Transmission System (FCRTS) Network and Utility/DSI Delivery facilities. Terms and conditions of service are specified in the Point-to-Point Transmission Service Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule for the transmission of non-Federal power is not available to customers taking service concurrently under the Integration of Resources rate or Formula Power Transmission rate. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

A. Network Charge

The charge shall be 1 or 2.

1. Embedded Cost

$1.386 per kilowatt per month of Billing Demand.

2. Opportunity Cost

For applications for new service or increases in current service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A

B. Delivery Charge

1. Utility

For service over Utility Delivery facilities, the charge is $1.164 per kilowatt per month of Billing Demand.

2. DSI

For service over DSI Delivery facilities, the charge is $0.415 per kilowatt per month of Billing Demand.

Section III. Billing Factors

The monthly Transmission Demands shall be contractually specified.

A. Network Charge

1. Embedded Cost

The monthly Billing Demand for the rate specified in section II.A.1. shall be the greater of:

a. the sum of the monthly Point of Integration Transmission Demands (including monthly peak subscriptions designated pursuant to 1996 Contracts and computed peak requirements pursuant to 1981 Contracts) that correspond to the current billing month, or

b. the sum of the monthly Point of Delivery Transmission Demands (including monthly peak subscriptions

designated pursuant to 1996 Contracts and computed peak requirements pursuant to 1981 Contracts) that correspond to the current billing month.

2. Opportunity Cost

The billing factor(s) for the rate in section II.A.2. shall be specified in the Agreement.

B. Delivery Charge

The monthly Billing Demand for the charges specified in section II.B. shall be the Measured Demand that occurs during the hour of the Monthly Transmission Peak Load at the Points of Delivery specified in BPA's Segmentation Study as Utility Delivery or DSI Delivery facilities.

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall equal the highest hourly peak demand during the billing month at the Point of Delivery multiplied by 0.76.

Section IV. Other Provisions

A. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

B. Ancillary Services

Ancillary services that may be required to support PTP transmission service are available under the APS rate schedule.

C. PTP Unauthorized Transmission Increase Charge

Customers who exceed their monthly Point of Integration (POI) or Point of Delivery (POD) Transmission Demand on any hour shall be subject to the PTP Unauthorized Transmission Increase Charge.

1. Rate

$15.63 per kilowatt of Billing Demand.

2. Billing Factor

The Billing Demand shall be the number of kilowatts that exceeds the monthly Transmission Demand at any POI or POD, or exceeds the sum of monthly POI or POD Transmission Demands, on any hour.

D. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

E. Direct Assignment Facilities

BPA shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Point-to-Point Firm Transmission customer under an applicable rate schedule.

F. Redispatch

When BPA determines that capacity constraints may be relieved more economically through redispatching the system rather than by building new facilities or upgrading existing facilities to eliminate such constraints, the customer taking Point-to-Point Transmission Service shall be responsible for such costs to the extent consistent with FERC policy.

G. Rates Applicable to PTP Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, this rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to this rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of this rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under this rate schedule prior to the effective date of such prospective modification.

Schedule ET–96—Energy Transmission Rate

Section I. Availability

This schedule supersedes ET–95 and is available for transmission service between points within the Pacific Northwest using Federal Columbia River Transmission System (FCRTS) facilities excluding the Southern Intertie, Eastern Intertie, and Northern Intertie. This rate is available for transmission of Federal and non-Federal power for firm transmission service of less than one calendar month duration and for nonfirm transmission service. Terms and conditions of Energy Transmission service are specified in the Point-to-Point Service Tariff. This schedule is available for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The charge shall be A or B.

A. Firm

1. Embedded Cost

2.44 mills per kilowatt-hour.

2. Opportunity Cost

For applications for new firm service or increases in current firm service, Opportunity Costs may be charged if those costs are higher than the rates in section II.A.1.

B. Nonfirm

The charge shall not exceed 2.44 mills per kilowatt-hour.

Section III. Billing Factors

The Billing Energy for the charge specified in section II.A.1. shall be the Contract Energy.

The Billing Energy for the rate in section II.A.2. shall be specified in the agreement.

The Billing Energy for charges under section II.B. shall be the monthly sum of scheduled kilowatt-hours.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support ET transmission service are available under the APS rate schedule.

B. ET Unauthorized Transmission Increase Charge

Customers who exceed their Contract Energy at any Point of Integration (POI) or Point of Delivery (POD) shall be subject to the ET Unauthorized Transmission Increase Charge.

1. Rate

29.28 mills per kilowatt-hour of Billing Energy.

2. Billing Factor

The Billing Energy shall be the amount of energy that exceeds the monthly Contract Energy at specified POIs or PODs.

C. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

D. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, this rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to this rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of this rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under this rate schedule prior to the effective date of such prospective modification.

Schedule IS–96—Southern Intertie Transmission Rate

Section I. Availability

This schedule supersedes IS–95 and is available for firm and nonfirm transmission service on the Southern Intertie. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The rates below apply to both north-to-south and south-to-north transactions.

A. Nonfirm Transmission Rate

The charge shall not exceed 3.53 mills per kilowatt-hour of Billing Energy.

B. Firm Transmission Rate

The charge shall be 1 or 2.

1. Embedded Cost

$0.740 per kilowatt per month of Billing Demand, and 1.77 mills per kilowatt-hour of Billing Energy.

2. Opportunity Cost

For applications for new firm service or increases in current firm service, Opportunity Costs may be charged if those costs are higher than the rates in section II.B.1.

Section III. Billing Factors

A. Nonfirm Transmission

For nonfirm service under section II.A., the Billing Energy shall be the monthly sum of the scheduled kilowatt-hours, plus the monthly sum of kilowatt-hours allocated but not scheduled. The amount of allocated but not scheduled kilowatt-hours that is subject to billing may be reduced pro rata by BPA due to forced Intertie outages and other uncontrollable forces that may reduce Southern Intertie capacity. The amount of allocated but not scheduled kilowatt-hours that is subject to billing also may be reduced upon mutual agreement between BPA and the customer.

B. Firm Transmission

For firm transmission service under section II.B.1., the Billing Demand shall be the Transmission Demand as specified in the agreement. The Billing Energy for firm transmission service shall be the monthly sum of scheduled kilowatt-hours, unless otherwise specified in the agreement.

For firm transmission service under section II.B.2., the billing factors shall be specified in the agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support IS transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

C. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service will be subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

D. Rates Applicable to IS Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

Schedule IN–96 Northern Intertie Transmission Rate

Section I. Availability

This schedule supersedes IN–95 and is available for firm and nonfirm transmission service on the Northern Intertie. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The rates below apply to both north-to-south and south-to-north transactions.

A. Nonfirm Transmission Rate

The charge shall not exceed 0.63 mills per kilowatt-hour of Billing Energy.

B. Firm Transmission Rate

The charge shall be 1 or 2.

1. Embedded Cost

$0.115 per kilowatt per month of Billing Demand, and 0.31 mills per kilowatt-hour of Billing Energy.

2. Opportunity Cost

For applications for new firm service or increases in current firm service, Opportunity Costs may be charged if those costs are higher than the rates in section II.B.1.

Section III. Billing Factors

A. Nonfirm Transmission

For nonfirm service under section II.A., the Billing Energy shall be the monthly sum of the scheduled kilowatt-hours.

B. Firm Transmission

For firm service under section II.B.1., the Billing Demand shall be the Transmission Demand specified in the

agreement. The Billing Energy for firm service shall be the monthly sum of the scheduled kilowatt-hours, unless otherwise specified in the agreement.

For firm transmission service under section II.B.2., the billing factors shall be specified in the agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support IN transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

C. Reservation Fee for Transmission Capacity

Customers who request new or increased firm transmission service under this rate and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee for Transmission Capacity specified in section II.O. of the General Rate Schedule Provisions.

D. Rates Applicable to IN Service

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

Schedule IE–96—Eastern Intertie Transmission Rate

Section I. Availability

This schedule supersedes IE–95 and is available for nonfirm transmission service on the Eastern Intertie. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The charge shall not exceed 1.89 mills per kilowatt-hour of Billing Energy.

Section III. Billing Factors

Billing Energy shall be the monthly sum of the scheduled kilowatt-hours, unless otherwise specified in the Agreement.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support IE transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

Schedule MT–96—Market Transmission Rate

Section I. Availability

This schedule supersedes MT–95 and is available for transmission service for transactions using Federal Columbia River Transmission System facilities pursuant to the Western Systems Power Pool (WSPP) Agreement. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA—s Billing Procedures.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall be based on the duration of the proposed transaction and shall not exceed the following rates.

A. Hourly Rate

The maximum charge shall be 6.5 mills per kilowatt-hour where the total hourly revenues from a given transaction during a calendar day shall not exceed the product of the Daily rate and the maximum demand scheduled during such day.

B. Daily Rate

The maximum charge shall be $.105 per kilowattday where the total demand charge revenues in any consecutive 7-day period shall not exceed the product of the Weekly rate and the highest demand experienced on any day in the 7-day period.

C. Weekly Rate

The maximum charge shall be $.52 per kilowattweek.

D. Monthly Rate

The maximum charge shall be $2.27 per kilowattmonth.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the transmission service use or reservation.

Section IV. Other Provisions

A. Ancillary Services

Ancillary services that may be required to support MT transmission service are available under the APS rate schedule.

B. Reactive Power Charge

Customers taking service under this rate schedule are subject to the Reactive Power Charge specified in section II.N. of the General Rate Schedule Provisions.

Schedule UFT–96—Use-of-Facilities Transmission Rate

Section I. Availability

This schedule supersedes UFT–95 unless otherwise provided in the agreement, and is available for firm transmission over specified Federal Columbia River Transmission System (FCRTS) facilities. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA—s Billing Procedures.

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once in each Contract Year, BPA shall determine the following data for the facilities which have been constructed or otherwise acquired by BPA and which are used to transmit electric power:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the Federal Columbia River Power System financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility constructed or otherwise

acquired by BPA shall be determined in accordance with the following formula:

A
D

Where:

A=The annual cost of such facility as determined in accordance with A.1. above.

D=The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

The annual cost per kilowatt of facilities listed in the agreement which are owned by another entity, and used by BPA for making deliveries to the transferee, shall be determined from the costs specified in the agreement between BPA and such other entity.

Section IV. Determination of Billing Demand

Unless otherwise stated in the agreement, the factor to be used in determining the kilowatts of Billing Demand shall be the largest of:

A. The Transmission Demand in kilowatts specified in the agreement;

B. The highest hourly Measured or Scheduled Demand for the month, the Measured Demand being adjusted for power factor; or

C. The Ratchet Demand.

Schedule AF–96 Advance Funding Rate

Section I. Availability

This schedule is available to customers who execute an agreement that provides for BPA to collect capital and related costs through advance funding or other financial arrangement for specified BPA-owned Federal Columbia River Transmission System (FCRTS) facilities used for:

A. Interconnection or integration of resources and loads to the FCRTS;

B. Upgrades, replacements, or reinforcements of the FCRTS for transmission service; or

C. Other transmission service arrangements, as determined by BPA. Service under this schedule is subject to BPA's General Rate Schedule. Bills shall be rendered and payments due pursuant to BPA's Billing Procedures.

Section II. Rate

The charge is the sum of the actual capital and related costs for specified FCRTS facilities, as provided in the agreement. Such actual capital and related costs include, but are not limited to, costs of design, materials, construction, overhead, spare parts, and all incidental costs necessary to provide service as identified in the agreement.

Section III. Payment

A. Advance Payment

Payment to BPA shall be specified in the agreement as either:

1. A lump sum advance payment;

2. Advance payments pursuant to a schedule of progress payments; or

3. Other payment arrangement, as determined by BPA.

Such advance payment or payments shall be based on an estimate of the capital and related costs for the specified FCRTS facilities as provided in the agreement.

B. Adjustment to Advance Payment

BPA shall determine the actual capital and related costs of the specified FCRTS facilities as soon as practicable after the date of commercial operation, as determined by BPA. The customer will either receive a refund from BPA or be billed for additional payment for the difference between the advance payment and the actual capital and related costs pursuant to BPA's Billing Procedures.

Schedule TGT–96

Townsend-Garrison transmission rate

Section I. Availability

This schedule supersedes TGT–95 and shall apply to all agreements which provide for the firm transmission of electric power and energy over transmission facilities of BPA's section of the Montana [Eastern] Intertie. Service under this schedule is subject to BPA's General Rate Schedule Provisions and Adjustments, Charges, and Special Rate Provisions. Bills shall be rendered and payments due pursuant to BPA—s Billing Procedures. Service under this schedule is subject to BPA's General Rate Schedule Provisions. Bills shall be rendered and payments due pursuant to BPA—s Billing Procedures.

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1- to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge

This charge will be filed as a separate rate schedule and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service

Intertie Charge = [((TAC/12-NFR) × (CR–EC) TCR]

Section III. Definitions

A. TAC = Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of: (1) Interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance

costs; (3) allowance for BPA's general administrative costs which are appropriately allocable to such facilities; and (4) payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. NFR = Nonfirm Revenues, which are equal to: (1) the product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. CR = Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. TCR = Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. EC = Exchange Credit for each customer which is the product of: (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

F. *General Rate Schedule Provisions (GRSPs):* This section contains the combined GRSPs for power and transmission rates. The GRSPs contain detailed descriptions of all adjustments, charges, and special rate provisions, and definitions of products and services and of rate schedule terms:

Section I Adoption of Revised Rate Schedules and General Rate Schedule Provisions

Section II Adjustments, Charges, and Special Rate Provisions

Section III Definitions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates

These 1996 wholesale power and transmission rate schedules and General Rate Schedule Provisions (GRSPs) shall become effective upon interim approval or upon final confirmation and approval by the Federal Energy Regulatory Commission (FERC). Bonneville Power Administration (BPA) has requested that FERC make these rates and GRSPs effective on October 1, 1996, for customers who are billed by BPA on a calendar month basis and on the first day of the first billing month following that date for all other customers. All rate schedules shall remain in effect until they are replaced or expire on their own terms.

B. General Provisions

These 1996 wholesale power and transmission rate schedules and the GRSPs associated with these schedules supersede BPA's 1995 rate schedules (which became effective October 1, 1995) to the extent stated in the Availability section of each rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to, and subsequent to, enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). All sales under these rate schedules are subject to the following acts as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act (Pub. L. 93–454), the Northwest Power Act (Pub. L. 96–501), and the Energy Policy Act of 1992 (Pub. L. 102–486).

These 1996 rate schedules do not supersede any previously established rate schedule which is required, by agreement, to remain in effect.

C. Notices

For the purpose of determining elapsed time from ''receipt'' of a notice applicable to rate schedule and GRSP administration, a notice shall be deemed to have been received at 0000 hours on the first calendar day following actual receipt of the notice.

Section II. Adjustments, Charges, and Special Rate Provisions

A. Conservation Surcharge (PF/NR only)

The Conservation Surcharge, where implemented, shall be applied in accordance with relevant provisions of the Northwest Power Act, BPA's current conservation surcharge policy, and the customer's Power Sales Contract with BPA. The PF and NR rate schedules are subject to the Conservation Surcharge. If a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal 10 percent of the total charge for all PF and NR power purchases multiplied by the ratio of: (a) the Purchaser's total retail load that is subject to the surcharge; and (b) the customer's total retail load.

The Conservation Surcharge shall be applied monthly and shall equal 10 percent of the customer's total monthly charge for any portion of power purchased under each rate schedule subject to the surcharge. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a BPA-approved Model Conservation Standards (MCS) residential plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent and multiplying the resulting percentage by 0.10. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a BPA-approved MCS commercial plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent and multiplying the resulting percentage by 0.10. The residential or commercial surcharge (one or the other, but not both for any one customer) will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and will be applied subsequent to any other rate adjustment.

B. Cost Contributions

BPA has made the following resource cost determinations:

1. The forecasted average cost of resources available to BPA under average water conditions is 22.56 mills per kilowatt-hour.

2. The approximate cost contribution of different resource categories to each rate schedule is as follows:

Rate schedule	Resource cost contribution	
	Federal base system (percent)	New resources (percent)
PF–96.2	100	0
PF–96.5	100	0
IP–96.2	77.69	22.31
IP–96.5	77.69	22.31
NR–96.2	77.69	22.31
NR–96.5	77.69	22.31
FPS–96	77.69	22.31

C. Curtailment Charge (IP Only)

Curtailment charges are charges assessed pursuant to section 9 of a DSI's 1981 Contract for failure to purchase an amount of power equal to 75 percent of the DSI's Operating Demand.

D. Deviation Adjustment

The Deviation Adjustment, described below, applies to Partial Requirements Purchasers under the 1996 Contract. In addition, for Full Requirements customers who purchase under 1996 Contracts, the Deviation Adjustment applies to those customers who elect to have their billing factor for Load Shaping reduced by an Industrial Exemption. In addition, the Deviation Adjustment applies to purchasers under the Power Shortage rate.

1. Definition of ''Deviation''

Deviation is the difference between the quantity of power that was actually taken from BPA (Actual) and the quantity the customer should have taken pursuant to its power sales contract (Obligation). If a customer's Actual exceeds its Obligation, the deviation is considered a ''positive'' deviation; if its Actual is less than its Obligation, the deviation is termed ''negative.''

2. The Customer's Purchase Obligation

The customer's purchase Obligation is a function of whether the customer is purchasing BPA's Load Shaping product. The actual description of the Purchaser's Obligation is provided in the Purchaser—s 1996 Contract.

3. Application of the Deviation Adjustment

The Deviation Adjustment is applied differently to customers purchasing Load Shaping and those not purchasing Load Shaping. Authorized Deviations are determined and charged for first, followed by Unauthorized Deviations.

a. Authorized Deviations

1. Load Shaping Purchasers

The Authorized Deviation for any purchaser who is buying BPA's Load Shaping product is included in the PF, NR, and IP billing factors; there is no separate adjustment for Authorized Deviations.

2. Other Purchasers

All other Purchasers who are subject to the Deviation Adjustment are eligible for an Authorized Deviation Adjustment. (In addition, they may be subject to the Unauthorized Deviation Charge below.) The Purchaser shall pay the established PF, NR, or IP rate, as applicable, for the authorized deviation.

b. Unauthorized Deviations

1. Unauthorized Deviation Charge

a. Demand Charge: Demand Charge from applicable power rate schedule.

b. Energy Charge: 100 mills per kWh in all months of the year.

2. Application of the Unauthorized Deviation Charge

Application of the Unauthorized Deviation Charge consists of three separate calculations, each of which is completed for each purchaser.

Positive Deviations

BPA will charge for positive deviations on a monthly basis at the rate specified above. (There is no additional charge for negative deviations, but the customer is not relieved of its take-or-pay obligation for negative deviations.)

Rate Period Excessive Purchases

If, in the last month of the purchase period, BPA determines that the Purchaser has taken more power than it is entitled to take to serve its actual Retail Load for the purchase period, then the Purchaser shall be subject to the Unauthorized Deviation Charge for all such excessive purchases.

Diverted Power Adjustment Deviations

If, in the last month of the purchase period, the Purchaser has not taken return of all of its Diverted Power (as described in the Billing Procedures), then the Purchaser must pay BPA the Unauthorized Deviation charge for all Diverted Power that was not returned to the Purchaser's system during the rate period.

E. Election Process

5-Year Rate Election

Any purchaser, except utilities participating in the residential exchange under section 5(c) of the Northwest Power Act, must elect an amount of power to be purchased under the applicable 5-year rates (PF–96.5, IP–96.5 or NR–96.5). The 5-year rate shall apply to purchasers who purchase power from BPA under either the 1981 or 1996 Contract and who comply with the requirements below.

1. Subscription Options

The amount of power that customers can purchase under the 5-year rate shall be based on one of the following methods.

a. Percentage of Load Option

This option is available only to: (a) Metered Requirements Customers and Actual Computed Requirements Customers as designated in the 1981 Contracts; and (b) Full Requirements Customers and Partial Requirements Customers as designated in the 1996 Contracts who elect to purchase Load Shaping from BPA. This option is not available for service to New Large Single Loads (NLSL). Purchasers eligible to use this option may select a single percentage equal to or less than 100 percent for the 5-year period. If a purchaser selects less than 100 percent, the remaining power purchased from BPA shall be billed at the PF–96.2, IP–96.2, or NR–96.2 rate, as appropriate. For utility purchasers under 1981 Contracts using this option, the amount of subscribed load under the 5-year rate shall be a percentage of the purchaser's Measured Demand and Energy. For DSIs purchasing under a 1981 Contract, the amount of subscribed load at the 5-year rate shall be a percentage of the purchaser's operating level and measured energy. For Full and Partial Requirements utility and DSI customers under 1996 Contracts, the amount of subscribed load under the 5-year rate shall be a percentage of the purchaser's total actual Retail Load.

b. Block of Power Option

This option is available to all purchasers except those serving New Large Single Loads. For purchasers using this option, the amount of subscribed load at the 5-year rate shall be the amount of demand and energy as specified by the purchaser. Purchasers using this option cannot specify an amount of power that exceeds their contract entitlements. Priority Firm Power, New Resource Firm Power, and Industrial Firm Power provided in excess of the amount subscribed will be billed at the appropriate 2-year rate. Purchasers under the 1996 Contract using this option must also specify an amount of power under the appropriate 2-year rate, as described in the contract.

c. Consumer Facility Option

This option is available to purchasers serving one or more New Large Single Loads. Purchasers under this option must elect to purchase under *either* the NR–96.2 rate or the NR–96.5 rate to serve all of that purchaser's NLSL load(s). For purchasers using this option, the amount of subscribed load to be served shall be the sum of the measured amounts of power (demand and energy) at all designated consumer facilities.

2. Notification Requirements

Purchaser must notify BPA, no later than August 1, 1996, of their election to purchase power under the applicable 5-year rate.

a. Purchasers Under 1981 Contracts

For customers continuing to receive service under the 1981 Contract, such notification shall be in writing and must specify the amount of power that a purchaser agrees to purchase exclusively from BPA (subscription amount) over the 5-year rate period, using either the percentage of load option, the block of power option, or the consumer facility option (Subscription Options) as described above.

Purchasers selecting the percentage of load option must specify a single percentage that will apply in each month of the 5-year period.

Purchasers selecting the block of power option must specify the amount of demand, and the amount of energy for HLH and LLH, for each month of the first 2 years in which the rate is effective, October 1, 1996, through September 30, 1998. For the remaining 3 years of the rate, FYs 1999, 2000, and 2001, the purchasers selecting the block of power option must specify annual amounts of demand, HLH energy, and LLH energy. Annual subscription amounts for years 3–5 cannot exceed the annual amounts for years 1–2 unless the increase is due to load growth. Purchasers will specify the monthly amounts for FYs 1999–2001 in subsequent notices, based on the previously selected annual amounts. By February 1, 1998, these purchasers must submit to BPA their monthly amounts of demand and HLH and LLH energy for the period beginning October 1, 1999, through September 30, 2000. By February 1, 2000, these purchasers must submit to BPA their monthly amounts of demand and HLH and LLH energy for the period beginning October 1, 2000, through September 30, 2001. Purchasers who fail to submit subsequent monthly amounts shall be deemed to have elected the same monthly shape selected for the period October 1, 1996, through September 30, 1998.

b. Purchasers under 1996 Contracts

Purchasers under 1996 Contracts must elect to purchase power under the 5-year rate through provisions provided in the contract. Such election will occur at the time a purchaser signs this contract, but in no event later than August 1, 1996.

2-Year Rate Election

Priority Firm Power, Industrial Firm Power, and New Resource Firm Power purchasers under the 1996 Contract purchasing all or a portion of their power under a 2-year rate must specify the amount of demand, and the amount of energy for HLH and LLH, for each month of the period October 1, 1996, through September 30, 1998. Subscriptions for the 2-year rate will be made through provisions provided in the contract. PF, NR, and IP purchasers under a 1981 Contract purchasing all of their power under a 2-year rate do not need to make a subscription.

Load Shaping Election

Any purchaser of load shaping, except utilities participating in the Residential Exchange under section 5(c) of the Northwest Power Act and purchasers under the Composite Rate, must elect to purchase the product at either the 2-year rate or the 5-year rate. The purchaser must notify BPA no later than August 1, 1996, of its rate election for the load shaping product.

Load Regulation Election

Same as for load shaping, above.

F. Energy Return Surcharge (PF/NR/FPS Only)

Any purchaser:

1. who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the 1981 Contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that Purchaser's Billing Demand and Computed Average Energy Requirement for the billing month, or

2. who purchases capacity under the FPS rate schedule, returns more than 60 percent of its Contract Demand for the billing month during a single offpeak hour, and is subject to the Energy Return Surcharge shall be subject to the following charge for each additional kilowatt-hour so returned:

- 3.63 mills per kilowatt-hour for the months of September-December;
- 3.83 mills per kilowatt-hour for the months of January–March;
- 3.27 mills per kilowatt-hour for the month of April;
- 5.07 mills per kilowatt-hour for the months of May–June;
- 5.37 mills per kilowatt-hour for the month of July;
- 5.77 mills per kilowatt-hour for the month of August.

FPS purchasers are subject to the Energy Return Surcharge stated above unless their agreement with BPA specifically provides otherwise.

G. Guaranteed Delivery Charge (NF Only)

A surcharge of 2.00 mills per kilowatt-hour of Billing Energy is applied whenever BPA guarantees delivery of nonfirm energy to a Purchaser under the Standard rate or Market Expansion rate.

H. Industrial Exemption and Industrial Curtailment

Both Industrial Exemption and Industrial Curtailment are available to purchasers under the 1996 Contract only.

Industrial Exemption adjusts the billing factor for Load Shaping by subtracting exempt industrial loads specified by the Purchaser. Each exempted industrial load must be greater than 5 aMW and must be separately metered. The customer is responsible for ensuring that variations from forecast are provided for; deviations may be subject to the Deviation Adjustment.

Industrial Curtailment allows the purchaser to decrease the forecast of its exempt industrial loads during any billing month. The charge is $0.35 per MWh applied to the megawatthours of industrial curtailment rights nominated for the month.

I. Low Density Discount (PF Only)

1. Basic LDD Principles

A predetermined discount shall be applied each billing month to the charges for all power (excluding transmission services) purchased under the PF and NR rate schedules by eligible purchasers as defined in section 2, below. The discount shall be calculated on an annual basis and shall become effective with the first billing period in the calendar year. Retroactive billing for the LDD may be required if the data are not available by the January billing date. The level of the discount shall be determined from the following ratios based on information for the utility's entire system in the Pacific Northwest, regardless of whether the utility has service areas in more than one state or whether the utility is participating in the residential exchange program in more than one state jurisdiction:

a. The kWh/Investment Ratio

The kWh/Investment ratio is calculated by dividing the purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales to firm and nonfirm retail loads, sales for resale, and associated losses) by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

b. The Consumers/Mile of Line Ratio

The Consumers/Mile of Line ratio is calculated by dividing the average number of consumers (annual and seasonal consumers with residential, industrial, commercial, and irrigation accounts, but excluding the average number of consumers associated with separately billed services for water heating, electric space heating, and security lights) during the previous calendar year by the average number of pole miles of distribution line for such year, calculated by halving the sum of the end-of-year pole mile figures for the previous year and the current year. Distribution lines are defined as those that deliver electric energy from a substation or metering point, at a voltage of 34.5 kV or less, to the point of attachment to the consumer's wiring and include primary, secondary, and service facilities.

These calculations shall be based on average annual data provided in the Purchaser's financial and operating reports which they submit periodically to BPA (usually monthly or quarterly). In calculating these ratios, BPA shall compile the data submitted by the Purchaser based on the Purchaser's entire electric utility system in the Pacific Northwest, regardless of whether the utility has service areas in more than one state or whether the utility is participating in the residential exchange program in more than one state jurisdiction. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see 1.a. and 1.b, above) by June 30 of each year shall be declared ineligible for the LDD effective with the June billing period for that year. BPA shall extend a customer's eligibility from the previous year through the June billing period of the following year and shall make any necessary retroactive adjustments once the new data have been processed. If no data have been received by December 31 for the previous calendar year, BPA shall assume that the utility did not qualify for an LDD for that year. LDDs issued from January 1 to June 30 shall be assumed to have been in error, and the utility shall be billed for any such discounts issued.

Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to 2 years from the first day to which the data apply. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

2. Eligibility Criteria

To qualify for a discount, the purchaser must meet all six of the following eligibility criteria:

a. the Purchaser must serve as an electric utility offering power for resale;

b. the Purchaser must agree to pass the benefits of the discount through to the Purchaser's consumers within the region served by BPA;

c. the Purchaser's average retail rate for the reporting year must exceed the average applicable Priority Firm Power rate for the qualifying period by at least 10 percent. For Calendar Year (CY) 1996, the average Priority Firm Power rate shall be the average of the PF–95 Preference rate for 9 months and the PF–96 Preference rate for 3 months. For CY 1997, the average Priority Firm Power rate shall be the PF–96 Preference rate. For Purchasers under the PF–96.2 rate or the PF–96.5 rate, the applicable rate shall be used for the calculation. For customers purchasing a portion of their load under each of the PF–96 rates, an average of the applicable rates shall be calculated, weighting the PF–96.2 rate by the Purchaser's subscription at that rate and the PF–96.5 rate by the Purchaser's subscription at that rate;

d. the Purchaser's kilowatt-hour-to-investment ratio (Ratio 1.a) must be less than 100;

e. the Purchaser's consumers-per-mile ratio (Ratio 1.b) must be less than 12; and

f. the Purchaser must qualify for a discount based on the criteria in section 3, below.

3. Discounts

The Purchaser shall be awarded the lesser of the following discounts, provided such discount does not differ from the Purchaser's current discount by more than one-half of 1 percent per year:

a. 7 percent, or

b. the sum, not to exceed 7 percent, of the two potential discounts for which the Purchaser qualifies based on the qualifying criteria specified in the following table:

Percentage discount	Applicable range for kWh/investment (K/I) ratio	Applicable range for consumers/mile (C/M) ratio
0.0	35.0≤x	12.0≤x
0.5	31.5≤x<35.0	10.8≤x<12.0
1.0	28.0≤x<31.5	9.6≤x<10.8
1.5	24.5≤x<28.0	8.4 ≤x<9.6
2.0	21.0≤x<24.5	7.2≤x<8.4
2.5	17.5≤x<21.0	6.0≤x<7.2
3.0	14.0≤x<17.5	4.8≤x<6.0
3.5	10.5≤x<14.0	3.6≤x<4.8
4.0	7.0≤x<10.5	2.4≤x<3.6
4.5	3.5≤x<7.0	1.2≤x<2.4
5.0	x<3.5	x<1.2

If the Purchaser satisfies eligibility criteria 2.a.-2.e, above, and the discount calculated above differs from the existing discount by more than one-half of 1 percent, the applicable discount will be:

a. the previous year's discount plus one-half percent if the calculated discount exceeds the previous year's discount; or

b. the previous year's discount minus one-half percent if the calculated discount is less than the previous year's discount.

The foregoing formula will be applied each successive year until the then-current calculated discount is fully phased in.

If the Purchaser fails to satisfy eligibility criteria 2.a.-2.e. above, the applicable discount will be zero.

J. NF Rate Cap

1. Application of the NF Rate Cap

The NF Rate Cap defines the maximum nonfirm energy price for general application. At no time shall the total price for BPA's nonfirm energy, including any applicable service charges or rate adjustments, sold under any applicable rate schedule exceed the NF Rate Cap. The level of the NF Rate Cap is based on a formula tied to BPA's system cost and California fuel costs. The NF Rate Cap applies to all sales of nonfirm energy under any applicable rate schedule for a 12-year period beginning October 1, 1987.

2. Monthly Customer Notification of the Value of the NF Rate Cap

Prior to the beginning of each calendar month, BPA shall determine the effective NF Rate Cap for that month. BPA is obligated to provide advance notification of the NF Rate Cap level to purchasers of nonfirm energy. This notification requirement does not apply if BPA does not intend to offer Nonfirm Energy at prices above BPA's Average System Cost (BASC) at any time during a month. BPA shall give the notification to the purchasers at least 10 calendar days prior to the first day of any calendar month in which the NF Rate Cap is expected to apply. BPA shall also maintain, on file for public review, a record of the NF Rate Cap by month throughout the 12-year period that the cap is in effect.

3. NF Rate Cap Formula

The NF Rate Cap shall be equal to the greater of the following:

a. BASC; or

b. BASC+[0.30 * (DEC—BASC)]

where:
BASC=BPA's Average System Cost
DEC=The Decremental Fuel Cost

4. Determination of BPA's Average System Cost (BASC)

BPA's Average System Cost is calculated by dividing BPA's Total System Costs by BPA's Total Annual System Sales, where:

a. BPA's T*otal System Costs* are the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs, Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

b. BPA's Total Annual System Sales are the sum of all BPA's system firm and nonfirm energy sales forecasted each general rate case for the applicable test period.

BASC shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

5. Determination of the Decremental Fuel Cost (DEC)

The Decremental Fuel Cost shall be determined monthly by BPA. For purposes of calculating the NF Rate Cap, a weighted average of gas and petroleum prices for California will be used for approximating decremental fuel costs. All quantities are to be rounded to the nearest tenth of a mill in making the calculation.

The monthly decremental fuel cost shall be calculated using the following formula:

DEC = [(MGP * WGU) + (MOP * WOU)] / (WGU + WOU)

where:
MGP = the monthly California gas price
WGU = historical gas use in California
MOP = the monthly California petroleum price
WOU = historical petroleum use in California

a. *Determination of MGP, the Monthly California Gas Price.*

MGP = AGP * HGP / 10

where:
AGP = the average gas price for California electric utility plants expressed in cents per million Btu as reported in the most recent monthly issue of *Electric Power Monthly* (EPM) published by the Energy Information Administration (EIA), U.S. Department of Energy.
HGP = the historical relationship between gas prices in the effective month of the NF Rate Cap (month t) and the month in which the gas prices are reported in EPM (month r) using the following procedures:

i. summing all California gas prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California gas prices shall be divided by the number of years for which MGPs were reported and rounded to the nearest one-tenth of a cent;

ii. summing all California gas prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California gas prices shall be divided by the number of years for which MGPs were reported and rounded to the nearest one-tenth of a cent; and

iii. dividing the average monthly California gas price in ''i'' above, by the average monthly California gas price in ''ii'' above, and rounding to the nearest one-tenth, or three significant places.

10 = the factor for converting gas prices stated in cents per million Btu to mills per kWh. The factor assumes a heat rate of 10,000 Btu per kilowatt-hour.

b. *Determination of WGU, Historical Gas Use in California.*

WGU = CGU * HGU

where:
CGU = the monthly net gas-fired generation, expressed in gigawatthours, for California in the most recent monthly issue of EPM published by the EIA, U.S. Department of Energy.
HGU = the historical relationship between gas consumption in the effective month of the NF Rate Cap (month t) and the month for which gas consumption is reported in EPM (month r) using the following procedures:

i. summing the reported net-gas fired generation for California, expressed in gigawatthours, from EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which gas consumption was reported and rounded to the nearest gigawatthour;

ii. summing the reported net gas-fired generation for California, expressed in gigawatthours, from EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which gas consumption was reported and rounded to the nearest gigawatthour; and

iii. dividing the average consumption of gas in California for the month t as determined in ''i'' above by the average consumption of gas for the month r as determined in ''ii'' above and rounding to the nearest one-tenth, or three significant places.

c. *Determination of MOP, the Monthly California Petroleum Price.*

MOP = AOP * HOP / 10

where:
AOP = same as AGP except the input data is for the average petroleum price (as opposed to the gas price).

HOP = same as HGP, except the data is for the petroleum price (as opposed to the gas price).
10 = the same conversion factor as used for converting the gas data.

d. Determination of WOU, Historical Petroleum Use in California.

WOU = COU * HOU
where:
COU = the same as CGU except the data for monthly net petroleum-fired generation is used instead of the gas data.
HOU = the same as HGU, except the data for petroleum consumption is used instead of the gas data.

6. Changes in Data Sources

In the event that the data used to compute the NF Rate Cap become unavailable, BPA may identify and substitute other data sources for the purpose of calculating the monthly NF Rate Cap. As a result of this data substitution, it may also be necessary to modify the NF Rate Cap methodology to achieve an NF Rate Cap that is substantially equivalent in rate level to that which would have resulted from continued use of the data described in section 5, above.

BPA shall notify interested parties of its intent to substitute data sources or to substitute data sources and change the NF Rate Cap methodology at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason(s) for the proposed changes and describe its proposed alternative. Interested persons will have until close of business 3 weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final data sources and the final NF Rate Cap methodology to differ from BPA's initial proposal. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month in which the new NF Rate Cap parameters (data sources/methodology) become effective.

K. Operating Reserves Adjustment (IP only)

The energy charges stated in the IP–96 rate schedules reflect a 3.05 mills per kilowatthour credit for the operating reserves a DSI provides to BPA pursuant to its power sales contract. If a DSI chooses not to provide operating reserves, a billing adjustment will be made to remove the credit.

L. Phase-In Mitigation

The phase-in mitigation is available for Full or Metered Requirements Preference customers. Phase-in mitigation does not apply to PF purchased under a Residential Purchase and Sale Agreement or an Exchange Transmission Credit Agreement.

1. Eligibility Criteria

To qualify for the phase-in mitigation a purchaser must:

a. be a Full Requirements customer of BPA as designated in the 1996 Contract, or a Metered Requirements customer of BPA as designated in the 1981 Contract;

b. agree to purchase all power from BPA for 5 years under one or more of BPA's 5-year rate schedules; and

c. have a rate increase greater than 9 percent for all BPA power purchases, rounded to the nearest one-tenth of a percent, based on the determination in section 2 below.

2. Determination of Rate Increase for Phase-In Mitigation

The percentage rate increase faced by a Full or Metered Requirements purchaser will be calculated as follows:

a. Apply all applicable 1993 rate schedule (PF, NR, etc.) charges to the individual customer's FY 1996 expected BPA purchases, as forecasted in the 1996 rate case by BPA.

b. Apply all applicable 1996 rate schedule (PF, NR, transmission, etc.) charges to the individual customer's FY 1996 expected BPA purchases, as forecasted in the 1996 rate case by BPA.

c. If the value of 2.b minus the value of 2.a, divided by 2.a, is greater than 9 percent, rounded to the nearest tenth of a percent, the customer may notify BPA by letter to their Account Executive to phase in the 1996 rate increase. Such notice must be received by BPA by September 1, 1996. Purchasers may not apply for mitigation after this time

3. Rate Adjustment

If the purchaser meets the eligibility criteria and requests BPA to phase in its 1996 rate increase, beginning each October 1 of each year BPA will limit the monthly increase in the customer's bill to 9 percent in the first year, with additional 9-percent increments in each subsequent year over the effective period of the 1996 5-year rates.

The adjustment will be based on the difference between: (1) the purchaser's total monthly payment assuming the 1993 rates for the billing month were applied to power purchases for that month; and (2) the purchaser's total monthly payment under the 1996 rates for that month. In the first year, if the difference between the two is equal to or less than 9 percent, no adjustment will be made to the purchaser's monthly bill. If the difference between the two is greater than 9 percent, an adjustment will be made such that the monthly bill to that customer will reflect an increase equal to 9 percent. In subsequent years, no adjustment shall be made if the difference between (1) and (2) above is less than or equal to 18 percent in the second year, 27 percent in the third year, 36 percent in the fourth year, and 45 percent in the fifth year.

M. Preschedule Change Charge

As specified in the APS–96 rate schedule, BPA shall apply the following charge to any customer who changes its preschedules after the close of the preschedule window: $33 per change.

N. Reactive Power Charge

1. Conditions for Application of the Reactive Power Charge

A Purchaser that purchases power under BPA's wholesale power rate schedules or transmission service on the Federal Columbia River Transmission System (FCRTS) under BPA's transmission rate schedules shall be charged for its Reactive Power requirements for such service.

The Reactive Power Charge will apply only to the Purchaser's Reactive Power requirements for which measured data exist. The Purchaser's Reactive Power requirements shall be measured at each point of delivery and at each point of interconnection between BPA and the Purchaser where real power (MW) flow is unidirectional and the Purchaser is taking delivery of real power (either Federal or non-Federal). Points of delivery that are served by transfer over another utility's transmission system will not be subject to a Reactive Power Charge unless: (1) the transferor imposes a reactive power charge on BPA for serving such Purchaser's load; or (2) there are BPA Integrated Network facilities between the Purchaser's points of delivery and the transferor's system. For points of interconnection, the flow of real power must be unidirectional on all hours during the billing month when the FCRTS facilities are in service. The Reactive Power Charge shall also apply to the Purchaser's Reactive Power requirements measured at points of integration where a Purchaser's generating resource is directly connected to the FCRTS, unless the Purchaser's generating resource is either: (1) a synchronous generator equipped with a voltage regulator; or (2) is equipped with Reactive Power control devices that comply with BPA's interconnection standards. Such resource must actively support the voltage schedule at the point of integration at all times, as determined by BPA, for this exemption to apply.

Generating resources that do not satisfy the above criteria shall not be exempt from the Reactive Power Charge. A Purchaser will pay for its Reactive Power requirements at each point only once.

The Purchaser may submit requests to BPA for special consideration of unique circumstances. BPA will consider the request and may make arrangements with the Purchaser to address the special circumstances.

This Reactive Power Charge replaces the Power Factor Adjustment provision included in BPA's 1993 wholesale power rate schedules. Purchasers previously granted Power Factor Adjustment waivers under BPA's prior wholesale power rate schedules shall be subject to the Reactive Power Charge. The charges for a Purchaser's Reactive Power requirements under this subsection shall be subject to the provisions of BPA's Billing Procedures.

2. Rate

BPA will bill the Purchaser for its total Reactive Power requirements at each point each month according to the methodology below.

a. *Reactive Demand*

$0.08 per kVAr of lagging Reactive Billing Demand during HLH in all months of the year.

$0.06 per kVAr of leading Reactive Billing Demand during LLH in all months of the year.

b. *Reactive Energy*

0.16 mills per kVAr for all lagging and leading Reactive Billing Energy during all hours of all months of the year.

3. Billing Factors

a. *Reactive Demand*

The Purchaser's Reactive Billing Demand shall be calculated independently for lagging Reactive Power and leading Reactive Power at each point for which a Reactive Power Charge is assessed.

All reactive demands shall be established in the particular Peak Period (HLH) or Offpeak Period (LLH) hour during which the maximum applicable reactive demand is placed on BPA, regardless of the time of the real power peak.

All reactive demand shall be established on a non-coincidental basis, regardless of whether the Purchaser is billed for real power or transmission on a coincidental or non-coincidental basis, unless:

i. otherwise specified in the agreement between BPA and the Purchaser, or

ii. coincidental billing is, in BPA's sole determination, more practical for BPA.

The Purchaser's Reactive Billing Demand for the billing month shall be the larger of:

i. the measured reactive demand during the billing month, or

ii. the Ratchet Demand for Reactive Power. The Ratchet Demand for Reactive Power is equal to 100 percent of the largest measured reactive demand during the preceding 6-year, 11 month period. The Ratchet Demand for Reactive Power for the 6-year, 11-month period preceding October 1, 1996, will be set at zero.

b. *Reactive Energy*

The Purchaser's Reactive Billing Energy shall be the measured reactive energy delivered at Purchaser's point during the billing month. (This quantity is the absolute value of all measured reactive energy, not the net value created by summing the positive/lagging reactive energy and the negative/leading reactive energy.)

4. Additional Adjustments

a. *Resetting of the Ratchet Demand*

BPA shall reset the Ratchet Demand for the Purchaser's Reactive Power to zero for any point of delivery or point of interconnection if BPA determines that both of the following criteria are met:

i. The Purchaser has reduced its Reactive Power demand at such point to 20 percent or less of its real power demand at such point on all hours in the month following implementation of the corrective action. Corrective action includes installing switchable capacitors or reactors; and

ii. BPA has not incurred capital expenditures to correct the problem in the preceding 6-year, 11-month period.

b. *Adjustment for Reactive Losses*

Measured data shall be adjusted for reactive losses, if applicable, before determination of the Reactive Billing Demand and Reactive Billing Energy.

O. Reservation Fee for Transmission Capacity

1. Conditions for Application of Reservation Fee

Reservation Fee is available to customers who enter into an agreement for Firm Transmission Service and want to postpone taking such service until a later date. Reservation Fee is available for new service or replacement of existing service. When used to replace existing service, Reservation Fee is intended to reserve transmission capacity:

a. for the integration of resource capacity or load not included in the current service; and/or

b. for new service that uses either expanded or different transmission facilities or requires changes in FCRTS operations.

Reservation Fee will reserve capacity for 1 year. A customer can request yearly extensions up to a total reservation period of 5 years. If during the reservation period, another customer requests service which can only be satisfied out of the reserved capacity, then the customer with the reservation must agree to pay the full monthly charge for the Firm Transmission Service. The charge becomes effective on the date when the competing request was to become effective. In the event the customer with the reservation elects to release the reserved capacity, the Reservation Fees paid for the current and past years will be forfeited.

2. Reservation Fee

The Reservation Fee shall be a nonrefundable fee equal to one-twelfth of the annual cost of Firm Transmission Service, as determined pursuant to the agreement, for each year or fraction of a year in which the Customer chooses to postpone service. The Reservation Fee shall be paid in a lump sum within 30 days of the date the agreement is executed, and, for yearly extensions, within 30 days of the beginning of the extension. The Reservation Fee shall be assessed annually until transmission service begins or the reservation period ends, whichever occurs first. The Reservation Fee shall be specified in the executed agreement for transmission service.

3. Billing Factors

The billing factors shall be the same as the type of transmission service requested, as determined pursuant to the applicable transmission rate schedule.

P. Transitional Service—Application of Rates During Initial Operation Period

Under the 1981 Contract, and as specified in BPA's Billing Procedures, BPA may agree to bill the purchaser for Transitional Service. Transitional Service shall apply to DSIs having new, additional or reactivated plant facilities, and utility purchasers serving industrial purchasers with power purchased from BPA. Transitional Service will not be available under the 1996 Contract.

If the purchaser requests billing on a Daily Demand basis pursuant to its power sales contract and if BPA agrees to such billing, the kilowatt Billing Demand for the billing month shall be

based on one of the following billing methods, as agreed to by BPA and the purchaser, based on load characteristics and consistent with the procedures outlined in BPA's Billing Procedures. If for any reason agreement is not reached on a billing method, paragraph 1 below shall serve as a default billing method. Reactive power will continue to be billed normally.

1. *Weighted Monthly Average of Daily Billing Demand*

The Billing Demand for each day is the maximum metered amount for any hour of that day. For the negotiated transitional period, each day's Billing Demand is averaged with the Billing Demand of every other day in the transitional period to compute the transitional period average. For the remaining period of the billing month, if any, the Billing Demand is the highest of the daily maximum metered amounts. To compute the Billing Demand for the month, the average Billing Demand for the transitional period and the Billing Demand for the remaining period are averaged, weighting each average by the number of days in each period.

2. *Weighted Monthly Average of Daily HLH Billing Demand*

The Billing Demand for each day is the maximum metered amount for any HLH hour of that day. For the negotiated transitional period, each day's Billing Demand is averaged with the Billing Demand of every other day in the transitional period to compute the transitional period average. For the remaining period of the billing month, if any, the Billing Demand is the highest of the daily maximum metered amounts. To compute the Billing Demand for the month, the average Billing Demand for the transitional period and the Billing Demand for the remaining period are averaged, weighting each average by the number of days in each period.

Q. Unauthorized Increase Charge

If specified in the applicable rate schedule, BPA shall apply the charge for Unauthorized Increase to any purchaser taking demand and energy in excess of its contractual entitlement.

1. Rate for Unauthorized Increase

a. Demand Charge: Demand Charge from applicable power rate schedule.

b. Energy Charge: 100 mills per kWh in all months of the year.

2. Calculation of the Amount of Unauthorized Increase

Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount that may be considered an Unauthorized Increase. BPA first shall determine the amount of Unauthorized Increase related to demand and shall treat any remaining Unauthorized Increase as energy-related.

a. *Unauthorized Increase in Demand*

That portion of any Measured Demand hours that exceeds the demand that the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

1. To a class of power that BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

2. To a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such hour,

shall be billed:

1. In accordance with the provisions of the ''Relief from Overrun'' exhibit to the 1981 Contract; or

2. At the rate for Unauthorized Increase if such exhibit does not apply or is not a part of the Purchaser's power sales contract.

b. *Unauthorized Increase in Energy*

The amount of Measured Energy during a billing month that exceeds the amount of energy the purchaser is contractually entitled to take during that month and which cannot be assigned:

1. To a class of power BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

2. To a type of power the purchaser acquires from sources other than BPA and which BPA delivers during such month,

shall be billed:

1. In accordance with the provisions of the ''Relief from Overrun'' exhibit to the 1981 Contract; or

2. At the rate for Unauthorized Increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

R. Utility Factor

For purchasers under the 1981 Contract, charges for Load Shaping and Load Regulation are multiplied by a utility-specific, monthly Utility Factor.

The Utility Factors to be used for billing will be developed annually based on historical data provided by the customers to BPA. The annual Utility Factor will be based on the customer's historical annual system load and purchases from BPA. Previous calendar year historical data (January 1–December 31) will be used to develop an annual utility factor that will be in effect for the following fiscal year (October 1–September 30). The customer shall submit its end of calendar year Financial and Operating Report and Generation Report (if applicable). BPA will develop the billing factors once they have received all necessary data from customers (usually in April). If a customer has not submitted the required data by June 1, BPA will prepare an estimate of the customer's historical annual system load for the previous calendar year, after consultation with the customer, and prepare the Utility Factor from that estimate. Completed Utility Factors will be provided to the customers. The first effective year for utility factors coincides with the first year of implementation of the new rate structure: October 1, 1996–September 30, 1997. Historical data from the previous calendar year (January 1, 1995–December 31, 1995) will be used to develop the utility factor for this first year. The customer's annual system load (in kWh) is defined as the total of:

(1) Retail load; plus
(2) Utility's own use; plus
(3) Distribution losses; minus
(4) Sales for resale.

The Utility Factor for the applicable fiscal year = customer system load ÷ energy purchases under the 1981 power sales contract for the previous calendar year.

Section III. Definitions

A. Products and Services Offered by BPA

1. Ancillary Services

Ancillary Services are those services necessary to support the transmission of electric power from resources to load while maintaining reliable operation of the FCRTS. Ancillary services include:

Scheduling and Dispatching, Transmission Losses, Control Area Reserves for Resources, Control Area Reserves for Interruptible Purchasers, and Load Regulation.

2. Construction, Test and Start-Up, and Station Service

Power for the purpose of Construction, Test and Start-Up, and Station Service for a generating resource or transmission facility shall be made available to eligible purchasers under the contract rate under the Firm Power Products and Services (FPS) rate schedule.

Construction, test and start-up, and station service power must be used in the manner specified below:

a. Power sold for construction is to be used in the construction of the project.

b. Power sold for test and start-up may be used prior to commercial operation—both to bring the project on

line and to ensure that the project is working properly.

c. Power sold for station service may be purchased at any time following commercial operation of the project. Once the project has been energized for commercial operation, the Purchaser may use station service power for start-up, shut-down, normal operations, and operations during a shut-down period.

3. Control Area Services

Control Area Services are services that BPA provides to the Purchaser for real-time fluctuations in the Purchaser's power requirements during the delivery hour. With these services, BPA will deliver power to the Purchaser in amounts that change automatically in response to changes in the Purchaser's loads or resource output located in BPA's control area. These services meet the standards established by the North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP) for regulating margin and spinning and non-spinning operating reserves. In addition, BPA may also provide similar services to loads and resources outside BPA's control area. The general category, Control Area Services, includes:

a. Control area reserves for resources;
b. Control area reserves for interruptible purchases;
c. Load regulation;
d. Eccentric load following;
e. Other control area services.

4. Control Area Reserves for Resources

Control Area Reserves for Resources are the control area services necessary to back up generation located in BPA's control area. Control Area Reserves for Resources provides the generation following and operating reserves for the remainder of the delivery hour.

5. Control Area Reserves for Interruptible Purchases

Control Area Reserves for Interruptible Purchases are the operating reserves provided by BPA for interruptible energy delivered to BPA's control area. Interruptible energy is defined as energy deliveries that can be interrupted by the delivering control area during the delivery hour.

6. Eccentric Load Following

Eccentric Load Following provides instantaneous (second-to-second) regulation of firm power supply for a Purchaser's actual real-time eccentric load within the hour. An eccentric load is defined as any specific cyclic customer or consumer load with the ability to change more than 50 MW in level at a rate of greater than 50 MW per minute, regardless of the duration of this change.

7. Firm Capacity without Energy

Firm Capacity without Energy is a product available under the PF–96.2 and NR–96.2 rate schedules to computed requirements customers who hold 1981 Contracts. Customers who buy this product may take power from BPA during HLH and must return the associated energy within 24 hours. This product is also offered under the FPS rate schedule with delivery and return provisions that may differ from those available under the 1981 Contract.

8. Firm Power

Firm Power available at the FPS rate is defined as firm energy with capacity, firm energy without capacity, and/or firm capacity that BPA may make available to the purchaser at BPA's discretion. Energy associated with the delivery of firm capacity must be returned to BPA either before or after delivery of the capacity and in a manner consistent with the agreement between BPA and the Purchaser.

Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Firm Power is guaranteed to be continuously available to the purchaser during the period covered by the commitment, except for reasons of certain uncontrollable forces. Firm Power may be used to meet the standards established by the North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP) for Operating Reserves. Firm Power is also available for various unbundled products, including:

a. Construction, test and start-up, and station service;
b. Power supplied for emergency use;
c. Replacement of lost generation during forced outages;
d. Replacement of lost generation during planned outages;
e. Displacement of higher-cost firm capacity resources which are otherwise available to meet the purchaser's load;
f. Supplemental non-spinning operating reserves; and
g. Other purposes.

9. Firm Transmission Service

Firm Transmission Service is the transmission service that BPA provides except for transmission service scheduled as nonfirm. If the firm service is provided pursuant to an agreement, the terms of the agreement may further define the service.

10. Industrial Curtailment

Industrial Curtailment allows the purchaser to decrease the forecast of its exempt industrial loads (see Industrial Exemption).

11. Industrial Exemption

Industrial Exemption adjusts the billing factor for Full Load Shaping to allow a customer to exempt industrial loads from load shaping charges. With the exemption, the customer is responsible for covering variations in the industrial load, except for loads also covered by Industrial Curtailment. The exempted industrial load must be greater than 5 aMW and must be separately metered.

12. Industrial Firm Power

Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial (DSI) purchaser subject to the terms of the Purchaser's power sales contract with BPA. Deliveries may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA. No Outage Adjustment shall be made for power restricted to provide reserves.

13. Load Regulation

Load Regulation is the instantaneous (second-by-second) regulation of the supply of firm power that BPA provides to follow variations in customer's loads within the hour. The amount of Load Regulation provided is related to the customer's retail load.

14. Load Shaping

Full Load Shaping provides coverage for the monthly difference between a utility purchaser's actual and forecasted retail loads. (Any deviations due to changes in resource operations are subject to the Unauthorized Deviation Adjustment or Unauthorized Increase Charge.) With the purchase of this product, a Purchaser will pay for only the power demand, HLH energy, and LLH energy it takes. Similarly, DSI Load Shaping, available to DSIs under a 1996 Contract only, provides coverage for a variation of up to 15 percent in a DSI customer's actual and forecasted loads due to changes in plant operations. Economic displacement is not allowed under DSI Load Shaping.

A separate product, Partial Load Shaping, is available to utilities under 1996 Contracts only. Partial Load Shaping allows the Purchaser to specify an amount of load shaping it will purchase. If the Purchaser's retail load

exceeds its forecast, BPA will provide additional demand and energy, limited to the amount specified by the customer. If the Purchaser's retail load is lower than forecast, BPA will relieve the take-or-pay obligation up to the amount of load shaping specified.

15. New Resource Firm Power

New Resource Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available:

a. For any New Large Single Load, and

b. For firm power purchased by investor-owned utilities (IOUs) pursuant to power sales contracts with BPA.

New Resource Firm Power is to be used to meet the Purchaser's actual firm load within the Pacific Northwest. Deliveries of New Resource Firm Power may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA.

16. Nonfirm Energy

Nonfirm Energy is energy that is supplied or made available by BPA to a Purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. Nonfirm energy is sold primarily under the Nonfirm Energy rate schedule, NF–96. Nonfirm energy also may be supplied under the NF–96 rate schedule to the Western Systems Power Pool (WSPP) subject to terms and conditions agreed upon by the members participating in the WSPP and in accordance with BPA policy for such arrangements. However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy rate schedule shall be provided to the Purchaser in accordance with the provisions of that schedule and the power sales contract if applicable. BPA may make Nonfirm Energy available to purchasers both inside and outside the United States.

17. Nonfirm Transmission Service

Nonfirm Transmission Service is interruptible transmission service.

18. Power Supplied for Emergency Use

Power Supplied for Emergency Use is electric energy and/or capacity that has been supplied by BPA under the FPS rate schedule:

a. For use during an emergency on the Purchaser's system, or

b. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may be provided under exchange agreements, and payment for that power made in accordance with the terms of those agreements.

19. Priority Firm Power

Priority Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available for resale to ultimate consumers and for direct consumption by public bodies, cooperatives, and Federal agencies. Utilities participating in the residential exchange under section 5(c) of the Northwest Power Act may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements (RPSA). Priority Firm Power is not available to serve New Large Single Loads.

Power purchased under the rate schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Deliveries of Priority Firm Power may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA.

20. Reserve Power

Reserve Power is firm power sold to a Purchaser:

a. In cases where the purchaser's power sales contract states that the rate for Reserve Power shall be applied;

b. To provide service when no other type of power is deemed applicable; or

c. To serve the Purchaser's firm power loads under circumstances in which BPA does not have a power sales contract in force with the purchaser.

Deliveries of Reserve Power may be reduced or interrupted either as a result of an uncontrollable force or when necessitated by emergencies, system maintenance requirements or other factors related to continuity of service.

21. Residential Purchase and Sale Agreement (RPSA) Power

RPSA Power is power BPA sells to a Purchaser pursuant to the Purchaser's Residential Purchase and Sale Agreement (RPSA) with BPA. Under section 5(c) of the Northwest Power Act, BPA ''purchases'' power from each RPSA customer at that utility's average system cost (ASC). BPA then offers, in exchange, to ''sell'' an equivalent amount of electric power to that customer at BPA's PF rate applicable to exchanging utilities. The amount of power purchased and sold is equal to the utility's eligible residential and small farm load. Benefits must be passed directly to the utility's residential and small farm customers.

22. Scheduling and Dispatching

Scheduling and Dispatching consists of all scheduling and generation-related dispatch activities including: real-time operation and control of generation resources located within BPA's control area; prescheduling; associated scheduling and dispatch; confirmation and verification of individual schedules, including preschedules and real-time or after-the-fact changes; associated losses; and net interchange between control areas.

a. Scheduling or prescheduling is the procedure to establish schedules between control areas for a predetermined or before-the-fact use of the FCRTS.

b. Generation-related dispatch is all the dispatch activity related to the operation of generation located within BPA's control area including, but not limited to, AGC and required current-hour schedule changes.

c. Preschedule is the process of identifying and activating accounts for the hourly energy transactions that will be implemented on the following day or days.

d. Preschedule Change is any change to a Preschedule transaction after the close of the Preschedule Window and prior to the hour of real-time implementation of the schedule.

e. Preschedule Window is the period of time during the commonly recognized workday when hourly schedules for the next day or days are prepared and entered into the energy management system.

f. Real-Time Change is any change to a Prescheduled transaction during the current day and any addition to a customer—s total daily schedules submitted during the Preschedule Window.

g. After-the-Fact Change is any change to a scheduled transaction for a historical day or days, including changes required due to a customer's scheduling error.

23. Shaping Services

Shaping Services are services provided by BPA to a Purchaser to shape the output of the Purchaser's resource (or purchase) to the Purchaser's load. Shaping services may be provided on an hourly, daily, weekly, monthly, seasonal, or other basis, and may include advance delivery of the resource (or purchase) to the load. Shaping services are available under the FPS rate schedule.

24. Shortage Power

Shortage Power is energy or energy with capacity, provided by BPA to a

Purchaser to serve such purchaser's regional load under circumstances where the Purchaser is in danger of curtailing firm load even though the Purchaser is operating all available resources and exercising all contractual rights to firm power to the maximum level feasible. In the event of a state-ordered or regionwide load curtailment, a power deficiency is deemed to exist for those Purchasers whose power supply condition is in part causally related to the State(s)-initiated load curtailment.

25. Transitional Service

Transitional Service is service that BPA provides to a DSI or utility customer that has a large industrial load that is being brought on-line. The load may be a new industrial plant, a major addition to an existing industrial plant, or reactivation of an existing industrial plant or major portion thereof. Pursuant to its agreement with the customer, BPA will serve the load and calculate the customer's monthly Billing Demand to account for the daily variations in the industrial load. In order to receive this service, the BPA customer must meet the eligibility requirements set forth in BPA's Billing Procedures.

26. Transmission Losses

Transmission losses are the power losses associated with the transmission of power over the FCRTS. The loss factor that represents the amount of losses for a specific transaction is included in the wheeling agreement or the rate schedule or tariff.

27. Transmission Service

As used in the MT rate schedule, Transmission Service is as defined in the Western Systems Power Pool Agreement.

28. Variable Industrial Power

Variable Industrial Power is Industrial Firm Power that is sold at the VI–96 rate, consistent with the terms and conditions of the Variable Rate Contract between BPA and the Purchaser.

B. Definition of Rate Schedule Terms

1. 1981 Contract

The ''1981 Contract'' refers to the initial power sales contracts that BPA executed with its Pacific Northwest customers pursuant to the requirements of the Northwest Power Act. Most of these contracts were executed in 1981, but some are dated ''1984'' or later. For purposes of these rate schedules, any such contract effective prior to October 1, 1996, is referred to for convenience as a ''1981 Contract.''

2. 1996 Contract

Contracts for the sale of firm power to Pacific Northwest customers pursuant to the requirements of the Northwest Power Act are termed the ''1996 Contracts'' if they are effective on or after October 1, 1996.

3. Auxiliary Demand (1981 DSI Contract)

Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. Auxiliary Power is power in excess of the DSI's Operating Demand. The DSI may request up to three levels of Auxiliary Demand during a billing month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's 1981 Contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power rate schedule.

4. Billing Demand (Energy)

The Purchaser's Billing Demand (Energy) is the amount of capacity (energy) to which the demand (energy) charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Demand (Energy) quantity for each product. BPA establishes Billing Demand and Billing Energy quantities for both active power (kilowatts/kilowatt-hours) and reactive power (kilovars and kilovarhours).

Various adjustments may be made to billing demand. At any POD that has an unbalanced phase current problem, BPA shall calculate the Billing Demand by multiplying the largest of the adjusted Integrated Demands on any phase during the billing month by three. BPA may continue this billing procedure until the Purchaser has made the necessary system corrections. Billing Demand also may be adjusted for certain outages (providing the Purchaser an Outage Credit) as specified in the Purchaser's agreement with BPA and pursuant to BPA's Billing Procedures.

5. BPA Operating Level (1981 DSI Contract)

The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

Each DSI must request service from BPA for each billing month in accordance with the terms of its power sales contract. The requested level of service under the 1981 Contract will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request, and BPA may agree to provide, a level of service for the Offpeak Periods that differs from that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level is the basis for determining if a DSI has incurred an Unauthorized Increase.

Any DSI whose Measured Demand during any single hour exceeds the BPA Operating Level for that hour shall be subject to an Unauthorized Increase charge for each kilowatt and kilowatt-hour of Unauthorized Increase associated with each such overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power rate schedule and the Variable Industrial Power rate schedule. During the Peak Period, the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

6. Calculated Energy Capacity

Calculated Energy Capacity is BPA's estimate of the amount of energy load (aMW) that a DSI would consume if its plant(s) is operating at full capacity. It is the billing factor for DSI Load Shaping.

7. Composite Rate

The Composite Rate applies to PF–96.5 Purchasers under 1981 and 1996 Contracts. Only customers whose average annual energy loads during the 5-year purchase period, as forecasted by BPA, are 25 average annual MW or less are eligible to purchase at this rate. The composite rate is a weighted average rate that takes into account the relative cost of typical quantities of each product purchased, including generation demand and energy, load shaping, and load regulation.

8. Computed Average Energy Requirement (1981 Utility Contract)

For computed requirements purchasers, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

9. Computed Energy Maximum (1981 Utility Contract)

The Computed Energy Maximum equals the Computed Average Energy Requirement (CAER) multiplied by the number of hours in the billing month. HLH Computed Energy Maximum equals the CAER multiplied by the number of HLH in the month; LLH Computed Energy Maximum equals the CAER multiplied by the number of LLH in the month.

10. Computed Maximum Requirement (1981 Utility Contract)

The Purchaser's Computed Maximum Requirement is the maximum amount of power that BPA is obligated to deliver to the Purchaser during the HLH of a month. The Computed Maximum Requirement is defined in section 17(g)(1) of the Purchaser's 1981 Contract as the greater of the Purchaser's Computed Peak Requirement and Computed Average Energy Requirement unless the terms of section 7 (''Allocation Provisions in the Event of Planning Insufficiency'') apply.

11. Computed Peak Requirement (1981 Utility Contract)

For purchasers designated to purchase on the basis of computed requirements, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

12. Computed Requirements Customer (1981 Utility Contract)

A Computed Requirements Customer is a Purchaser of Priority Firm and/or New Resource Firm Power who is designated as a computed requirements customer by the terms of its 1981 contract.

13. Contract Demand

The Contract Demand shall be the maximum number of kilowatts that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the applicable contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatt-hours shall be deemed, for the purpose of these GRSPs, to refer to the term ''Contract Energy.''

14. Contract Energy

Contract Energy is the maximum number of kilowatt-hours that BPA agrees to make available subject to any limitations included in the contractual agreement between BPA and the Purchaser. Contract Energy may refer to an energy purchase from BPA or to an amount of energy that BPA agrees to transmit over the FCRTS.

15. Curtailed Demand (1981 DSI Contract)

A Curtailed Demand is the number of kilowatts of Industrial Firm Power during the billing month which results from a DSI's request for such power in amounts less than the Operating Demand therefor. Each purchaser of Industrial Firm Power may curtail its demand according to the terms of its 1981 contract (which permits up to three levels of Curtailed Demand each month).

16. Customer's Load

Customer's Load is the customer's Network Load measured during the hour of the Monthly Transmission Peak Load. For customers with 1981 Contracts, Customer's Load is the power taken under 1981 Contracts during the hour of the Monthly Transmission Peak Load.

17. Decremental Cost

Unless otherwise specified in a contractual arrangement, Decremental Cost as applied to Nonfirm Energy transactions shall be defined as:

a. All identifiable costs (expressed in mills per kilowatt-hour) associated with the use of a displaceable thermal resource or end-user load with alternate fuel source to serve a purchaser's load that the purchaser is able to avoid by purchasing power from BPA, rather than generating the power itself or using an alternate fuel source; or

b. All identifiable costs (expressed in mills per kilowatt-hour) to serve the load of a displaceable purchase of energy that the purchaser is able to avoid by choosing not to make the alternate energy purchase.

All identifiable costs as used in the above definition may be reduced to reflect costs of purchasing BPA energy such as transmission costs, losses, or loopflow constraints that are agreed to by BPA and the purchaser.

18. Direct Assignment Facilities

Direct Assignment Facilities are transmission facilities which are constructed by BPA for the sole use/benefit of facilitating a specific request for transmission service, the costs of which are directly assigned to the transmission customer requesting service.

19. Direct Service Industry (DSI) Delivery

The DSI Delivery segment is the portion of the FCRTS that provides service to DSI customers at voltages of 34.5 kV and below.

20. Eastern Intertie

The Eastern Intertie is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment, including related terminals at Garrison.

21. Electric Power

Electric Power is electric peaking capacity (kilowatts) and/or electric energy (kilowatt-hours).

22. Federal Columbia River Transmission System

The Federal Columbia River Transmission System (FCRTS) is comprised of the transmission facilities of the Federal Columbia River Power System, which includes all transmission facilities owned by the government and operated by BPA, and other facilities over which BPA has obtained transmission rights.

23. Full Requirements Customer (1996 Contract)

As currently proposed by BPA, a Full Requirements Customer is a customer

that has not been designated by BPA as a Partial Requirements Customer under the terms of its 1996 Contract. This term will be further defined as 1996 Contracts are developed. For purposes of these rate schedules, Full Requirements Customers are those purchasers under 1996 Contracts: (a) with no resource; or (b) that have contracted for services with BPA or another party for their resource(s) so that the purchaser retains Full Requirements status.

24. Heavy Load Hours (HLH)

Heavy Load Hours (HLH) are all those hours in the Peak Period (6 a.m. to 10 p.m., Monday through Saturday).

25. Integrated Demand

Integrated Demand is the quantity derived by mathematically ''integrating'' kilowatt-hour deliveries over a 60-minute period.

26. Light Load Hours (LLH)

Light Load Hours (LLH) are all those hours in the Offpeak Period (10 p.m. to 6 a.m. Monday through Saturday and all hours Sunday).

27. Main Grid

As used in the FPT rate schedule, the Main Grid is that portion of the Network facilities with an operating voltage of 230 kV or more.

28. Main Grid Distance

As used in the FPT rate schedules, Main Grid Distance is the distance in airline miles on the Main Grid between the Point of Integration (POI) and the Point of Delivery (POD), multiplied by 1.15.

29. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid Interconnection Terminal refers to Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

30. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, Main Grid Miscellaneous Facilities refers to switching, transformation, and other facilities of the Main Grid not included in other components.

31. Main Grid Terminal

As used in the FPT rate schedules, Main Grid Terminal refers to the Main Grid terminal facilities located at the sending and/or receiving end of a line, exclusive of the Interconnection terminals.

32. Measured Demand

The Purchaser's Measured Demand is that portion of its Metered or Scheduled Demand purchased from BPA under the applicable rate schedule. The Measured Demand is computed for the hour of the Monthly Transmission Peak Load. If more than one class of power is delivered to any point of delivery, the portion of the measured quantities assigned to any class of power shall be as agreed by the parties. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power. Any residual quantity, after determination of the Purchaser's contractual entitlement at a particular rate, is considered ''unauthorized.'' Unauthorized amounts (Unauthorized Increases under the 1981 Contract and Unauthorized Deviations under the 1996 Contract) are considered a separate class of power when determining Measured Demand and are billed in accordance with the provisions of these GRSPs.

In determining Measured Demand for any Purchaser who experiences an outage as defined in the Purchaser's agreement with BPA and in BPA's Billing Procedures, BPA shall exclude any abnormal Integrated Demand due to, or resulting from:

a. Emergencies or breakdowns on, or maintenance of, the Federal System Facilities; and

b. Emergencies on the Purchaser's facilities to the extent Bonneville determines that such facilities have been adequately maintained and prudently operated.

Partial interruptions shall be converted to an equivalent outage of total Measured Demand.

33. Measured Energy

The Purchaser's Measured Energy is that portion of its Metered or Scheduled Energy that is purchased from BPA under the applicable rate schedule during a particular season or diurnal period (HLH or LLH). If more than one class of power is delivered to any point of delivery, the portion of the measured quantities assigned to any class of power shall be as agreed by the parties. The portion of the total Measured Energy so assigned shall constitute the Measured Energy for each such class of power. Measured Energy for Load Shaping and Load Regulation includes both PF and NLSL (NR) purchases. Any residual quantity, after determination of the Purchaser's contractual entitlement at a particular rate, is considered ''unauthorized.'' Unauthorized amounts (Unauthorized Increases under the 1981 Contract and Unauthorized Deviations under the 1996 Contract) are considered a separate class of power when determining Measured Energy and are billed in accordance with the provisions of these GRSPs.

34. Metered Demand

The Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour Integrated Demands at which electric energy is delivered to a purchaser:

a. At each point of delivery for which the Metered Demand is the basis for determination of the Measured Demand,

b. During each time period specified in the applicable rate schedule, and

c. During any billing period.

Such largest Integrated Demand shall be determined from measurements made in accordance with the provisions of the applicable contract and these GRSPs. This amount shall be adjusted as provided herein and in the applicable agreement between BPA and the Purchaser.

35. Metered Energy

The Metered Energy for a purchaser shall be the number of kilowatt-hours that are recorded on the appropriate metering equipment, adjusted as specified in the applicable agreement and delivered to a purchaser:

a. At all points of delivery for which metered energy is the basis for determination of the Measured Energy, and

b. During any billing period.

36. Metered Requirements Customer

A Metered Requirements Customer is a customer that has been designated as such under the terms of its 1981 Contract.

37. Monthly Transmission Peak Load

Monthly Transmission Peak Load is the monthly peak loading on the FCRTS for the billing month.

38. Network (or Integrated Network)

The Network is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, as defined in BPA's Segmentation Study.

39. Network Upgrades

Network Upgrades are modifications and/or additions to transmission-related facilities that are integrated with and support BPA's Network Transmission System to satisfy, at least in part, an application for transmission service as well as provide for the general benefit of all users of such Network Transmission System.

40. Northern Intertie

The Northern Intertie is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities consist of two 500-kV lines between Custer Substation and the United States-Canadian border, one 500-kV line between Custer and Monroe Substations, two 230-kV lines from Boundary Substation to the United States-Canadian border, and the associated substation facilities.

41. Offpeak Period

The Offpeak Period (or LLH) includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 6 a.m., Monday through Saturday, and all hours Sunday.

42. Operating Demand (1981 DSI Contract)

The Operating Demand is that demand which is established by each DSI in accordance with section 5(b) of the DSI's 1981 Contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The hourly demand which the purchaser may impose on BPA; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA.

43. Opportunity Cost

Opportunity Cost is the net loss of revenue or the net increase in generation cost caused by displacing one transaction with another when the transmission system is so constrained that both transactions cannot be handled at the same time. Loss of revenue resulting from competition shall not be included in the determination of the Opportunity Cost. Opportunity Cost shall be determined consistent with FERC policy.

44. Partial Requirements Customer (1996 Contract)

As currently proposed by BPA, a Partial Requirements Customer is a Purchaser (utility, Federal Agency, or DSI) that is designated as a Partial Requirements Customer by the terms of its 1996 Contract. This term will be further defined as 1996 Contracts are developed. For purposes of these rate schedules, Partial Requirements Customers are those purchasers under 1996 Contracts that dedicate generation resources or purchases to serve their retail load in specific amounts.

45. Peak Period

The Peak Period (or HLH) includes the hours from 6 a.m. to 10 p.m., Monday through Saturday.

46. Phase-In Mitigation

Phase-In Mitigation is available to Full and Metered Requirements Preference Purchasers who are purchasing their firm requirements under one or more of BPA's 5-year rate schedules and whose 1996 rate increase for BPA purchases is at least 9 percent. If the purchaser meets the eligibility criteria and requests that BPA phase in its 1996 rate increase, BPA will limit the Purchaser's annual rate increase to 9 percent each year for the 5-year period.

47. Point of Delivery (POD)

A Point of Delivery is where BPA delivers power to a customer. The delivered power will be Federal power to the extent that the customer is purchasing power under BPA's wholesale power rate schedules, and it will be non-Federal power to the extent that the customer is purchasing transmission services from BPA.

48. Point of Integration (POI)

A Point of Integration is a connection point between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

49. Point of Interconnection

A Point of Interconnection is a connection point between the FCRTS and non-BPA facilities where there is a change in facility ownership.

50. Purchaser

Pursuant to the terms of an agreement and applicable rate schedule(s), a Purchaser contracts to pay BPA for providing a product or service.

51. Ratchet Demand

The Ratchet Demand in kilowatts is the maximum demand established during a specified period of time either during, or prior to, the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. When the Ratchet Demand is used as a billing factor, BPA shall have specified the following information in the appropriate rate schedules or GRSPs:

a. The period of time over which the ratchet shall be calculated;

b. The type of demand to be used in the calculation; and

c. The percentage (if any) of that demand that will be used to calculate the Ratchet Demand.

In the event that the Purchaser has decreased its demand under the terms of its agreement with Bonneville, Bonneville shall, as necessary, reduce the Ratchet Demand to ensure that it does not exceed the maximum demand permitted under the terms of the Agreement.

52. Reactive Power

Reactive Power is the out-of-phase component of the total voltamperes in an electric circuit. Reactive Power has two components: reactive demand (expressed in kilovars or kVAr) and reactive energy (expressed in kilovarhours or kVArh).

53. Restricted Demand (1981 DSI Contract)

Restricted Demand is the number of kilowatts of Industrial Firm Power that results when BPA has restricted delivery of such power for one clock-hour or more. BPA makes such restrictions pursuant to the terms of the DSI's power sales contract with BPA. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as the number of restrictions.

54. Retail Load

Retail Load for a utility or Federal agency is the purchaser's regional retail energy load during any given time period plus distribution losses and the purchaser's system power requirements. No distinction is made between load that is served with BPA power and load that the customer serves with power acquired from other sources. Retail Load for a DSI is the purchaser's total energy load at facilities eligible for BPA service during any given time period, irrespective of whether the customer has chosen to serve its load with BPA or non-Federal power. Retail Load is the billing factor for Load Shaping and Load Regulation for certain purchasers.

55. Scheduled Demand

The Scheduled Demand in kilowatts is the largest of the hourly demands at which electric energy is scheduled for transmission on the FCRTS or delivery to a purchaser:

a. To each system for which Scheduled Demand is the basis for determination of the Measured Demand;

b. During each time period specified in the applicable rate schedule; and

c. During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining Billing Demand.

56. Scheduled Energy

The Scheduled Energy in kilowatt-hours shall be the sum of the hourly

demands at which electric energy is scheduled for delivery to a purchaser:

a. For each system for which scheduled energy is the basis for determination of the Measured Energy, and

b. During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining Billing Energy.

57. Secondary System

As used in the FPT and IR rate schedules, Secondary System is that portion of the Integrated Network facilities with an operating voltage of less than 230 kV.

58. Secondary System Distance

As used in the FPT rate schedules, Secondary System Distance is the number of circuit miles of Secondary System transmission lines between the secondary POI and either the Main Grid or the secondary POD, or between the Main Grid and the secondary POD.

59. Secondary System Interconnection Terminal

As used in the FPT rate schedules, Secondary System Interconnection Terminal refers to the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

60. Secondary System Intermediate Terminal

As used in the FPT rate schedules, Secondary System Interconnection Terminal refers to the first and final terminal facilities in the Secondary System transmission path, exclusive of the Secondary System Interconnection terminals.

61. Secondary Transformation

As used in the FPT rate schedules, Secondary Transformation refers to transformation from Main Grid to Secondary System facilities.

62. Southern Intertie

The Southern Intertie is the segment of the FCRTS which includes, but is not limited to, the major transmission facilities consisting of two 500 kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation, and the 500 kV AC Intertie facilities which include Captain Jack Substation, the Alvey-Meridian AC line, one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border; and associated substation facilities.

63. Subscription

A Purchaser's Subscription is the amount(s) of a particular product(s) a Purchaser is entitled to purchase from BPA during a billing month. When a Purchaser must provide BPA with its Subscription is specified in the Purchaser's 1996 Contract with BPA.

5-Year Demand Subscription (Substitute ''HLH Energy'' or ''LLH Energy'' for ''Demand'' as appropriate).

The Purchaser's 5-Year Demand Subscription is the maximum amount of capacity (demand), as designated by the purchaser, that the purchaser elects to purchase from BPA under the applicable 5-year rate schedule for each month. A purchaser's demand subscription forms the basis for the monthly billing demand for that purchaser. For purchasers designating a monthly megawatt amount, the 5-Year Demand Subscription for that purchaser's billing month shall be the amount so specified by the purchaser. For DSIs under a 1981 Contract, the amount of subscribed load at the 5-year rate shall be a percentage of the purchaser's operating level and measured energy. For purchasers continuing service under the 1981 Contract who designate a percentage, the 5-Year Demand Subscription shall be determined by taking the specified percentage times the purchaser's Measured Demand. For purchasers under the 1996 Contract, the 5-Year Demand Subscription shall be determined by taking the specified percentage times the purchaser's actual Retail [demand] Load. For purchasers electing service to a New Large Single Load(s) under the NR–96.5 rate, the 5-Year Demand Subscription shall be the total Measured Demand for all designated consumer facilities.

2-Year Demand Subscription (Substitute ''HLH Energy'' or ''LLH Energy'' for ''Demand'' as appropriate).

The Purchaser's 2-Year Demand Subscription is the maximum amount of capacity (demand), as designated by the purchaser, that the purchaser elects to purchase from BPA under the applicable 2-year rate schedule for each month. A purchaser's demand subscription forms the basis for the monthly billing demand for that purchaser. Only purchasers receiving service under the 1996 Contracts are required to subscribe to an amount of demand at the 2-year rate schedule.

64. Total Transmission Demand

Total Transmission Demand is the sum of all the transmission demands as defined in the applicable Agreement.

65. Transmission Demand

Transmission Demand is the demand for transmission services as specified in the applicable Agreement.

66. Utility Delivery

The Utility Delivery segment is the portion of the FCRTS that provides service to utility customers at voltages of 34.5 kV and below.

67. Utility Factor

A Utility Factor is the factor BPA applies to the charges for Load Shaping and Load Regulation under the 1981 Contracts. The Utility Factor is developed annually based on historical data provided by the customers to the Account executive or District Sales Office. The annual factor will be based on the customer's historical annual average retail load and average purchases from BPA and applied on a fiscal year basis.

Issued in Portland, Oregon, on June 30, 1995.

Stephen J. Wright,

Vice President for the Washington, D.C. Liaison Office, Bonneville Power Administration.

[FR Doc. 95–17374 Filed 7–11–95; 3:38 pm]

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Monday
July 17, 1995

Part III

Federal Communications Commission

47 CFR Part 21

Filing Procedures; Multipoint Distribution Service and Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[MM Docket No. 94–131 and PP Docket No. 93–253, FCC 95–230]

Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts a licensing plan under which we will allot Multipoint Distribution Service (MDS) authorizations by geographic areas, through a simultaneous multiple round bidding process. The Report and Order also adopts a variety of measures to streamline the application and implementation processes. It authorizes the voluntary use of electronic filing for new MDS applications, as well as electronic fee payments. It institutes computerized interference studies utilizing new data elements to be included in a revised MDS application form. It also makes clear that interference disputes are to be resolved, in the first instance, through private negotiations, with the FCC to serve only as a last resort. These procedures are designed to expedite processing and facilitate development of wireless cable, an industry that delivers video programming to subscribers using MDS and Instructional Television Fixed Service (ITFS) channels. This proceeding is intended to expedite more service to the public and enhance opportunities for wireless cable to reach its potential as a competitor to wired cable.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon Bertelsen at (202) 416–0892 or Jerianne Timmerman at (202) 416–0881, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The following collection of information has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Persons wishing to comment on this information collection should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, Room 10102 NEOB, Washington, D.C. 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 418–0210.

OMB Numbers: None. This Report and Order adopts a new application form, FCC Form 304, to be used for new MDS facilities, and several new rules and amended rules. There is also a new FCC Form 304–A and FCC Form 175–M.

Titles: Form 304: Application for a Multipoint Distribution Service Authorization. Form 304–A: Certification of Completion of Construction for a Multipoint Distribution Service. Form 175–M: Application to Participate in an FCC MDS Auction. 47 CFR 21.930 (Five-year Build-out Requirements), 21.931 (Partitioning of BTAs), 21.934 (Assignment or Transfer of Control of BTA Authorizations), 21.937 (Negotiated Interference Protections), 21.956 (Filing of Long-form Applications or Statements of Intention) and 21.960 (Designated Entity Provisions for MDS).

Action: New Collections.

Respondents: Businesses or other for-profit, small businesses or organizations.

Frequency of Response: On occasion reporting requirements.

Estimated Annual Response: Form 304: 300 responses, 55 hours per response; Form 304–A: 100 responses, .5 hours per response; Form 175–M: 1600 responses, .48 hours per response; Section 21.930: These filings will not occur until FY 2001, 750 responses, 1 hour per response; Section 21.931: 150 responses, 6 hours per response; Section 21.934: 200 responses, 1 hour per response; Section 21.937: 75 responses, 30 hours per response; Section 21.956: 200 responses, 3 hours per response; Section 21.960: 550 responses, 2 hours per response.

Needs and Uses: FCC Form 304 will be used to ensure that the respondent is qualified to become a Commission licensee. FCC Form 304–A will be used to certify that the facilities as authorized have been completed and that the station is ready to provide service to the public. FCC Form 175–M will be used to determine whether the applicant is legally, technically and otherwise qualified to participate in an MDS auction. Section 21.930 will be used to determine whether the BTA holder has met its construction requirements and to ensure that service is promptly delivered to the public. Sections 21.931 and 21.937 will ensure that the interference protection rules are complied with. Section 21.934 is used to determine whether there has been unjust enrichment to the party selling the station. Section 21.956 will be used by the staff to determine whether to grant a BTA authorization. Section 21.960 will prevent abuse of the special measures offered to MDS auction winners claiming designated entity status.

A summary of the Report and Order follows. The complete text is available for inspection and copying during normal business hours in the MDS public reference room, Room 207, at the Federal Communications Commission, 2033 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. (Action by the Commission: Chairman Hundt dissenting in part and issuing a statement; Commissioners Quello and Barrett issuing separate statements; and Commission Ness dissenting in part and issuing a statement.)

1. By this action, we adopt rules to facilitate the development and rapid deployment of wireless cable services.[1] As a result of our actions in prior proceedings, wireless cable operators that use spectrum in the Multipoint Distribution Service (MDS), often supplemented with leased channels from the Instructional Television Fixed Service (ITFS), have begun to provide a competitive alternative to wired cable and other multichannel video programming distributors.[2] The rules we now adopt will accelerate that process by setting streamlined measures to distribute unused MDS spectrum through competitive bidding and by establishing a protected service area for MDS stations that is large enough to allow operators flexibility they need to design viable and competitive wireless cable systems. Adoption of these rules will enable the Commission to lift the

[1] Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels. Our use of the term ''wireless cable'' does not imply that it constitutes cable television for statutory or regulatory purposes.

[2] Unless otherwise indicated, ''MDS'' includes single channel Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) applications and authorizations collectively.

current freeze on filing new MDS applications.[3]

2. Specifically, we adopt in this order a licensing plan under which we will allot, through a simultaneous multiple round bidding process, one MDS authorization for each of the 487 Basic Trading Areas (BTAs) and six additional BTA-like geographic areas.[4] A BTA authorization holder will be able to construct facilities to provide wireless cable service over any usable MDS channels within the BTA, and will have preferred rights to the available ITFS frequencies and ITFS lease agreements within the BTA. A channel is usable if the proposed station design is in compliance with the Commission's interference standards.

3. Under the new rules, the signals of a BTA authorization holder cannot interfere with those of any other BTA authorization holder. Recognizing, however, that BTA lines do not always track desired service areas, the rules permit BTA authorization holders to negotiate interference protection rights. In addition, the rules we adopt require BTA authorization holders to honor the protected service areas of incumbent MDS operators within their BTAs. In a companion order, also adopted today, the Commission expanded the protected service areas of existing MDS stations.[5] These various licensees and applicants that are authorized or proposed on or before the effective date of this Report and Order, including those stations that are subsequently modified, renewed or reinstated, are referred to throughout this Report and Order as ''authorized or previously proposed facilities'' or ''incumbents.'' In order to facilitate the development of successful wireless cable systems, the rules permit BTA authorization holders to assign or transfer their entire BTAs, or partitioned portions of it, to incumbents or other parties. (Unserved areas may be included as long as the assignment or transfer takes place within the five-year build-out period that the rules impose.) Because the BTA authorization holder may be an incumbent, the rules permit the aggregation of existing and new MDS and ITFS channels within a BTA.

4. The Report and Order also adopts a variety of measures to streamline the application and implementation processes. It authorizes, for example, the voluntary use of electronic filing for new MDS applications, as well as electronic fee payments. It institutes computerized interference studies utilizing new data elements to be included in a revised MDS application form. It also makes clear that interference disputes are to be resolved, in the first instance, through private negotiations, with the Commission to serve only as a last resort.

5. We understand that the wireless cable industry has made tremendous progress toward the transition to digital transmission.[6] The rules we adopt today will facilitate that transition.

6. Background. In 1983, to satisfy a growing demand for the delivery of video entertainment programming to subscribers and to provide competition to wired cable systems, the Commission reallocated eight of the then twenty-eight ITFS channels for MDS use, and authorized ITFS licensees to lease the excess capacity on their systems to wireless cable operators.[7] That action created wireless cable as a multichannel video distribution medium, and in 1991, the Commission made more channels available for wireless cable services.[8] Today, there are a maximum of thirty-three microwave channels used for wireless cable in each market. These include thirteen MDS channels (Channels 1, 2 or 2A, E1–E4, F1–F4 and H1–H3) and the excess capacity on up to twenty ITFS channels (Channels A1–A4, B1–B4, C1–C4, D1–D4 and G1–G4).[9]

7. Wireless cable is now similar to wired cable television in the type of programming it provides, but differs from cable in how the programming is transmitted to subscribers. Generally, a wireless cable system may be described as a microwave station transmitting on a combination of MDS and ITFS channels to numerous receivers with antennas, such as single family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

8. Over the past few years, the wireless cable industry has experienced substantial growth and has emerged as an effective competitor to wired cable in many locations.[10] This rapid growth is due, in part, to program access provisions and changes in other regulations that have increased access to financing. MDS is a heavily encumbered service. Most of the thirteen MDS channels have already been authorized in the largest metropolitan areas, especially for locations in the eastern half of the country. Thus far, MDS has developed almost entirely in large and medium-sized cities, though MDS systems also serve many smaller communities in the western states. In addition to the approximately 170 operating wireless cable systems, many conditional licenses have been issued to entities that, presumably, are in various stages of constructing their systems. Finally, the MDS landscape includes MDS systems proposed in applications now being processed at the Commission.

A. Filing Procedures and Service Rules

9. Proposals. On December 1, 1994, the Commission released a Notice of Proposed Rulemaking in this proceeding which solicited comment on proposals that would modify our MDS filing procedures and use competitive bidding to select from among mutually exclusive

[3] The Commission imposed a freeze on the filing of applications for new MDS stations in Notice of Proposed Rulemaking in PR Docket No. 92–80, 7 FCC Rcd 3266 (1992), 57 Fed. Reg. 24,006 (June 5, 1992).

[4] Rand McNally defined 487 BTAs in the 1992 Commercial Atlas & Marketing Guide. Since Rand McNally did not include a few areas, we will add them to the list as BTA-like geographic areas, bringing the total to 493 authorizations to be auctioned. See infra at ¶ 26.

[5] Second Order on Reconsideration in Gen. Docket Nos. 90–54 and 80–113, FCC 95–231 (released June 21, 1995) (Secord Order on Reconsideration).

[6] See, e.g., The Wireless Cable Association International, Selected Papers from the First Annual Wireless Cable Technical Symposium (February 4–6, 1995).

[7] Report and Order in Gen. Docket No. 80–112 and CC Docket No. 80–116, 94 FCC 2d 1203 (1983), 48 Fed. Reg. 33,873 (July 26, 1983). Therein, the Commission also grandfathered interference protection to existing ITFS applicants, permittees or licensees on these eight E and F channels, resulting in twenty-eight ITFS channels in some locales.

[8] The Commission reallocated the H group channels from the Operational Fixed Service to MDS and made MDS operators eligible for authorization on vacant ITFS channels with specified restrictions. Second Report and Order in Gen. Docket No. 90–54, 6 FCC Rcd 6792, 6793–94, 6801–06 (1991), 56 Fed. Reg. 57,808 (Nov. 14, 1991), recon. denied, 7 FCC Rcd 5648 (1992). Last year, the Commission consolidated processing of MDS and ITFS applications into one organization. Amendment of Parts 0 and 1 of the Communication's Rules to Reflect a Reorganization of Multipoint and Multichannel Multipoint Distribution Services, 9 FCC Rcd 3661 (1994), 59 Fed. Reg. 38,374 (July 28, 1994).

[9] MDS channel 2A is only 4 MHz wide and lacks sufficient bandwidth to transmit a standard television signal. Grandfathered ITFS stations on the eight E and F channels also lease excess capacity to wireless cable operators.

[10] See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, 9 FCC Rcd 7442, 7482–88 (1994), 59 Fed. Reg. 64,657 (Dec. 15, 1994). The Commission is required to file such reports pursuant to the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, § 628(g), 106 Stat. 1460 (amending the Communications Act of 1934), codified at 47 U.S.C. § 548(g). The Commission recently adopted a Notice of Inquiry to obtain information needed to prepare the annual assessment that will be released in 1995, FCC 95–186 (released May 24, 1995), 60 Fed. Reg. 29,533 (June 5, 1995).

applicants.[11] In the Notice, the Commission proposed that applicants file short-form applications for established geographic service areas to identify mutually exclusive applicants for competitive bidding purposes and that the successful bidders file long-form applications. Notice at 7669–71. The Notice suggested the use of predetermined geographic areas, such as Metropolitan Statistical Areas (MSA) and Rural Service Areas (RSA) or Areas of Dominant Influence (ADI).[12] This proposal envisioned that we would release a public notice announcing auctions by geographic area, specifying the filing period for short-form applications (FCC Form 175)[13] and the applicable bidding procedures. Mutually exclusive applicants would bid for all usable MDS channels in that area as a package and the auction winner would be permitted to file long-form applications for conditional licenses to operate stations anywhere throughout the service area provided the specific engineering design of their MSD stations meets the Commission's interference protection standards with respect to all authorized or previously proposed MDS and ITFS facilities. Long-form applications accepted for filing would be proposed for grant by a Commission public notice, announcing that the applications are accepted for filing and opening a thirty-day period for filing petitions to deny. See 47 U.S.C. § 309(b); 47 CFR 21.30. The Notice observed that these filing procedures would enable operators to amass MDS channels, would avoid the lengthy delay associated with licensing stations site-by-site and therefore would allow operators to enhance their services more rapidly. The Notice asked commenters to determine which type of geographic areas would be most suitable for MDS and to address the definition of protected service area. In particular, we requested comment on whether the current definition of an MDS station's protected service area would be appropriate,[14] or whether the boundary of the geographic area designed for auction purposes should become the protected service area. We also asked commenters to discuss the interference standards for service to the areas adjacent to the boundaries between geographic areas. Although the Notice identified this approach of licensing MDS channels as the preferred approach, we also invited comment on alternative licensing procedures.

10. The Notice suggested an alternative approach that would limit applications to predetermined sites where there are vacant E, F or H channels. Notice at 7671–72. Under this approach, the Commission would identify such sites based upon the location of an already authorized E, F or H channel. The Commission would issue multiple public notices specifying the filing period and applicants would file a short-form application to identify mutually exclusive situations for purposes of competitive bidding. The auction winner would be required to file a long-form application containing a complete engineering proposal and specifying a compatible station design with the Commission's interference protection standards to all previously proposed or authorized MDS and ITFS facilities.

11. Under another alternative presented in the Notice, the Commission would periodically open national filing windows, with no geographic restrictions on filing for available MDS channels. Notice at 7672–73. Pursuant to this proposal, we would release a public notice announcing the filing window for available channels. This proposal would initially require a long-form application, containing the applicant's complete technical proposal, to determine mutual exclusivity before competitive bidding procedures are implemented. The Notice pointed out that this approach would likely result in a larger number of mutually exclusive applications and increase the possibility of ''daisy-chains'' (interlinking application proposals at different locations), which would require a more complicated and time consuming competitive bidding process, including subsequent rounds of auctions to resolve all mutual exclusivities in a daisy-chain. We invited commenters favoring a national window approach to recommend ways to resolve the daisy-chains that might arise under this proposal.

12. As an option to the national filing window approach, the Notice discussed limiting eligibility to file in the first window to existing licensees and system operators who, at the time the application is filed, are operating with a certain minimum number of channels. Notice at 7673. In many situations the acquisition of a small number of additional channels may be essential for launching a whole new wireless cable system in a given area. This approach would allow existing wireless cable operators to accumulate the critical mass of channels necessary to operate competitive wireless cable systems. We asked commenters favoring this option to suggest eligibility requirements to govern the filing of applications in this first window.

13. Resolution. After careful consideration of the merits of the various proposals we raised in the Notice, we continue to prefer a filing approach where applicants file short-form applications and auction winners file long-form applications. We have decided that BTAs are the most appropriate geographic area for MDS. The boundaries of each geographic area, with the exceptions of channels obtained through leases with ITFS licensees, will become the protected service area for the auction winner. The auction winners will be issued authorizations for specific geographic areas and will be permitted to operate one or more MDS transmitting stations and signal boosters anywhere inside the service area, provided the specific engineering design meets the Commission's interference protection standards to all authorized or previously proposed MDS and ITFS facilities, and complies with the limits we establish for signal strength along the perimeter of the geographic area. See infra at ¶¶38–41. Following the auction, there would be a five year build-out period in which an authorization holder can expand service or initiate new service within their area without competing applications. The authorization holder will also be permitted to partition its area along established geopolitical boundaries and enter into contracts with eligible parties, allowing such parties to

[11] Notice of Proposed Rulemaking in MM Docket No. 94–131 and PP Docket No. 93–253, 9 FCC Rcd 7665 (1994), 59 Fed. Reg. 63,743 (Dec. 9, 1994) (Notice). The only aspect of the Notice which applied to ITFS was the electronic filing proposal. In a separate proceeding, the Commission recently adopted improvements to the ITFS licensing process, including a window filing procedure. Report and Order, Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service, MM Docket No. 93–24, 10 FCC Rcd 2907 (1995), 60 Fed. Reg. 20,241 (Apr. 25, 1995).

[12] MSAs and RSAs are standard geographic areas used by the Commission for administrative convenience in licensing cellular radio systems. The Commission has also used MSAs since 1983 for making mutually exclusive determinations for MDS applications filed for the E or F channels under 47 C.F.R. § 21.901(d)(5). ADIs are standard geographic areas that were developed by Arbitron Ratings Company. Each county in the United States is placed within one of 209 ADIs, the lowest numbered ADI having the highest population.

[13] FCC Form 175 contains the applicant's name, the markets in which the applicant wishes to bid, the persons authorized to make or withdraw a bid, whether the applicant is qualified as a designated entity under 47 C.F.R. § 1.2110, certifications that the applicant is legally, technically, financially and otherwise qualified, and identification of all parties involved in agreements, or certification that no agreements exist, relating to the authorizations being auctioned or the bidding process.

[14] 47 C.F.R. § 21.902. In another order, also adopted today, the Commission amends 47 C.F.R. § 21.902, to expand the protected service area for authorized or previously proposed MDS facilities. Second Order on Reconsideration at ¶¶ 2–31.

file long-form applications for usable MDS channels within that partitioned area. See infra ¶¶34–35. This will permit broad participation from entities of all sizes. This framework provides the most efficient system of disseminating MDS licenses because service areas are easily identified and authorizations are promptly granted with minimal administrative or judicial delays. This approach will also provide operators sufficient flexibility to design systems that satisfy consumer demand.

14. We emphasize that there is no perfect or simple filing approach to adopt at this time for new MDS authorizations given the history of the service, the characteristics of the technologies involved, the implementation of competitive bidding procedures, and our goal to rapidly enhance wireless cable systems as viable competitors in the multichannel video marketplace. We also reiterate that MDS is a heavily encumbered service. Although conditional licenses in some markets for one or more channels have been forfeited for failure to comply with express conditions or to timely construct, in a majority of the markets only small portions are unserved and few channels are available. Of the thirteen MDS channels, it is possible that no channel remains available for prospective bidders for as many as 59 of the cities of the top 100 ranked television markets. There are possibly two or less channel available in as many as 90 percent of these market cities. Moreover, the fixed 35-mile protected service areas of MDS incumbents, adopted today in a separate proceeding, will occupy substantial portions of most BTAs and typically cross BTA boundaries, especially in the eastern half of the country where BTAs are relatively geographically smaller. By enabling incumbents to continue providing interference-free service to subscribers within the expanded 35-mile areas, it is likely that in a substantial number of BTAs, it may be difficult, if not impossible, for an auction winner to locate a station anywhere in the BTA to provide both interference-free service and the necessary interference protection to protected areas of incumbents; unless either the auction winner is the incumbent, negotiates an interference agreement with the incumbent or would acquire the authorization of the incumbent.[15] We emphasize that prospective bidders must carefully ascertain the extent of incumbent operations and authorized but unconstructed facilities in any BTAs prior to bidding. Further, where there remains outstanding at the time of auction a pending application, petition for reconsideration, reinstatement request or application for review affecting any BTA, winning bidders would acquire any authorization conditioned upon the outcome of Commission actions on such applications or pleadings. Prospective bidders must consider the total impact of incumbents in their valuation of the auction areas for competitive bidding purposes.

15. With regard to the definition of the service area to be authorized for MDS, we conclude that issuing authorizations by Basic Trading Areas (BTA) reflects the best balance of competing considerations. We considered several service area options including Metropolitan Statistical Areas (MSA) and Rural Service Areas (RSA),[16] the television Areas of Dominant Influence (ADI) and the analytically similar Designated Market Areas (DMA),[17] Basic Trading Areas (BTA) and a combination of service areas that vary in size. The record reflects that because many MSAs are much smaller than actual service areas existing today, wireless cable stations licensed to different entities in adjacent MSAs would have great difficulty providing service to their MSA without causing harmful interference to systems in adjacent areas. In some cases, operators who designed their systems to maximize population, are serving subscribers located beyond the MSA in which the transmission facilities are located. Furthermore, the record indicates that the use of MSAs and RSAs would result in unnecessary fragmentation of natural markets and in order to protect the boundaries of adjacent MSAs and RSAs, in many cases, stations would have to operate at extremely low levels of power. While simultaneous multiple round bidding would permit the consolidation of interdependent MSAs and RSAs, and licensees could acquire additional markets after auctions through the assignment and transfer process, we believe that these options may result in unproductive regulatory and transaction costs for the Commission and applicants. We believe that the use of larger service areas would alleviate these problems and would reduce the need for and cost of interference coordination between neighboring licensees.

16. ADIs and DMAs, on the other hand, tend to be much larger than the area in which reliable MDS service is available using today's technology. One commenter indicates that ADIs tend to be over seven times the size of actual wireless cable protected service areas (of 710 square miles) and therefore concludes that ADIs are the least appropriate service area for MDS. It explains that ADIs are designed for television advertising measurement purposes and unlike wireless cable, the signal of television stations and hence the size of ADIs are attributed to cable carriage of television signals. Furthermore, the cost of acquiring an ADI authorization through competitive bidding, building systems and marketing services in the larger ADIs may unnecessarily restrict entry to a small number of applicants. BTAs offer a compromise in size that may best approximate MDS service areas. Although varying in geographic shape and size, BTAs are bigger than MSAs generally since they often include the MSA and surrounding counties, thus mitigating harmful interference among adjacent areas. BTAs offer sufficiently large service areas to allow applicants flexibility in designing a system to maximize population coverage and take advantage of economies of scale necessary to support a successful operation. Yet BTAs are generally smaller than ADIs, making the initial cost of acquiring the authorization through competitive bidding lower, and therefore providing greater opportunity for participation by small businesses, female and minority entrepreneurs and rural telephone companies. The use of BTAs combined with geographic partitioning will encourage further participation by a wide variety of applicants. See 47 U.S.C. 307(j)(4)(C). Finally, BTAs provide a manageable number of discrete filing areas for competitive bidding purposes.

17. We recognize that the majority of the commenting parties express support for the national filing window approach. We believe, however, that using national filing windows would most likely result in more of the very substantial processing and administrative delays that have long plagued the development of the wireless

[15] In assessing MDS channel availability, we assumed that each authorized or previously proposed MDS station has a protected service area of 35 miles, i.e., the expanded service area adopted today in a related order. Second Order on Reconsideration.

[16] MSAs and RSAs are used by the Commission in licensing cellular radio systems. All of the 306 MSAs and 428 RSAs and the counties they comprise are listed in Public Notice, Report No. CL–92–40, ''Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,'' 7 FCC Rcd 742 (1992). See also 47 CFR 22.909.

[17] DMAs are standard geographic areas developed by A.C. Neilsen Company in which each county in the continental United States is placed within one of the 211 DMAs, the lowest numbered DMA having the highest population.

cable service. Given the history of the service, we believe such delays are inherent in site-specific licensing, which would require analysis of long-form applications containing the applicant's complete engineering proposal before the competitive bidding process begins. Since the national filing window approach would likely result in a larger number of mutually exclusive applications and daisy-chains, implementation would likely require significant Commission resources and a substantial amount of time to conduct the multi-part auctions (to resolve the daisy-chains) recommended by some commenters or otherwise complete the competitive bidding process. We acknowledge the concerns of some commenters that the licensing approach should afford MDS licensees flexibility to locate systems wherever necessary to maximize coverage. The record reflects that the success of the wireless cable industry thus far has been based upon negotiated agreements with neighboring system operators and strong partnerships with ITFS licensees. The filing system and procedures we adopt herein are expected to facilitate such negotiations and afford wireless cable operators the flexibility to improve existing systems, introduce new systems and implement digital technologies.

18. Indeed, the record indicates that geographic licensing may be the most efficient method to these ends in a digital environment, toward which the wireless cable industry is moving. The nature of digital transmissions will allow more flexibility to tailor signal coverage to geographic boundaries using multiple transmitting facilities. We believe that our rules will facilitate the transition to digital transmissions. If modification of our rules become necessary, we will act promptly to ensure that our rules in no way impede the digital future.

19. In response to the concern about the protected service areas for MDS (BTAs) and ITFS being different, we must emphasize that the two services have differing purposes and authorization procedures. One is intended primarily to provide educational and cultural development to students enrolled in accredited schools and the authorization is issued to the best qualified applicant, while the other is commercial in nature and is subject to competitive bidding. Furthermore, unlike MDS stations, the protection afforded to ITFS operators is based upon receive sites and protected service area is defined in 47 CFR 74.903. Pursuant to this rule, the protected service area associated with the lease of excess channel capacity will also expand to a circle, 35 miles in radius, centered about the transmitter site of the ITFS stations. We note, however, that in a recent proceeding we adopted a 35-mile protection distance for ITFS receivers, a protection distance that is compatible with many BTAs,[18] and with the 35-mile protected service area for MDS stations which are authorized or previously proposed that we have separately adopted today. Second Order on Reconsideration.

20. For the reasons stated above, we believe that licensing by geographic areas is the best approach for issuing MDS authorizations. We decide not to adopt the approach presented in the Notice limiting applications to predetermined sites identified by the Commission based upon the locations of already authorized E, F or H channels where there are usable channels. We agree with the commenters that this approach is inflexible. An approach in which the Commission identifies the specific site sacrifices the business judgment of the operators when they are in the best position to consider market forces. Further, where there is more than one site, the Commission would have to establish criteria for choosing among the available locations. In addition, where identified sites are unavailable to the highest bidders, the Commission would have to process modification applications, which would actually decrease overall processing efficiency and would delay service to the public.

21. We decline to adopt a preference for existing licensees and system operators because we believe that, rather than place restrictions on eligibility to participate based upon an applicant having access to a minimum number of channels, it is in the public interest to encourage participation from a wide variety of applicants. Indeed, a new entrant into the wireless cable industry may place a higher value on the spectrum than an incumbent licensee or system operator in a given area. While we recognize that in some areas, the existing licensee or operator may be in the best position to immediately introduce competition to wired cable, we further believe that a new entrant with sufficient resources will be able to accumulate a sufficient critical mass of channels to launch a system in a market through the competitive bidding process and through the assignment or transfer of previously authorized channels. Thus, market forces will lead to the accumulation of channels into one operating system.

1. Service Areas

22. We therefore will award MDS authorizations for entire BTA service areas under competitive bidding procedures. BTAs were designed by Rand McNally to represent the natural flow of commerce, comprising areas within which consumers have a community of interest. Like the other types of predetermined geographical areas, BTAs vary in size and shape. Typically, a BTA includes a population center(s) (city or large town) and the surrounding rural area. BTA boundaries are based on country lines because most statistical information relevant to marketing is published in terms of counties. The specific boundaries were drawn after a study of several factors, such as physiography, population distribution, economic activities, newspaper distribution and transportation facilities.[19]

23. We note that Rand McNally & Company is the copyright owner of the Basic Trading Area and Major Trading Area Listings, which list the counties contained in each BTA, as embodied in Rand McNally's Trading Area System Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide. Rand McNally has licensed the use of its copyrighted MTA/BTA listings and maps for certain services such as Personal Communications Services (PCS), 800 MHz Specialized Mobile Radio Services (SMR) and Local Multipoint Distribution Services (LMDS). Rand McNally had also reached an agreement in principle with the American Mobile Telecommunications Association (AMTA) for a blanket copyright license for the conditional use of the copyrighted material in the 900 MHz SMR service. These agreements authorize the conditional use of Rand McNally's copyrighted material in connection with these particular services, require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership, and provide for a payment of a license fee to Rand McNally.

24. Currently, MDS is not covered by any blanket copyright license agreement. While current and prospective MDS licensees and other parties interested in using the copyrighted materials may negotiate

[18] Report and Order in MM Docket No. 93–24, 10 FCC Rcd 2907, 2917, 60 Fed. Reg. 20,241 (Apr. 25, 1995).

[19] See Rand McNally 1992 Commercial Atlas & Marketing Guide at 39.

their own licensing arrangement with Rand McNally, as in other services, we encourage interested parties and Rand McNally to explore the possibility of entering into blanket license agreements similar to those noted above to cover MDS. In any event, we note further that an MDS BTA authorization grantee who does not obtain a copyright license (either through a blanket license agreement or some other arrangement) from Rand McNally for use of the copyrighted material may not rely on grant of a BTA-based authorization from the Commission as a defense to any claim of copyright infringement brought by Rand McNally against such grantee. The MTA/BTA Listings, the MTA/BTA Map and the license agreements noted above are available for public inspection at the MDS public reference room, Room 207, 2033 M Street, N.W., Washington, D.C.

25. The Commission will consider awarding the 487 BTA authorizations in the United States, with the following additions to be authorized as BTA-like areas: American Samoa, Guam, Northern Mariana Islands, San Juan, Puerto Rico, Mayaguez/Aguadilla-Ponce, Puerto Rico, and the United States Virgin Islands. Thus, a total of 493 authorizations will encompass all land areas within the United States and related territory. We reiterate that, based on its geographic size, and the extent of encumbrances, it may not be possible in a particular BTA to design and select a station site for any MDS station without negotiating an agreement with one or more affected, previously authorized or proposed, cochannel or adjacent channel MDS or ITFS stations. However, we are going to hold auctions initially for all BTAs for which mutually exclusive, short-form applications are filed. The Commission will announce the time and place of the auction and the applicable bidding procedures by a future public notice. Applicants wishing to participate in the auction process will file a short-form application indicating each BTA service area for which they desire to bid. To determine eligibility to apply for a BTA service area, we will apply the same general eligibility requirements for an MDS authorization.[20] There is no restriction on the number of BTA service areas for which any entity may apply or on the number of BTA authorizations awarded to one entity. Incumbent MDS licensees, conditional licensees and applicants and new entrants will be eligible. Accordingly, prospective bidders will be able to aggregate adjacent BTAs to utilize economies of scale that currently benefit wired cable competitors. Selection from among the mutually exclusive applicants will be determined through a simultaneous multiple round bidding process. The auction winner for each BTA service area, if qualified, will be awarded a BTA authorization. The protected service area lies within the geographic boundary of that BTA, except as excluded by any 35-mile circle protected service areas of previously authorized or proposed MDS stations and except for channels related to ITFS lease agreements.

2. Rights and Responsibilities of BTA Authorization Holder

26. The following paragraphs describe the service rules regarding the rights and responsibilities of the holder of a BTA authorization, the duration of those rights and how an event will alter the boundaries of a protected MDS service area. For purposes of clarity, the chronology of the events would occur as follows: (1) the 35-mile protected service areas of incumbents will become fixed in place upon the effective date of the Second Order on Reconsideration; (2) issuance of public notices announcing auctions by geographic area, and specifying the filing periods for short-form applications and upfront payments; (3) issuance of a public notice identifying all applicants determined to be qualified to bid (i.e., submitted acceptable short-form applications and sufficient upfront payments); (4) competitive bidding rounds; (5) after bidding has ended, the Commission would declare bidding closed and would notify the auction winners, who would then have five business days to make down payments and thirty business days to file at least one long-form application; [21] (6) following review of the long-form applications, the Commission would issue a public notice identifying those accepted and opening a thirty-day period for filing petitions to deny; and (7) if no petitions to deny are filed or if they are dismissed or denied, the Commission would issue a public notice stating that the BTA authorization and the MDS station license are ready to be issued Assuming that the auction winner made full payment of its winning bid within five business days of this public notice, the Commission would grant one or more conditional station licenses for individual stations within the auction winner's BTA service area and issue the BTA authorization for the entire BTA service area.

27. Description of Authorization. The holder of a BTA authorization may file one or more long-form applications seeking authority to construct stations anywhere inside their BTA on usable MDS channels, provided the specific engineering design meets the Commission's interference protection standards to all authorized or previously proposed MDS and ITFS facilities, and complies with the prescribed signal strength limits at the BTA boundary, i.e., at all points along the perimeter of the BTA. A separate conditional station license will be awarded for each single channel or channel group at each site location.[22] For example, separate licenses will be issued for the E Group, F Group and each of the three H Channels. In this Report and Order, the initial license for the BTA service area will be referred to as a ''BTA authorization'' and individual channels will be separately licensed. Thus, we will distinguish between three different types of authorizations for MDS facilities: (1) a ''BTA authorization'' awarded to an auction winner of a particular BTA following the requisite long-form application or statement of intention and requisite payment, (2) a ''station license for each individual station within the BTA'' service area held by an auction winner, and (3) a ''station license'' for an MDS facility authorized or previously proposed under the rules predating the effective date of this Report and Order. Accordingly, under the Commission's rules, as amended herein, the holder of a BTA authorization would file a long-form application for each usable single channel or channel group at each transmitter site within the auction winner's BTA service area, and will have a later opportunity to file amendments to correct any defects in the application. The construction period specified in each conditional station license granted for the individual

[20] *See* 47 CFR 21.4, 21.17, 21.900, 21.912. Because we are amending our rules to implement competitive bidding, our rules regarding random selection and comparative consideration would not apply to applications for new stations filed after the lifting of the freeze. *See* 47 CFR 21.31, 21.914.

[21] If the BTA is so heavily encumbered that the winning bidder is unable to file a long-form application for a station within the BTA while protecting incumbents from harmful interference, the winning bidder must file a statement of intention of use of the BTA, accompanied by a current License Qualification Report (FCC Form 430), before the Commission issues the BTA authorization. See infra at ¶¶ 118–120.

[22] This in no way should be interpreted to reflect on other services where we are eliminating site licensing. See Further Notice of Proposed Rule Making in PR Docket No. 93–144 and PP Docket No. 93–253, FCC 94–271 (released Nov. 4, 1994), 59 FR 60111 (Nov. 22, 1994); Second Report and Order and Second Further Notice of Proposed Rule Making in PR Docket No. 89–553, PP Docket No. 93–253, and GN Docket No. 93–252, FCC 95–159 (released April 17, 1995), 60 FR 21987 (May 4, 1995).

stations within the auction winner's BTA service area will be the five year build-out date which runs from the grant date of the first conditional license within the auction winner's BTA (granted the same date as the BTA authorization). When the portion of the system represented by a particular long-form application is constructed and ready to begin operation, the holder of the BTA authorization will file a corresponding certification of completion of construction. The license term for those stations will be the same ten-year term as MDS stations licensed prior to the adoption of this Report and Order. See 47 CFR 21.45. The ten-year term for the new licenses will commence on the date the Commission declares bidding in the MDS auction to be closed. The holder of a BTA authorization has a protected service area that is coterminous with the boundaries of their BTA service area, subject to exclusion of the protected service areas and/or locations of authorized or previously proposed MDS and ITFS facilities, as further discussed *infra* in ¶ 42. Individual station licenses that are a part of a BTA service area will not have a uniquely associated protected service area. The common protected service area of all individual stations within the BTA authorization will be the boundary of that BTA.

28. We emphasize that the actual service areas can be tailored through voluntary agreements among the affected parties. Although our rules indicate that the holders of BTA authorizations must locate all transmitter sites within the boundaries of the BTA and may not cause interference in adjacent BTAs, the interference rights may be modified through negotiation and written agreements. The MDS station facilities within the auction winner's BTA may be expanded or modified throughout the BTA service area so long as the system continues to be in compliance with our technical rules and protects incumbent MDS and ITFS facilities. The facilities may be expanded beyond the BTA or into the protected service area of an incumbent with an agreement from the entity that controls the adjacent BTA or the incumbent protected 35-mile circular area.

29. Consistent with our goal of establishing filing procedures and policies that will encourage the accumulation of a full complement of channels necessary for a viable MDS system, only the BTA authorization holder will be qualified to submit any new application for MDS use of available ITFS frequencies within the BTA in accordance with 47 CFR 74.990(a), and the ITFS application procedures of § 74.991. ITFS station licensees and prospective ITFS applicants that seek to construct and operate new ITFS facilities located within a BTA and that choose to lease excess channel capacity will be free to negotiate with any potential lessee, including the holder of the BTA. In furtherance of our goal of accumulating a full complement of channels, however, the holder of the BTA will be afforded the right to match the final offer of any proposed lessee. Should the holder of the BTA decline to exercise such right, then the ITFS applicant can enter into a lease arrangement with any operator it so chooses. This is not intended to interfere with present contractual rights that are in effect or renewal of those rights. In the case where a BTA authorization holder is the licensee of ITFS channels, the associated protected service area will be the entire BTA, and interference protection will be governed in the manner for protecting BTA service on MDS channels. However, in the case where a BTA authorization holder leases excess channel capacity from an ITFS licensee, the protected area will be a 35-mile circle centered around the particular ITFS station in the BTA that leases the channels. We will afford this area the same protection generally afforded under our ITFS rules. BTA authorization holders in adjacent BTAs must protect points on the 35-mile circle using cochannel and adjacent channel desired-to-undesired signal strength rations of 45 dB and 0 dB, respectively. A special case will occur whenever BTA authorization holders in adjacent BTAs both lease the same ITFS channel group, such that the 35-mile protected circle of each extends into the BTA of the other. In this regard, we will expect the respective ITFS entities and BTA holders to reach an agreement concerning interference protection near their common boundary. Moreover, a BTA authorization holder will not be required to protect that portion of the 35-mile circle associated with the other authorization holder that falls on his or her side of the boundary. We believe that this approach will promote our policy objectives for this service and will similarly have only a positive effect on the continued successful development of ITFS with the ever expanding financial support for that service provided by wireless cable operators.

30. The available MDS spectrum within a BTA authorization will increase if the unconstructed facilities or unused channels held by an MDS incumbent with transmitter site locations within a particular BTA are forfeited or if previously proposed conditional licenses or modifications are not granted. The holders of the BTA authorizations obtain contingent rights to this spectrum when they receive their authorizations, so that the forfeited channels will revert and become part of the BTA authorization up to the boundary of the BTA. The holder of the BTA authorization may subsequently file long-form applications for the forfeited channels, provided the specific station design meets the Commission's interference protection standards. Such a policy provides an incentive for the holders of BTA authorizations to find and document such warehousing violations, resulting in efficient use of fallow spectrum. In addition, authorization rights may be revoked or terminated because of gross misconduct, misrepresentation or bad faith by an applicant. Other events may also change the protected service area, such as the end of the five year build-out period, an assignment or transfer or partitioning of the BTA. These events are discussed in detail below.

31. Five Year Build-out Period. The build-out period in which the holder of a BTA authorization is permitted to expand service or initiate new service within their BTA service area will be five years. Specifically, we will provide the BTA authorization holder five years from the grant date of the initial BTA authorization to construct and operate the system. The purpose of this requirement is to ensure that service is promptly delivered to the public. *See* 47 U.S.C. 309(j)(4)(B). This five year build-out period is not extended by the grant of subsequent authorizations, such as the grant of a long-form or modification application for an individual station within the BTA service area. We will require the holder of a BTA authorization to submit a showing to the Commission five years after the BTA authorization was issued demonstrating that it is providing a signal level sufficient to provide adequate service to approximately two-thirds of the population of the area within its control in the licensed BTA. The holder of the BTA authorization must submit maps and other supporting documents showing compliance with this construction requirement. The Commission, in evaluating the showing, may consider line-of-sight obstructions and the ability to provide service without causing harmful interference to other MDS or ITFS facilities. If the holder of the BTA fails to cover any of the BTA, it will forfeit the authorization

and it will be ineligible to regain it. If the Commission determines that there are usable channels in an unserved or underserved area of the BTA, the Commission would partition the area along geopolitical boundaries and issue a public notice establishing the reauction of the partitioned area. This public notice would announce the auction or auctions by geographic area, specifying the filing period for short-form applications and the applicable bidding procedures. The holder of the BTA will forfeit the partitioned service area and will be ineligible to bid on it. We believe that this coverage policy is reasonable and will result in the channels being made available to applicants who will provide service to the public. We further believe that this will deter the warehousing of channels and ensure that the spectrum is being effectively utilized for MDS.

32. Assignment or Transfer of Control. The holders of BTA authorizations and MDS incumbents may negotiate mergers, buyouts, channel swaps, channel splits or make similar arrangements on a voluntary basis, pursuant to the general assignment and transfer provisions of 47 CFR 21.38. Both parties are generally permitted to buy from and sell authorizations to each other and to third parties, with few limitations.

33. Additional spectrum may be acquired by the holder of a BTA authorization through buyouts of incumbent licensees within their authorized BTA service area. As is the case with ITFS licensees, wireless cable operators may also acquire spectrum through leasing agreements with incumbents. In this case, the protected service area of the acquired station will extend to the BTA boundary or the existing 35-mile protected circular area (from the incumbent), whichever is larger. The holder of the BTA authorization may assign or transfer control of its entire BTA, which will include all authorized stations, subject to the unjust enrichment provisions for designated entities. See infra at ¶¶ 147.152. Such an assignment or transfer of an entire BTA may also include unserved areas so long as the five year build-out period has not expired. If a BTA authorization is assigned or transferred, the new holder of the BTA authorization is held to the original build-out period. The holder of the BTA authorization may also partition portions of the BTA along geopolitical boundaries under our partitioning rules, discussed below, and contract with eligible parties, allowing such parties to file long-form applications for the usable MDS channels within that area. We believe that allowing the partitioning of portions of the BTA service area will encourage provision of service to rural areas, which will promote the most efficient use of the spectrum. See 47 U.S.C. 309(j)(3)(A) (instructing the Commission to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas).

34. Partitioning. During the five year build-out period, we will permit the holder of a BTA authorization to partition portions of its BTA authorization and enter into contracts with eligible parties, allow such parties to file long-form applications for the usable MDS channels within that partitioned area. The BTA may be partitioned along geopolitical boundaries, and the Commission may grant such applications, provided they are in compliance with the rules. Also, a holder of a BTA authorization will be permitted to add to its service area by acquiring a partitioned service area from the holder of an adjacent BTA. Following grant of such an application, the authorization will be referred to as ''partitioned service area.'' The holder of a partitioned service area would, in effect, then hold something similar to a BTA authorization for the partitioned area. The protected service area will become or expand to the boundaries partitioned along the designated geopolitical boundaries and the same technical rules will apply, including the limiting signal strength at the boundaries of the partitioned area. Accordingly, the construction period for the partitioned service area will be the remaining portion of the five year build-out and at the end of this five year period, the holder of the partitioned service area must demonstrate that it is providing substantial service to the partitioned area. Once construction is complete, the license term will run ten years from the date the Commission declared bidding in the MDS auction to be closed.

35. We believe that allowing holders of the BTA authorizations to partition will facilitate the provision of service to small markets and rural areas, some of which currently have no source of multichannel video programming. Partitioning will also promote the most efficient use of the spectrum and encourage participation by a wide variety of entities, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. *See* 47 U.S.C. 309(j) (3)(B), (3)(D) and (4)(C).

36. Technical Rights and Responsibilities. In determining interference protection standards and other technical provisions under this new approach to MDS authorization of service, our objectives are two-fold: (1) to provide maximum flexibility to allow both new BTA authorization holders and current MDS licensees, conditional licensees, and applicants to develop and expand service in the most rapid and economically feasible manner, and (2) to assure that the introduction of new MDS service will not result in objectionable interference to the services of incumbent stations and will minimize insofar as possible the extent of potential interference within BTA service areas. These objectives and the provisions herein take into account the extent to which the current service has been built around successful negotiations among neighboring operators and/or licensees, as well as prospective operators and licensees. We fully expect this spirit of cooperation and accommodation to continue and, while we will adopt interference protection provisions for BTA and incumbent service, we will allow and indeed encourage the holders of BTA authorizations and incumbents to work out mutually agreeable interference concerns with other potentially affected parties whenever possible.

37. As a result of this Report and Order and a separate MDS order we are adopting today, protected service areas for BTA authorization holders and MDS incumbents will be defined differently. Second Order on Reconsideration at ¶¶ 2–31. We believe this approach will best facilitate the full development of incumbent wireless cable systems, many of which already have secured the desired transmitting site, and serve subscribers within a metropolitan area from a single site. In addition, this approach may allow the rapid expansion of new MDS service into other unserved portions of BTAs. We adopt an idea contemplated in the Notice, that the perimeter of a predetermined geographic area (BTA) generally defines its protected area. The holders of BTA authorizations will not be permitted to cause interference within the boundaries of an adjacent BTA, without the consent of the affected authorization holder. When such interference occurs, an offending party will be expected to act promptly to eliminate any unwanted interference in another operator's BTA.

38. Interference among adjacent BTA operators will be partially controlled by establishing an allowable limit for a station's predicted signal strength at all points along a BTA boundary. The same

limiting signal strength will apply at the boundaries of every BTA, regardless of its size or shape. An exception to this limit would be justified where a single entity obtains authorization for adjacent BTAs. While we recognize that several commenting parties are concerned that an MDS signal simply does not stop at the area boundary, we believe the level of limiting signal strength given below, together with the multitude of available interferences abatement techniques, will facilitate control of interference between BTA authorization holders in adjoining BTAs. Interference levels to BTA holders from MDS incumbent stations will be partially governed by establishing the same maximum allowable signal strength along the boundary of incumbents' 35-mile circular areas, the expanded area provided in the Second Order on Reconsideration.

39. At first glance, it would appear that the approach to interference control between adjacent BTAs would be ineffective, given that the levels of desired (D) and undesired (U) could be the same at the common boundary between BTAs. The resulting desired-to-undesired signal strength ratio (D/U) of 0 dB falls well below the 45 dB standard now governing interference between MDS stations operating on the same channel. However, taking the signal suppressing effects of receiving antennas into account and further assuming that the desired and undesired signals are coming from opposite sides of the BTA boundary, the D/U ratio improves to as much as 25 dB. If we further expect that, in most cases, stations on opposite sides of the boundary would operate with different antenna polarizations, then the D/U ratio further improves to 45 dB. These numbers are based on the characteristics of the standard MDS receiving antenna found in 47 CFR 21.902(f). Alternatively, station operators on opposite sides of a BTA boundary may design their facilities with agreements between affected parties to operate on a frequency offset basis, with a less restrictive D/U ratio of 28 dB necessary to prevent cochannel interference in this situation. Indeed, a host of interference abatement techniques could be employed to prevent interference near BTA boundaries. Admittedly, this approach relies more on operator interference agreements and the honoring of another's interference rights than it does on applying rigid interference standards in the processing of applications. However, if we were to mandate strict compliance with the 45 dB cochannel and 0 dB adjacent channel D/U signal strength ratios (the current MDS interference standards) to protect BTA service at the BTA boundary, we believe there would be populated areas within a substantial number of BTAs that may never be served due to the irregular sizes and shapes of BTAs. Moreover, as we have indicated, given the nature and history of the service, as well as the likelihood that auction participants will be experienced in conducting negotiations, we believe that we can prevent unwanted interference by relying primarily on negotiated agreements and voluntary compliance with our interference right-of-ways, which we will enforce as necessary. Thus, we consider our limitation of signal strength at the BTA boundaries and incumbent service areas as a secondary means of interference protection.

40. Inasmuch as incumbent stations lie within BTAs and authorized BTA stations will not have their own protected service areas, interference from incumbent stations can only be governed by agreements between affected parties, and indirectly, by placing a limiting value on the strength of the signal at the boundary of incumbent MDS stations. A signal strength, regardless of its numerical value, will not by itself eliminate the potential for interference from incumbent stations. Terrain shielding and other abatement techniques will also be helpful in this regard; however, the most effective means of controlling interference will be the agreements between BTA authorization holders and incumbent MDS licensees, which, for example, may stipulate that an incumbent utilize a directional antenna pointed away from the affected BTA.

41. We have selected as the limiting signal strength a power flux density value of -73 dBw/m^2. This value corresponds to a received power level of approximately -83 dBw (decibels above 1 watt) or -53 dBm (decibels above 1 milliwatt), given a receiver antenna with a maximum gain of 20 dBi. A power flux density value is used because ''free space'' propagation is the model long used in the MDS service. This variable depends only on the level of power radiated from a transmitting antenna and the distance between the transmitting and receiving locations. The value of -73 dBw/m^2 was selected because it is the ''free space'' value of power flux density achieved with an equivalent isotropically radiated power (EIRP) of 2,000 watts (the maximum allowable EIRP in the MDS service where omni-directional antennas are used) at a distance separation of 35 miles. This numerical value is stronger than the power flux density achieved under standards used in the MDS service for many years, *i.e.*, a value of -75.6 dBw/m^2 is achieved with 200 watts of EIRP at a distance of 15 miles. Moreover, based on the record in the Second Order on Reconsideration, it is clear that many wireless cable systems serve a substantial subscriber base at distances of 35 miles or even greater. Thus, we conclude that the selection of this value of limiting signal strength will generally enable service over unobstructed signal propagation paths at the 35-mile boundary of an incumbent's transmitting facilities. The ability to achieve this signal level at a BTA boundary will vary considerably, depending on the size of the BTA and the placement of a transmitting facility. Clearly, because of their large size, service of many BTAs will require multiple transmitting facilities.

42. In the Notice we stated our intention not to change the interference protection standards applied ''at points along the service contours of protected facilities.'' Notice at 7674. Accordingly, BTA authorization holders will be required to design their transmitting facilities to protect points along the 35-mile circles and points within the protected service areas of incumbents' licensed stations, conditionally licensed stations, or previously proposed applications. Specifically, stations proposed in BTA long-form applications must meet the 45 dB and 0 dB cochannel and adjacent channel desired-to-undesired signal strength ratios at the boundary of each protected 35-mile circle. We will also continue to use these stricter protection standards within incumbents' protected service areas. Unlike BTA service, which does not yet exist, incumbent stations have an established subscriber base in many cities and rural areas throughout the country. Wireless cable systems were carefully crafted, both through engineering design, site location and negotiation among affected parties, and in partial reliance on the Commission's protection standards. To a considerable extent, these systems provide interference-free reception to subscribers, many out to distances beyond 35 miles. Because many wireless cable systems have been serving subscribers well beyond their current 710 square mile protected service area, we do not wish to disrupt existing service patterns which compete with wired cable systems.

43. The holders of BTA authorizations within 80 kilometers (50 miles) of the Canadian or Mexican borders, may only operate on MDS channels pursuant to the restrictions in international

agreements. Thus, applicants considering authorizations for these BTAs should consider the impact of the additional border requirements in their valuation of the service areas for competitive bidding purposes.

3. Treatment of Incumbents

44. As we have stated, a principal objective in this proceeding is to allow incumbents to continue existing operations without objectionable interference from new MDS operations and to allow them sufficient flexibility to modify their facilities to respond to market forces. Expansion of the protected service boundary to 35 miles will increase an incumbents' service area from 710 square miles to 3848 square miles, which will allow for the future orderly development of wireless cable systems, particularly as digital technology is introduced. Second Order on Reconsideration at ¶¶2–31.

45. Incumbents, unless they also control the adjacent BTA territory (either as BTA authorization holders or through interference agreements) will not be free to expand further their service area into the adjacent BTA. The manner we choose to prevent such occurrences is to define a limiting power flux density of -73 dBw/m^2, which may not be exceeded at points along the 35-mile protected service area. Subject only to this limitation, incumbents will be free to file long-form applications at any time to modify their facilities or add facilities such as signal boosters. In a small number of cases involving directional antennas, an incumbent's power flux density may already exceed -73 dBw/m^2, for signal paths in some directions at a distance of 35 miles. In such cases, we would not force the incumbent to reduce the signal strength to the allowable limit, nor would we allow the signal level to increase. Incumbents who propose to modify their stations must continue to seek prior Commission approval pursuant to 47 C.F.R. §§ 21.40 through 21.42, and include any agreements with the holder(s) of a BTA authorization(s). All other current rules continue to apply to MDS incumbents unless specifically amended.

46. Finally, since the incumbents' 35-mile protected circles will be embedded within one or more BTAs, to prevent additional encroachment into a BTA we must at some point fix the 35-mile circles around a permanent reference point, absent an interference agreement with a BTA authorization holder. Accordingly, on the effective date of the rules adopted in the Second Order on Reconsideration, we will permanently fix the location of the protected 35-mile circles in the following manner. For incumbent licensees with no conditional licenses or pending applications, the ''protected reference coordinates'' will be those of the current site. Subsequent changes in site location would be permitted; however, the 35-mile circle would remain centered about the previous site coordinates. For incumbents having only a conditional license or a new station application pending before the effective date, the site coordinates specified for the conditional license or pending application will become the reference coordinates. In cases where an incumbent has two or more authorizations and/or pending applications on the effective date, the reference coordinates in each authorization and/or application will be provisionally treated as the permanent reference coordinates of the protected circle. Eventually, pending applications will be disposed of and conditional licenses will either become licenses or be forfeited for failure to construct.

4. Alternative Uses of MDS Frequencies

47. The principal use of MDS frequencies is wireless cable service. Under Section 21.903(a) of the Commission's rules, 47 C.F.R. § 21.903(a), MDS stations are ''generally intended to provide one-way radio transmission (usually in an omnidirectional pattern) from a stationary transmitter to multiple receiving facilities located at fixed points.'' At the same time, our rules permit use of MDS frequencies for other kinds of services. Section 21.903(b), 47 C.F.R. § 21.903(b), states that ''[u]nless otherwise directed or conditioned in the applicable instrument of authorization, Multipoint Distribution Service stations may render any kind of communications service consistent with the Commission's rules on a common carrier or on a non-common carrier basis * * *.'' We wish to emphasize that nothing in this Report and Order precludes either new licensees or incumbents from using MDS frequencies for other kinds of services pursuant to 47 C.F.R. § 21.903(b). We note, however, that such applicants may need to apply for waivers of certain MDS technical rules, such as 47 C.F.R. §§ 21.903(a) and 21.906.

B. Interference Criteria and Data Elements

48. Proposals. As a complement to the filing proposals and electronic procedures, the Notice proposed to adopt a technical equation as the basis for the ''free space'' interference protection calculations. The Commission's MDS engineers currently utilize this formula and it is recognized by engineering consulting firms in the wireless cable industry:

The received signal power level $(RSL)_{dBW}$ at the output of the FCC reference receiving antenna is obtained from the following:[23]

$$(RSL)_{dBW}=(EIRP)_{dBW}-(L_{FS})_{dB}+(G_{AR})_{dB}$$

where the free space loss $(L_{FS})_{dB}$ is

$$(L_{FS})_{dB}=20 \log (4\pi d/\lambda) \text{ dB}$$

In these equations, $(RSL)_{dBW}$ is received power in decibels referenced to one watt, $(EIRP)_{dBW}$ is equivalent isotropically radiated power in decibels above one watt, d is the distance of the signal path in meters, λ is the wavelength of the signal in meters, and G_{AR} is the gain of the reference receiving antenna, as obtained in 47 C.F.R. § 21.902(f)(3), Figure 1. The Notice proposed to formalize the above equations by adopting them as a rule provision as part of a plan to implement computerized interference studies. Additionally, the Notice stated that we will require proposed facilities to meet the 45 dB and 0 dB cochannel and adjacent channel desired-to-undesired signal strength ratios at points along the service contours of protected facilities which were authorized under the current interference standards. With regard to long-form applications, we proposed to retain the requirement in 47 C.F.R. § 21.902, that an applicant perform analyses of the potential for harmful interference and serve such interference studies upon the authorized or previously proposed station applicants, conditional licensees or licensees required to be studied, but we would not require the submission of a list of those served at the time the long-form application was filed. We explained that, on the revised long-form application form, the applicant would supply certain crucial data elements describing the station parameters, such as antenna polarization and the station EIRP, while the Commission staff would perform interference analyses using a computer program. The Notice stated that, although the submission of interference or other engineering analyses would not be required with the long-form application, we would require the applicant to make the records available for Commission inspection upon request. We also questioned in the Notice whether we should eliminate signal contour maps as a required part of the interference studies.

49. Pursuant to our streamlining effort, the Notice proposed to improve the current application form used for

[23] Leon W. Couch II, Digital and Analog Communication Systems, p. 384 (3rd ed. 1990).

new MDS stations, FCC Form 494,[24] by excluding certain data elements which have yielded information that is no longer necessary or of only marginal utility. Specifically, we proposed to eliminate queries regarding the antenna vertical sketch and the narrative description of why grant of the application would be in the public interest. We further proposed to exclude the following parameters of the transmission system: transmitter manufacturer and model number, transmitter output power, transmitting antenna gain and the specification of transmission line and other transmission losses. We observed that with regard to transmitters, we are only concerned that MDS licensees operate transmitters that are ''type-accepted'' by the Commission for use in this service. Accordingly, we proposed to eliminate the requirement that the applicant identify the transmitter make and model, and simply require that the conditional licensee certify that its transmitter is ''type-accepted'' in its certification of completion of construction, currently FCC Form 494A. The MDS rules now provide for a maximum EIRP, rather than a maximum value for transmitter output power. See 47 CFR 21.904. Thus, the Notice stated, so long as the EIRP remains within the limits of Section 21.904, it is not necessary to require applicants to specify the equipment parameters used to calculate EIRP. The Notice also proposed to allow changes to these transmission parameters without notification to the Commission, provided the resulting EIRP would not change. The station power to be specified on the application form would be the maximum EIRP in the horizontal plane, i.e., the EIRP at an angle of zero degrees in the vertical plane. We proposed to permit electrical beam tilting of antennas; however, in all cases, applicants would be required to specify the EIRP in the zero degree vertical (horizontal) plane. Where beam tilting is employed, the EIRP at the zero degree vertical angle will be less than the maximum EIRP at the tilt angle, due to the vertical suppression characteristic of the transmitting antenna. In most instances, this value of EIRP closely approximates the power radiated to the radio horizon which is most relevant to interference analysis. By proceeding in this manner, we would not need to collect data on antenna vertical radiation patterns.

50. The Notice proposed to further modify the long-form application in an effort to make the form compatible with an electronic filing system. At the present time, we propose to use a new long-form application together with the current FCC Form 430, the Licensee Qualification Report. An appendix to the Notice listed data elements and other informational items for our proposed new electronic application form, including general, engineering and legal elements. For example, we proposed to retain engineering data elements necessary for analysis of interference or possible air safety hazards, such as transmitting antenna site coordinates, EIRP, antenna polarization, site elevation and antenna structure height above ground. Other data would be used to verify an applicant's compliance with a particular Commission rule, such as when antenna beam width is used to calculate the maximum allowable EIRP of a station using a directional transmitting antenna. We also proposed to retain applicant responses which demonstrate compliance with a particular statutory requirement, such as an environmental assessment.

51. In reference to applicants locating stations in areas where notification or coordination with Canada or Mexico is required by international agreement, the Notice indicated that these applicants would be required to submit the following additional technical data, which were not proposed as standard data elements in the electronic long-form application: transmitter output power, transmitting antenna gain and transmission line loss. In addition to the EIRP at a vertical angle of zero degrees, applicants in the border areas will be required to specify the maximum EIRP at the vertical angle corresponding to the beam tilt. The Notice explained that the additional data requirements could be submitted in a textual exhibit to the electronic application or a paper supplement.

52. Resolution. With some additional clarification, we will adopt the proposals raised in the Notice, including the free space equation and the proposed data elements for the long-form application. A draft long-form application, FCC Form 304, is attached to the Report and Order.[25] We will develop computer programs that will help to streamline the processing of the long-form and modification applications of MDS incumbents and BTA authorization holders. A program is being designed that will perform cochannel and adjacent channel interference analysis at one degree intervals along the protected 35-mile circle of incumbents' authorized stations or protected station proposals. This program, as envisioned, will use the Commission's three-second terrain data base to check for unobstructed signal paths between the site of the station being studied and points along the incumbent's protected contour. For those radials on which line-of-sight conditions do not exist, either due to a terrain obstruction or the earth's curvature, the program will conclude that interference would not occur at that point. We note, following long-standing Commission practice, that all line-of-sight determinations will assume a receiver height of 30 feet and a standard 4/3 earth radius for determining the electrical horizon. Where line-of-sight conditions exist, the program would first determine the proposed station's EIRP in the pertinent direction, based on the EIRP and horizontal relative field strength tabulation given in the application. The received signal power level of the proposed station, the ''undesired signal'' (U), will then be calculated using the free space equation. The value of the receiver antenna gain in this calculation will depend on the angular relationship between the radial azimuth and the orientation of the receiving antenna. We will assume that the latter is pointed toward the station being received. The gain will also depend on whether the proposed station is cross polarized or co-polarized with respect to the protected station. The receiving antenna gain will be that of the reference receiving antenna found in Section 21.902(f)(3), Figure 1 of the Commission's rules. We here establish a fixed value for the ''desired signal'' level at the 35-mile boundary. Assuming a receiver antenna gain of 20 dB above an isotropic antenna, an EIRP of 2000 watts (33 dBw) and a frequency of 2638 MHz, the midpoint frequency between channels E1 and H3, the free space propagation equation gives a value of −82.9 dBw. Our computer program will therefore use a received power level (''D'') of −83 dBw as the value of the desired signal strength. Finally, the program will compute the value of the desired-to-undesired signal strength ratio (''D/U''), which is logarithmic units is expressed as D – U. This value will be tested against the minimum standard of 45 dB.

[24] Since Form 494 is a multi-purpose form that is used for other services, to the extent that we are proposing changes, we intend to create a different form to be used for MDS.

[25] The Office of Management and Budget has not yet approved the FCC Form 304 pursuant to the Paperwork Reduction Act. A public notice will be issued when the new form has been approved and is available for use.

53. Another program is being designed that will analyze the impact of incumbents' modification applications. This program will analyze 360 radials spaced by one degree, first checking for unobstructed line-of-sight paths to the 35-mile boundary and, for clear paths, calculating the free space signal strength that would result from the modification and comparing it to the maximum allowable limit; that is, a power flux density value of -73 dBw/m^2. To the extent that we are not constrained by licensing agreements with third parties and to the extent resources are available, we will make our computer programs available to the public. This will be announced in a subsequent public notice.

54. We emphasize that we will use computer models as application processing tools. Similar processing tools have been successfully used for Low Power Television Service with very few reported cases of interference to television reception, none of which occurred inside of a station's protected contour. The MDS interference standards should not be confused with the processing methods, which can only approximate the standard. For example, under the interference standards, incuments' 35-mile areas are to be protected not only at points along the boundary, but also within the boundary.

55. Although, as applicable, we will require MDS applicants to prepare interference analyses or notification of application filings, and serve these on potentially affected parties, we will generally not require that such studies or a list of the parties served be included with applications. However, since electronic filing will be implemented in this service on a voluntary basis, we will allow applicants to submit interference studies with their applications on a voluntary basis. Applicants may also submit negotiated agreements of tailored interference protection or operation on the basis of frequency offset. Applicants may submit terrain shielding studies based on methods of their own choosing, including shadow maps. There are no universally accepted methods for terrain shielding studies given the widely varying characteristics of terrain features. Therefore, we believe it is appropriate to afford applicants the flexibility to select a terrain model suitable to the terrain being analyzed. Additionally, we are persuaded by the comments that interference studies should no longer be required to include contour maps. As Marshall points out, contour lines can be used in several ways and are most useful when drawn on a terrain shadow map, which is not a required element in the application process. Applicants may continue to prepare interference studies with D/U contour lines at their discretion. Given the structure and processing tools associated with our new licensing approach for the MDS service, we will not prescribe how applicants' interference studies are to be conducted. Further, potentially affected parties who are served a study and disagree with its conclusions may file a petition to deny an application.

56. As contemplated in our Notice, we intended to streamline our application forms in accordance with our actions herein. We are, therefore, directing the staff to incorporate as appropriate those data elements previously listed in the Notice into a revised and reformatted long-form application for use in the future by MDS applicants seeking to construct new stations or to make changes in their authorized facilities.

C. Electronic Filing and Electronic Fee Payments

57. Proposals. In the Notice we invited comment on the feasibility of utilizing mandatory electronic filing for new MDS applications, on whether ITFS applicants should be required to file applications for new stations electronically on a combined application form,[26] and on whether there should be a paper exception for those educators that are not financially supported by a wireless cable operator. Notice at 7676–77. The Notice suggested that communication links could be used to exchange application date between applicants and the Commission, thus minimizing the filing of paper with the Commission and allowing the Commission to process MDS and ITFS applications more efficiently. Pursuant to the proposal, an electronic form would be designed for personal computers using a Windows based environment, and consisting of a series of computer screens. One possible approach identified in the Notice involves the use of electronic mailboxes such as that of a Value Added Network (VAN). Applicants would transmit relevant data from their personal computer to a VAN electronic mailbox. The VAN would, in turn, convert the data into a format compatible with Commission files and download the information to an electronic mailbox at the Commission. In the Notice, we recognized the possible limitations of this approach with respect to maps and other graphic representations. We envisioned that the public would have on-line viewing access to our data bases, perhaps through a third-party vendor in addition to access at the Commission's public reference room.

58. In the Notice, we also proposed expanding the acceptable methods of payment for application fee to include electronic payment under 47 C.F.R. § 1.1109.[27] We stated our intention of announcing the procedures for the electronic payment of fees in a public notice, pursuant to Section 1.1109(a)(1). We sought comment regarding a fee system where applicants use a unique fee payor number together with an appropriate service code and a suffix in cases where applicants file multiple applications, in order to link the fee payment with the electronically filed application.

59. Resolution. We will authorize voluntary electronic filing for new MDS applications. Use of an electronic filing system is not as essential under the filing approach we adopt today because we anticipate that fewer long-form applications will be filed. We also considered the burden on educators and determined that applications for new ITFS stations will not be included at this time. We appreciate the concerns expressed by commenters, including the cost to applicants of implementing and using electronic filing, data security and system reliability issues. We will take these concerns into account in deciding upon the software which will be used and the access method for electronic filing. We agree with commenters who encourage the Commission to evaluate carefully alternative electronic filing approaches and who suggest a transition period from paper filing to electronic filing. At the present time, we decline to accept the proposal put forth by Pepper regarding the establishment of a committee to recommend Commission-wide standards and procedures for all services, noting that the merits associated with the formation of such a committee would be outweighed by factors such as delayed decision making and implementation of electronic filing. Through subsequent public notices we will provide specific details concerning

[1] In 1992, Congress amended the Communications Act of 1934 to permit the electronic filing of license and construction permit applications. See Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, § 204, 106 Stat. 3533, 3543, codified at 47 U.S.C. §§ 308(b) and 319(a). Such applications may be signed ''in any manner or form, including by electronic means, as the Commission may prescribed by regulation.'' Id.

[27] The Commission recently amended 47 C.F.R. §§ 1.1108 and 1.1109 to permit the electronic filing of fee payments, initially on an experimental basis. Implementation of Section 9 of the Communications Act, Report and Order in MD Docket No. 94–19, FCC No. 94–140 (released June 8, 1994). 59 Fed. Reg. 30,984 (June 16, 1994) at ¶¶ 50–51.

the method for electronically filing MDS applications. We will also authorize electronic fee payment for MDS applications. Current methods of payment available under 47 CFR 1.1109 will continue to be accepted. As our resources permit, we will work toward improved viewing access to the data bases.

D. Competitive Bidding Procedures

1. Competitive Bidding Background

60. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (Budget Act) added a new section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. 151–611 (Communications Act). This amendment to the Communications Act gave the Commission express authority to employ competitive bidding procedures to choose from among mutually exclusive applications for certain initial licenses. The Commission adopted a Notice of Proposed Rule Making in the competitive bidding proceeding on September 23, 1993.[28] In it March 8, 1994 Second Report and Order,[29] the Commission established general rules and procedures and a broad menu of competitive bidding methods to be used for all auctionable services, including MDS. We indicated in the Second Report and Order that in subsequent Reports and Orders we would set forth specific competitive bidding rules that would be applicable to individual services. To date, the Commission has established competitive bidding rules specifically applicable to, and has conducted auctions for, narrowband Personal Communications Services (PCS),[30] the Interactive Video and Data Service (IVDS),[31] and broadband PCS.[32] This Report and Order establishes competitive bidding rules and procedures for MDS.

61. Given the interdependencies we believe exist between authorizations for certain BTA service areas and the declining cost of conducting simultaneous multiple round bidding, we choose this auction method for use in MDS. We also adapt the general procedures set forth in the Second Report and Order so as to be compatible with the application procedures established for MDS in this Report and Order. Finally, we set forth rules to deter possible abuses of the bidding and application procedures, and establish special provisions for small businesses, including those owned by minorities and women, to encourage their participation in the competitive bidding process and in the provision of MDS system offerings.

2. Auction Eligibility

62. The Commission has in the past employed a random selection process (i.e., a lottery) to select from among mutually exclusive MDS initial applications. See 47 CFR 1.824. However, Section 309(j) of the Communications Act, as amended, permits auctions were (1) mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission; (2) the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals; and (3) the objectives set forth in Section 309(j) would be promoted. In the Second Report and Order, we concluded that single and multichannel MDS as classes of services would satisfy the Section 309(j) criteria for auction ability, and, thus, new initial applications in MDS would be eligible for competitive bidding. Id. at 2359. The Second Report and Order did not, however, expressly resolve the question of the auction ability of mutually exclusive MDS station applications filed prior to July 26, 1993, the date specified in the Commission's auction authority in the 1993 Budget Act. Id. For the reasons set forth in Section 3 below, we now determine to lottery these previously filed MDS applications.

3. Disposition of Previously Filed MDS Applications

63. Before the Commission conducts competitive bidding for the BTA service areas applied for under the revised procedures set forth herein, we must first process the remaining acceptable, mutually exclusive applications for MDS station licenses that were filed prior to July 26, 1993.[33] Under the procedures in effect prior to the enactment of competitive bidding authority in the 1993 Budget Act, these mutually exclusive MDS applications were to have been lotteried. In September 1993, the Commission tentatively concluded to lottery rather than auction pre-July 26, 1993 MDS applications. See Competitive Bidding Notice at 7661. In reaching this decision, the Commission first noted that these applications has already incurred substantial delays. The Commission then tentatively decided to eschew auctions in favor of lotteries for pending MDS applications to avoid ''further delay'' in granting MDS station licenses and providing service to the public during the time it would take for the Commission to promulgate competitive bidding rules. Id. Subsequently, in the Second Report and Order, the Commission concluded that new initial applications in MDS would be eligible for competitive bidding, but did not resolve the question of whether to employ lotteries or auctions to dispose of the previously filed MDS applications. Second Report and Order at 2359. Thus, due to processing delays and further delays resulting from the consideration of issues raised in the Budget Act regarding competitive bidding, this group of previously filed MDS applications, through no fault of the applicants themselves, has never been lotteried.

64. The 1993 Budget Act empowers the Commission to either auction or lottery these previously filed MDS applications.[34] Consistent with the statute, our tentative conclusion in the Competitive Bidding Notice, and Commission precedent,[35] we now exercise our discretion to lottery this group of remaining previously filed, mutually exclusive MDS applications. By employing lotteries for pre-July 26, 1993 MDS applications, and by holding auctions for initial applications accepted for filing after that date, we adopt a straightforward approach that is

[28] Notice of Proposed Rule Making in PP Docket No. 93–253, 8 FCC Rcd 7635 (1993), 58 Fed. Reg. 5389 (Oct. 15, 1993) (Competitive Bidding Notice).

[29] Second Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1944), 59 Fed. Reg. 22980 (May 4, 1994) (Second Report and Order), recon. granted in part, Second Memorandum Opinion and Order, 9 FCC Rcd 7245 (1994), 59 Fed. Reg. 44272 (Aug. 26, 1994) (Second Memorandum Opinion and Order).

[30] Third Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2941 (1994), 59 Fed. Reg. 26741 (May 24, 1994) (Third Report and Order), recon. granted in part, Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 175 (1995), 59 Fed. Reg. 44059 (Aug. 26, 1994) (Third Memorandum Opinion and Order).

[31] Fourth Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2330 (1994), 59 Fed. Reg. 24947 (May 13, 1994) (Fourth Report and Order), petition for recon. pending.

[32] Fifth Report and Order in PP Docket No. 93–253, 9 FCC Rcd 5532 (1994), 59 Fed. Reg. 37566 (July 22, 1994) (Fifth Report and Order), recon. granted in part, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1995), 59 Fed. Reg. 63210 (Dec. 7, 1994) (Fifth Memorandum Opinion and Order).

[33] Once we complete our processing, we expect that this group of previously filed, acceptable MDS station applications will likely be quite small, consisting of approximately 100 mutually exclusive applications for five rural locations. The applications for these five locations have been pending since 1991.

[34] See 47 U.S.C. §§ 309 (i) & (j); Budget Act, Pub. L. No. 103–66, § 6002(e) (Special Rule), 107 Stat. 312, 397 (1993).

[35] See Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 7387 (1994), 59 FR. 37 163 (July 21, 1994) (Cellular Unserved Order) (determining to lottery previously filed applications for cellular unserved areas).

easy to apply, fair to the applicants and serves the public interest.

4. Competitive Bidding Design

65. In this Report and Order, we have attempted to design auction rules and procedures that are compatible with the unique characteristics of MDS and that meet the congressional objectives set forth in the Communications Act. See 47 U.S.C. 309(j)(3). We believe that these objectives are embodied in two basic Commission policy goals: promoting economic growth and enhancing access to telecommunications service offerings for consumers, producers and new entrants. Second Report and Order at 2349–2350. In the paragraphs below, we implement competitive bidding for MDS, pursuant to Section 309(j) of the Communication Act and based on the record in this proceeding. The methodology and procedures we will utilize in conducting MDS auctions are identified below, and additional details about specific competitive bidding procedures will be provided by public notice prior to the MDS auction.

66. General Competitive Bidding Designs. The Second Report and Order established the criteria to be considered in selecting the auction methodology for each auctionable service. We generally concluded that awarding licenses to those parties that value them most highly will best advance congressional policy goals. Id. at 2360. We also indicated that, because a bidder's ability to introduce valuable new services and to deploy them rapidly, intensively and efficiently increases the value of the license to that bidder, an auction design that awards licenses to those bidders who are willing to pay the highest bid tends to promote the development and deployment of new services and the efficient and intensive use of the spectrum. Id. at 2349–2350.

67. With regard to auction methodologies specifically, the Commission previously determined that: (1) licenses with strong interdependencies should be auctioned simultaneously; [36] (2) multiple round auctions, by providing bidders with information regarding other bidders' valuations of licenses, generally will yield more efficient allocations of licenses and higher revenues, especially where there is substantial uncertainly as to value; and (3) because they are relatively expensive to implement and time-consuming, simultaneous and/or multiple round auctions become less cost-effective as the value of licenses decreases. Second Report and Order at 2360. We also found that simultaneous multiple round bidding facilitates the efficient aggregation of licenses across spectrum bands and geographic areas, and because of the superior information and flexibility this bidding methodology provides, is likely to yield greater revenues than other auction designs. Thus, we concluded in the Second Report and Order that the use of simultaneous multiple round bidding would generally be preferred. Id. at 2366.

68. We also recognized in the Second Report and Order that simultaneous multiple round bidding may appear more complex to bidders and could be more difficult and expensive to implement than other auction methods. Id. at 2364. We have, however, in the past year gained considerable experience in conducting simultaneous multiple round bidding. This competitive bidding method has been utilized in several narrowband and broadband PCS auctions,[37] and has proved to be an efficient and effective way to conduct spectrum auctions. In addition, the cost to the Commission of conducting simultaneous multiple round bidding has decreased considerably since the initial simultaneous auctions because the computer software used in these auctions has now been developed. We have also recently initiated procedures permitting remote bidding from personal computers throughout the country. Consequently, bidders may now participate in simultaneous multiple round auctions in a variety of ways—on site, by personal computer using remote bidding software, or via telephone.

69. MDS Competitive Bidding Design. Given our growing and successful experience with this auction design, we conclude that the generally favored method of simultaneous multiple round bidding is appropriate for MDS. We accordingly adopt this method to auction the BTA service areas.

70. In the Notice, we had tentatively concluded that simultaneous multiple round bidding was less appropriate for MDS than other auction methods primarily because the ''value of and interdependence between'' the geographic service areas might not be ''sufficiently high to justify the use'' of the generally preferred auction method. Notice at 7678. After further consideration, and based upon our continuing successful experience with simultaneous multiple round bidding, we now conclude that simultaneous multiple round bidding is in fact appropriate for MDS.

71. With regard to the expected value of the BTA service areas at auction, we realize that some areas—particularly those with sparse populations—may be auctioned for relatively modest amounts. The value of any BTA service area at auction will, however, vary, depending in large part upon the population of and the amount of usable spectrum in that area. Heavily populated BTA service areas may therefore attract more substantial sums, depending on the availability of spectrum within such areas. Given the substantially decreased costs associated with implementing simultaneous multiple round bidding, we believe that BTA service area values are sufficient to justify the use of this auction method.

72. With regard to the question of interdependence, we believe that the BTA service area authorizations to be auctioned possess a degree of interdependence. As explained in the Notice, ''[t]here appears to be some geographic interdependence due to coordination of interference at the borders.'' Id. at 7678. Indeed, because we have selected a filing approach based on predetermined geographic areas, rather than a national filing window, we emphasize that authorizations for adjacent BTA service areas will be interdependent, as common ownership of such areas will reduce problems of controlling interference at the borders of the BTAs. See Second Report and Order at 2364. Interdependence between the BTA authorization may also arise from economies of scale achieved by wireless cable operators spreading of fixed costs over more units of output. See Second Report and Order at 2364. We accordingly conclude that there is some degree of interdependence between BTA authorizations and that this interdependence may be significant for geographically contiguous BTAs. Thus, the adoption of simultaneous multiple round bidding should result in the most efficient award of these BTA authorizations. See Second Report and Order at 2363. In particular, we believe that potential bidders that operate (or are planning to operate) MDS systems in

[36] Licenses are interdependent when the value of a license to the bidder depends on the other licenses that the bidder acquires. Second Report and Order at 2361. Licenses may be interdependent because they are substitutes or because they are complements. Id. at 2364.

[37] The Commission has also recently proposed to utilize simultaneous multiple round bidding for both the 800 and 900 MHz Specialized Mobile Radio services. Further Notice of Proposed Rule Making in PR Docket No. 93–144 and PP Docket No. 93–253, FCC 94–271 (released Nov. 4, 1994), 59 FR. 60111 (Nov. 22, 1994); Second Report and Order and Second Further Notice of Proposed Rulemaking in PR Docket No. 89–553, PP Docket No. 93–253, and GN Docket No. 93–252, FCC 95–159 (released April 17, 1995), 60 FR. 21987 (May 4, 1995).

geographically adjacent BTAs and/or in several regions of the country will be able to make more informed bidding decisions in a simultaneous auction where all BTA service areas may be bid upon at the same time.

73. In addition to issues of cost and interdependence, other considerations support the use of simultaneous multiple round bidding for MDS. Compared with other bidding mechanisms, including open outcry and sealed bidding, simultaneous multiple round bidding will generate the most information about the value of BTA service areas during the course of the auction. Thus, it is the most likely auction method to award BTA authorizations to the bidders who value them most highly. We also note that an auction method awarding BTA authorizations to the parties who value them most highly should result in the award of authorizations to bona fide wireless cable operators, rather than to speculators, because bona fide operators will likely value authorizations more highly than, and will therefore outbid, speculators, who may be reluctant to pay up front the amounts necessary to obtain authorizations through competitive bidding.[38] Moreover, given the uncertainty as to the value of the MDS spectrum, the information generated by simultaneous multiple round bidding should prove particularly valuable by giving bidders more flexibility to pursue back-up strategies. Because of the superior information and flexibility it provides, this auction method should also yield more revenue for the MDS spectrum than other auction designs, including open outcry.[39] Although the raising of revenue is not our dominant concern, we note that Congress directed the Commission, in designing auction methodologies, to promote ''recovery for the public of a portion of the value of the public spectrum resource.'' 47 U.S.C. 309(j)(3)(C). Finally, the employment of simultaneous multiple round bidding for MDS, rather than open outcry, will eliminate the need for the Commission to select the order in which the BTA service areas will be auctioned. See Second Report and Order at 2360, 2363, 2366.

74. The simultaneous multiple round auction design adopted herein also includes several features that should reduce the possible burdens on bidders. We expect, for example, to have bidding rounds of shorter duration than in other simultaneous multiple round auctions, such as broadband PCS. This measure should shorten the MDS auction substantially so that the length of the auction should not prove burdensome to bidders. In addition, the burden on bidders will be reduced by the variety of methods through which they may participate in the MDS simultaneous multiple round auction. Bidders will be able to submit bids on site, via personal computers using remote bidding software, or via telephone;[40] however, given the space limitations for on site bidding and the uncertainty as to the exact number of prospective bidders, the Commission reserves the right to have only remote bidding—by personal computer and by telephone—for the MDS auction. Thus, the expense to the bidders of participating in a simultaneous multiple round auction should be less than in an open outcry auction, where bidders (and/or their representative(s)) would need to travel to and remain in Washington, DC for the duration of the auction. Finally, the Commission will hold a seminar for prospective bidders to acquaint them with this bidding design and all alternative bid submission methods.

75. Given the numerous advantages of the generally preferred auction method of simultaneous multiple round bidding, we believe that this methodology will best serve for conducting MDS auctions. We note, however, that the presence of incumbents in the BTA service areas could affect the relative desirability and value of BTA authorizations in ways we do not anticipate. In the event that the filings of short-form applications indicate that the BTA authorizations have relatively little interdependence and lower than expected value, we delegate authority to the Mass Media Bureau and the Wireless Telecommunications Bureau to reconsider the issue of whether another auction design would be more appropriate.

76. MDS Bidding Procedures. There will be one authorization offered in each BTA and the BTA authorizations will be awarded by simultaneous multiple round bidding. All BTA service areas will be auctioned at the same time. Bids will be accepted at the same time on all BTA service areas in each round of the auction. High bid amounts will be posted after the end of the bid submission period in each round of bidding. With modifications to take account of the unique characteristics of MDS and to reduce length, MDS auctions will follow the general bidding procedures we have used to date to conduct the narrowband and broadband PCS auctions.

77. In using simultaneous multiple round bidding to award the BTA authorizations, it is important to specify minimum bid increments. The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous stopping rule. In that case, all markets will remain open until there is no bidding on any market, and a delay in closing the bidding on one market will delay the closing of all markets. Second Report and Order at 2369.

78. Because we plan to use simultaneous multiple round bidding with a simultaneous stopping rule to award BTA authorizations, we believe that it is necessary to impose a minimum bid increment to ensure that the MDS auction conclude within a reasonable period of time. As we recognized in the Second Report and Order, it is important to establish the amount of the minimum bid increment as the greater of a percentage and fixed dollar amount. This will ensure a timely completion of the auction even if bidding begins at a very low dollar amount. *Id.* at 2369. Accordingly, we will impose a minimum bid increment of some percentage of the high bid from the previous round or a fixed dollar amount, whichever is greater, in MDS auctions where simultaneous multiple round bidding is used. We will announce by public notice prior to the

[38] Sealed bidding is not supported by the Commission for MDS, because this bidding method will generate no information about the value of the BTA service areas during the course of an auction, and thus may not award BTA authorizations to the parties who value them the most. See Second Report and Order at 2362.

[39] A simultaneous auction for MDS will tend to raise more revenue than a sequential oral auction for two reasons. First, it will increase the value of the BTA service areas by facilitating efficient aggregation. Second, because it will provide more information about the value of the BTA service areas, it will reduce the propensity of sophisticated bidders to bid cautiously to avoid the ''winner's curse''—the tendency for the winner to be the bidder who most overestimates the value of the item up for bid.

[40] Telephonic bidding should, in particular, be a simple and inexpensive method for bidders to submit bids. If submitting bids by telephone, bidders may utilize the Internet to learn of the round-by-round results of the auction; on-line services such as Compuserve provide Internet access at low cost. Bidders may also, at negligible cost, utilize a bulletin board service, accessible by long distance telephone, from which auction results can be downloaded to a personal computer.

MDS auction the specific bid increment that generally will be utilized.

79. The Commission will also retain the flexibility to vary the minimum bid increment during the course of the MDS auction by announcement. We may, for example, begin the MDS auction with a sizable minimum bid increment and reduce the bid increment as the auction progresses. Starting with a sizable minimum bid increment will move the auction quickly at the beginning, when prices have limited informational content and there is little benefit to either bidders or the Commission of refined price movements, while allowing bidders to express small differences in valuation as the auction nears a close, increasing both efficiency and auction revenues. Small bid increments also reduce the chances of ties. Where a tie occurs, the high bidder will be determined by the order in which the bids were received by the Commission. See Second Report and Order at 2369. Adjustments in the bid increment may be based in part on the level of bidding activity.

80. To gain the full benefit of the information generated by a simultaneous multiple round auction, bidders will need some time between bidding rounds to evaluate back-up strategies and consult with their principals. Prior to the MDS auction, we will announce by public notice the duration of bidding rounds for the auction. We also reserve the discretion during the course of the auction to vary, by public notice or announcement, the duration of bidding rounds or the interval at which bids are accepted. We expect to allow more time for the initial rounds in the MDS auction, while bidders familiarize themselves with the bidding process, and then increase the frequency of rounds as the auction progresses. Thus, we should be able to move the auction toward closure in a reasonable period of time.[41]

81. To ensure that a simultaneous MDS auction with a simultaneous stopping rule closes within a reasonable period of time and to increase the information conveyed by bid prices during the auction, we believe that it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all markets open for bidding as long as anyone wishes to bid, they also create an incentive for bidders to hold back until prices approach equilibrium before making a bid. As noted in the Second Report and Order, this could lead to very long auctions. See id. at 2371. Delaying serious bidding until late in an auction also reduces the information content of prices during the course of the auction. Without an activity rule, bidders cannot know whether a low level of bidding on a particular market means that the market's price is near its final level or if instead many serious bidders are holding back and may bid up the price later in the auction. When bidding closes on a market-by-market basis, an activity rule is less important. This is because failure to bid on a given market in any round may result in loss of the opportunity to bid on that market, if that round turns out to be the last one for that market.

82. In the Second Report and Order, we adopted the three-stage Milgrom-Wilson activity rule as our preferred activity rule when a simultaneous stopping rule is used. Id. at 2372. See also Fifth Report and Order at 5553–5556. We plan to employ this activity rule in the MDS auction as well. Under the Milgrom-Wilson activity rule, bidders are required to declare their maximum eligibility in advance of the auction and make an upfront payment proportional to that eligibility level. In the PCS auctions, activity and eligibility are defined in terms of ''MHz-pops.'' See, e.g., Fifth Report and Order at 5553–5554. Specifically, the number of MHz-pops associated with a PCS license is calculated by multiplying the population of the license service area by the amount of spectrum authorized by the license. We chose MHz-pops because we anticipated that PCS license values would be closely related to the number of MHz-pops in the license service areas. This choice ensures that the measure of bidding activity used in the activity rule is highly correlated with license values. In the MDS auction, bidding activity and eligibility will be defined in terms of dollar values. The Commission will assign an ''activity unit'' value to each BTA service area for the purpose of measuring bidding activity and eligibility. Specifically, the activity unit value for a BTA service area will be equal to the upfront payment associated with that BTA service area. A bidder's maximum eligibility (which is also the bidder's eligibility for the first round of the auction) will be equal to its total upfront payments.[42] Because the upfront payments will be related to the value of the BTA service areas (see infra ¶ 103), activity units will fulfill the same function that MHz-pops have fulfilled in the previous PCS auctions.

83. The Milgrom-Wilson activity rule provides a bidder's minimum activity level, measured as a fraction of eligibility in the current round, will increase during the auction. A bidder will be considered ''active'' on a BTA service area in the current round if it is either the higher bidder at the end of the bid withdrawal period in the previous round, or if it submits a bid in the current round which meets or exceeds the minimum valid bid (i.e., a bid that exceeds the high bid in the previous round by at least the minimum bid increment). A bidder's activity level in a round is the sum of the activity units associated with the BTA service areas on which the bidder is active.

84. The minimum required bidding activity levels for each stage of the MDS auction are as follows. In each round of Stage One of the auction, a bidder who wishes to maintain its current eligibly is required to be active on BTA service areas encompassing at least fifty percent of the activity units for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of activity units associated with BTAs upon which a bidder will be eligible to be active in the next round of bidding (unless an activity rule waiver, as described below, is used). During the first stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two (2/1). Eligibility for each applicant in the first round of Stage One is determined by the amount of the unfront payment received and the BTAs identified in the applicant's short-form application. In each round of Stage Two, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing at least eighty percent of the activity units for which it is eligible in that particular round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of Stage Three, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing ninety-five percent of the activity units for which it is eligible in that particular round. In the

[41] Given our estimates of the value of the BTA service areas and the likely number of bidders, we expect to hold more frequent bidding rounds in the MDS auction than we have in certain other simultaneous multiple round actions, particularly broadband PCS. See Second Report and Order at 2368.

[42] As explained in ¶ 105, however, a small business bidder eligible for a reduction in its upfront payment requirement will not have the number of its activity units decreased as a result of submitting a reduced upfront payment.

final stage, if activity in the current round is below ninety-five percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

85. In the PCS auction, we specified transition guidelines for deciding when the auction would move from Stage One to Stage Two to Stage Three. Those guidelines are based on the ''auction activity level,'' the sum of the MHz-pops of PCS licenses for which the high bid increased in the current round as a percentage of the total MHz-pops of all licenses offered in the auction. See, e.g., Fifth Report and Order at 5555. However, we also retained the discretion to move the PCS auctions from one stage to another at a rate different from that set out in the guidelines. See Fourth Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 6858, 6860 (1994), 59 Fed. Reg. 53364 (Oct. 24, 1994).

86. For the MDS auction, we shall employ an analogous procedure. The ''auction activity level'' for a given round of the MDS auction will be defined as the sum of the activity units associated with the BTA service areas for which the high bid increases in that round, divided by the sum of activity units associated with all of the BTAs being auctioned. The following transition guidelines apply. The MDS auction will begin in Stage One and move from Stage One to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction will move from Stage Two to Stage Three when the auction activity level is below five percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. The Commission retains the discretion to determine and announce during the course of an MDS auction when, and if, to move from one auction stage to the next, based on a variety of measures of bidder activity, including, but not limited to, the auction activity level as defined above, the percentage of BTA service areas on which there are new bids, the percentage of activity units on which there are new bids, the number of new bids, and the percentage increase in revenue.

87. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, we will provide bidders with a limited number of waivers of the above-described activity rule. We believe that some waiver procedure is needed because the Commission does not wish to reduce a bidder's eligibility due to an accidental act or circumstances not under the bidder's control. See Second Report and Order at 2372.

88. In MDS auctions, bidders will be provided five activity rule waivers that may be used in any round during the course of the auction. See Second Report and Order at 2373. If a bidder's activity level is below the required activity level, a waiver will automatically be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be automatically applied. A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. See Fourth Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 6858, 6861 (1994), 59 Fed. Reg. 53364 (Oct. 24, 1994). If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced (according to the formulas specified in ¶84), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open. Bidders will have the option of pro-actively entering an activity rule waiver during the bid submission period.[43] If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

89. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. We also retain the flexibility to adjust prior to an auction the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction. See Second Report and Order at 2373. We will announce by public notice before the MDS auction the number of waivers that will be allowed in that particular auction.

90. As with other auctions, we reserve the right to impose for the MDS auction an activity rule less complex than the Milgrom-Wilson rule. See Second Report and Order at 2372; Fifth Report and Order at 5556. We will announce by public notice before the MDS auction the activity rule that will be employed in that particular auction.

91. We noted in the Second Report and Order that, with multiple round auctions, a stopping rule must be established for determining when the auction is over. Id. at 2369. In an MDS simultaneous multiple round auction, bidding could close separately on individual BTA service areas, simultaneously on all BTA service areas, or a hybrid approach could be used. Under an individual approach, bidding would close on each BTA service area after one round passed in which no new acceptable bids were submitted for that particular service area. With a simultaneous stopping rule, bidding would remain open on all BTA service areas until there was no new acceptable bid on any service area. This approach would have the advantage of providing bidders full flexibility to bid for any BTA service area as more information became available during the course of the MDS auction, but it could lead to a very long auction, unless an activity rule were imposed. See id. at 2370. A hybrid approach would combine the individual and the simultaneous approaches.[44]

92. For MDS auctions, we intend to utilize a simultaneous stopping rule, as we have successfully used in previous simultaneous multiple round auctions. Bidding will accordingly remain open on all BTA service areas until bidding stops on every BTA service area. The auction will close after one round passes in which no new valid bids or proactive waivers are submitted. The Commission retains the discretion, however, to keep the MDS auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver.[45] Since we are also imposing an activity rule (as discussed

[43] Thus, a ''proactive'' waiver, as distinguished from the automatic waiver described above, is one requested by the bidder.

[44] For example, in a hybrid approach, we could use a simultaneous stopping rule (along with an activity rule designed to expedite closure) for higher valued BTA service areas. For lower valued BTA service areas, where the loss from eliminating some back-up strategies would be less, bidding on BTAs could be allowed to close individually. See Second Report and Order at 2370.

[45] This will help ensure that the MDS auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction. See Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 7684, 7685 (1994), 59 Fed. Reg. 64159 (Dec. 13, 1994).

above), we believe allowing simultaneous closing for all BTA service areas will afford bidders flexibility to purse back-up strategies without running the risk that bidders will refrain from bidding until the final rounds. We also believe that a simultaneous stopping rule will best enable bidders to take account of any interdependencies that exit between BTA authorizations (especially authorizations for adjacent areas) and will allow bidders to make the most informed bidding decisions. Thus, simultaneously closing bidding on BTA service areas will most likely award licenses to the bidders who value them most highly. See Second Report and Order at 2370.

93. Additionally, the Commission may also declare at any time after forty rounds that the MDS auction will end after a specified number of additional rounds. If the Commission invokes this stopping rule, it will accept bids in the final round(s) only for BTA service areas on which the high bid increased in at least one of the proceeding three rounds. See Second Report and Order at 2370 n.106. Stopping the MDS auction after a specified number of additional rounds will ensure ultimate Commission control over the duration of the action. See id. Thus, the Commission will have the means to prevent bidders from continuing to bid on a few BTA service areas (or even a single service area) solely to delay the closing of bidding for all BTA service areas in an MDS auction with a simultaneous stopping rule. This will also ensure that the Commission can end the MDS auction if it determines that the benefits from ending the auction, and hence granting BTA authorizations more rapidly, exceed the possible efficiency loss from cutting off bidding on a few BTA service areas. If we exercise this option, we favor the use of three final rounds. Allowing more than one additional round provides some opportunity for counter-offers, thus reducing the risk that a BTA authorization will not be awarded to the party that values it most highly.

94. If this fail-safe mechanism is used in an MDS auction, there are two reasons not to take bids on BTA service areas on which there has been no recent bidding. First, the fact that bidding on an individual BTA service area may close will provide an additional incentive to bid actively and thus speed the conclusion of the MDS auction. If bids are accepted on all BTA service areas in the final round(s) there is less risk to a bidder in holding back. Second, closing bidding on BTA service areas for which activity has ceased ensures high bidders for those service areas that they will not lose a BTA authorization without having an opportunity to make a counter-offer.[46] This reduces the uncertainty associated with aggregating BTA authorizations (such as those for adjacent BTAs) that may be worth more as a group than individually. If final bids are accepted on all BTA service areas, a high bidder on an aggregation of BTA service areas may unexpectedly lose a significant part of the aggregation and have no chance to regain it except in the post-auction market, where bargaining or other transaction costs may be high.

95. The Commission does not intend to exercise this option except in extreme circumstances, such as where the MDS auction is proceeding very slowly, there is minimal overall bidding activity, and it appears unlikely that the auction will close within a reasonable period of time. Before exercising this option, however, the Commission would first attempt to increase the pace of the auction by announcing that the auction will more into the next stage, where bidders would be required to maintain a higher level of bidding activity. Under these circumstances, the Commission may also first increase the number of bidding rounds per day an increase the amount of the minimum bid increments for those limited number of BTA service areas where there is still a high level of bidding activity.

96. Additionally, because of the large number of BTA service areas to be auctioned at once, we will retain the discretion either to use a hybrid stopping rule to allow bidding to close individually for these service areas if, as we gain more experience with auctions, we determine that simultaneous stopping rules are too complex to implement for very large numbers of service areas. The specific stopping rule for ending bidding on the BTA service areas will be announced by public notice prior to the MDS auction.

5. Procedural and Payment Issues

97. Pre-Auction Application Procedures. The Second Report and Order established general rules and procedures for participating in auctions. Again, however, we noted that these might be modified on a service-specific basis. As described below, we have determined that we will follow for new MDS initial applications the procedural and payment rules established in the Second and Report and Order and set forth at 47 CFR Chapter I, Part 1, Subpart Q, with modifications to fit MDS. Certain procedural details will be supplied later by public notices. Our objective has been to design rules and procedures that will reduce administrative burdens and costs on bidders and the Commission, ensure that bidders and licensees are qualified and able to construct their systems, and minimize the potential for delay of service to the public. See 47 U.S.C. 309(j)(3)(A) (in designing auction rules, Commission should seek to promote development and rapid deployment of products and services for public benefit, without administrative or judicial delays).

98. Before an MDS auction, the Commission, or, pursuant to delegated authority, the Mass Media Bureau, in conjunction with the Wireless Telecommunications Bureau, will release public notices concerning the auction. The public notices will specify the BTA service areas to be auctioned, the filing deadline for short-form applications, and the time, place and method of competitive bidding to be used, as well as applicable bid submission and payment procedures.

99. Applicants will be required to submit short-form applications by the date specified by public notice. Applicants should file a short-form application identifying all BTA service areas specified by the public notice in which they are interested in bidding.[47] If the Commission receives only one application that is acceptable for filing for the same BTA service area and thus there is no mutual exclusivity,[48] the Commission will by public notice cancel the auction for this BTA service area and establish a date for the filing of either an initial long-form application for an MDS station license or, for a heavily encumbered BTA, a statement of intention with regard to the BTA.[49]

100. To encourage maximum bidder participation, we will provide applicants whose short-form applications are substantially complete, but which contain minor errors or defects, with an opportunity to correct

[46] Either the MDS auction will close only when bidding ceases on all BTA service areas, so the high bidder will have an opportunity to respond to any new bids, or the Commission will call for final bids but not accept new bids on BTA service areas on which there have been no new bids in the previous three rounds, so no other bidder will have the opportunity to outbid the high bidder in a final round.

[47] As described in detail below, the short-form applications must also include an exhibit identifying any bidding consortia or other arrangements relating to the BTA service areas being auctioned. See infra ¶ 129.

[48] Absent mutually exclusive applications, the Commission is prohibited from conducting an auction. See 47 U.S.C. § 309(j)(1).

[49] See infra ¶¶ 116–120, for the procedures for filing either a long-form application for a station license or a statement of intention with regard to the BTA.

their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications; for MDS, we classify all amendments to short-forms as major, except those to correct minor errors or defects, such as typographical errors, or those to reflect ownership changes or formation of bidding consortia specifically permitted under the anti-collusion rules set forth below. See infra ¶ 130. We note in particular that a change in control of an applicant or a change in the BTAs upon which an applicant wishes to bid will be regarded as a major amendment to the short-form application. In addition, applications that are not signed in any manner or form, including by electronic means, or that fail to make the requisite certifications will be dismissed and may not be resubmitted. See Second Report and Order at 2377; 47 CFR 1.2105(b).

101. After reviewing the short-form applications, the Commission will issue another public notice listing all applications containing minor defects, and applicants will be given an opportunity to cure and resubmit defective applications. On the date set for submission of corrected applications, applicants who on their own discover minor errors in their applications, such as typographical errors, also will be permitted to file corrected applications. Following a review of the corrected applications, the Commission will release another public notice announcing the names of all applicants whose applications have been accepted for filing. Applicants identified in this public notice will then be required to submit the full amount of their upfront payment. See Second Report and Order at 2377.

102. Upfront Payments. In the generic auction rules, we described five types of payments: upfront payments, down payments, final payments, bid withdrawal payments, and default and disqualification payments. Given the history of speculators filing MDS applications, we believe a substantial upfront payment is needed for MDS auctions to discourage speculative bidding and increase the likelihood of applicants who intend to provide service to the public obtaining the remaining available MDS channels. Requiring a substantial upfront payment provides some degree of assurance that only serious, qualified bidders will participate and serves as a deterrent to the filing of speculative applications, which may delay the provision of service to the public. The upfront payments will also provide the Commission with a source of funds to satisfy any bid withdrawal or default and disqualification payments assessed. See Second Report and Order at 2378–2379. Therefore, we will require an upfront payment for the MDS auction.

103. We believe the upfront payment should bear a relation to the value of the BTA authorizations that a bidder hopes to be awarded. We accordingly delegate to the Mass Media Bureau and the Wireless Telecommunications Bureau the authority to determine an appropriate upfront payment for each BTA service area being auctioned, taking into account, at the Bureaus' discretion, such factors as the population and the approximate amount of usable spectrum in each BTA. Bearing in mind the uncertainties associated with valuing the BTA authorizations, we expect that the Bureaus will follow the guidelines laid out in the Second Report and Order and establish upfront payments equal to around five percent of the expected amounts of winning bids for the various BTA service areas. See id. at 2378–2379. In no event will the upfront payment for any BTA service area be less than $2500, the minimum suggested in the Second Report and Order, and we retain the flexibility for the Bureaus to modify this minimum if we find that a higher amount would better deter speculative filings. Id. at 2379.

104. Prior to the MDS auction, the Mass Media Bureau, in conjunction with the Wireless Telecommunications Bureau, will public a public notice listing the upfront payment amounts corresponding to each BTA service area to be auctioned. The number of activity units associated with a BTA service area (see ¶ 82) equals the amount of the upfront payment for the BTA. A prospective bidder must submit an upfront payment equal to the largest combination of activity units on which the bidder anticipates being active in any single round. The combination of activity units on which a bidder is active in a round equals the sum of the activity units associated with the BTAs on which the bidder has submitted a bid, or on which the bidder is the standing high bidder. Although a bidder may file applications for every BTA service area being auctioned, the total upfront payment submitted by each applicant will determine the combinations of BTA service areas on which the applicant will actually be permitted to be active in any single round of bidding.[50]

105. A prospective bidder in the MDS auction that claims status as a small business, as defined in ¶ 153, will be eligible for a twenty-five percent reduction in its upfront payment requirements. See infra ¶¶ 148–149 for a discussion of the reduced upfront payments measure. A small business eligible for this reduction in its upfront payment will not have the number of its activity units decreased as a result of submitting a reduced upfront payment.[51]

106. Applicants identified by public notice as those whose applications have been accepted for filing will be required to submit their upfront payments to the Commission's lock-box bank by the date specified in the public notice, which generally will be no later than fourteen days before the scheduled auction. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. All payments, including upfront, down and final payments, should be accompanied by FCC Form 159 (remittance advice form). After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a public notice announcing the names of all applicants that have been determined to be qualified to bid in the MDS auction. Any applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will not be identified on this public notice as a qualified bidder, will be prohibited from

[50] Consider, for example, an applicant that submits a $100,000 total upfront payment. As explained above at ¶ 82, the maximum number of activity units for that applicant is 100,000. In any single round, the applicant could be active on two BTA service areas with 50,000 activity units each, on five BTAs with 20,000 activity units each, on ten BTAs with 10,000 activity units each, or on any combination of BTA service areas for which the sum of associated activity units totals 100,000 or less. As set forth above, a bidder is ''active'' on a BTA service area if it is either the high bidder on that BTA from the previous round (at the end of the bid withdrawal period), or if it submits a bid on that BTA in the current round which exceeds the previous round's high bid by at least the minimum bid increment. See supra ¶ 83. Thus, a bidder who begins the auction eligible to bid (based on the magnitude of its upfront payment) on BTA service areas associated with 100,000 activity units and who, in the first round, is the high bidder on a BTA service area associated with 50,000 activity units, may only, in the second round, submit new bids on a combination of BTAs associated with 50,000 or fewer activity units.

[51] For example, if a small business applicant is interested in bidding on a BTA with an upfront payment of $100,000, it would be required, under the reduced upfront payment measure, to submit only $75,000 to qualify to bid on that BTA. This applicant would still, however, receive 100,000 activity units—the number of activity units equivalent to the full upfront payment amount associated with that BTA.

bidding in the MDS auction, and its application will be dismissed. See Second Report and Order at 2377; 47 CFR 1.2106.

107. The upfront payments submitted by prospective bidders will later be counted toward the down payments that winning bidders must make. The upfront payments of bidders who are not the high bidder on any BTA service area will be refunded as soon as possible after the MDS auction. Prior to refunding the upfront payments of non-winning bidders, however, we will determine whether they are subject to withdrawal or default payments. In some circumstances, it may be appropriate to retain upfront payments until after the winning bidders have tendered their down payments because further rounds of competitive bidding may be held if down payments are not made. No interest will be paid on upfront payments. See Second Report and Order at 2380.

108. Down Payments and Full Payments. To provide further assurance that winning bidders will be able to pay the full amount of their bids, we decided generally in the Second Report and Order that each winning bidder must tender a down payment sufficient to bring the total deposit up to twenty percent of the winning bid. We believe a down payment requirement is appropriate for MDS. Accordingly, winning bidders will be required to supplement their upfront payments to bring their total deposit with the Commission up to at least twenty percent of the final payment due for the BTA authorization(s) won in the MDS auction. If the upfront payment already tendered amounts to twenty percent or more of the winning bid, no additional deposit will be required. To the extent that any upfront payment not only covers, but exceeds, the required down payment, the Commission will refund any excess amount after determining that no bid withdrawal payments are owed by the bidder. To simplify this process administratively, the Commission will not honor requests that this excess amount be retained and applied toward later payments or obligations. The down payment will be due within five business days after the winning bidders have been notified by the Commission, and may be made by cashier's check or by wire transfer to the Commission's lock-box bank. The down payment will be held by the Commission until the winning bidder has been issued its BTA authorization and has paid the remaining balance of its winning bid, or until the winning bidder is found unqualified to be a station license or has defaulted, in which case it will be returned, less applicable default payments. During the period that deposits are held pending ultimate award of the BTA authorization, the interest that accrues, if any, will be retained by the government. See Second Report and Order at 2381–2382; 47 CFR 1.2107(b).

109. Based upon our experience in conducting spectrum auctions, we will require winning bidders to make full payment of the balance of their winning bids prior to the issuance of their BTA authorizations. Specifically, the Commission will, when a BTA authorization is ready to be issued, release a public notice stating that fact. The auction winner for that BTA will be required to make full payment of the balance of its winning bid within five business days following this public notice. The Commission will issue the BTA authorization to the auction winner within ten business days following notification of receipt of full payment. See Second Report and Order and Second Further Notice of Proposed Rulemaking in PR Docket No. 89–553, PP Docket No. 93–253, and GN Docket No. 93–252, FCC 95–159 (released April 17, 1995), 60 Fed. Reg. 21987 (May 4, 1995), at ¶ 109.

110. Auction winners that are small businesses eligible for installment financing will be subject to differing payment requirements, however. *See infra* ¶¶ 153–154 for discussion of small business eligibility. Specifically, a small business will be required to bring its total deposit with the Commission up to ten percent of its winning bid within five business days after having been notified by the Commission of its winning bidder status. An additional ten percent will be due within five business days following the public notice that its BTA authorization is ready to be issued. The Commission will then issue the BTA authorization to the small business within ten business days following notification of receipt of this additional ten percent payment.

111. Bid Withdrawal, Default and Disqualification Payments. In the Second Report and Order, we concluded that strong incentives are needed to ensure that potential bidders are financially and otherwise qualified to participate in auction proceedings, so as to avoid delays in the deployment of new services to the public. Id. at 2382. We accordingly stated that we will, in simultaneous multiple round auctions, impose a bid withdrawal payment requirement in instances where a high bid is withdrawn during the course of the auction and an additional default payment if a winning bid is withdrawn after the auction has closed. Id. at 2373–2374.

112. In an MDS simultaneous multiple round auction, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the BTA service area is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.[52] No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. After bidding closes, a defaulting auction winner (*i.e.*, a winner who fails to remit the required down payment within the prescribed time, fails to submit a long-form application or statement of intention, fails to make full payment, or is otherwise disqualified) will be subject to an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. *See* 47 CFR 1.2104(g) and 1.2109; Second Report and Order at 2373–2374. The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We will hold deposits made by defaulting or disqualified auction winners until full payment of these amounts. In rare cases in which it would be inequitable to retain a down payment, we will entertain requests for waiver of this provision. We believe that these payment requirements will discourage insincere bidding and default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements.

113. In addition, ''if a default or disqualification involves gross misconduct, misrepresentation or bad

[52] If a BTA service area is re-offered by auction, the ''winning bid'' refers to the high bid in the auction in which the service area is re-offered. If a BTA service area is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the BTA service area is offered by the Commission. If a BTA service area which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. Losing bidders will not be required to accept the offer. We wish to encourage losing bidders in MDS simultaneous multiple round auctions to bid on other BTA service areas, and therefore we will not hold them to their losing bids on a service area for which a bidder has withdrawn a bid or on which a bidder has defaulted.

faith by an applicant, the Commission also may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant.'' Second Report and Order at 2383. Parties who obtain their BTA authorizations through the auction process are put on notice that if their BTA authorizations are cancelled for any reason they will lose all monies paid to the Commission regarding those authorizations. This loss of monies paid is not intended as an exclusive remedy. Where such BTA holder's conduct so warrants, additional sanctions, including monetary fines and station license revocation, may be imposed.

114. In the event that an MDS auction winner defaults or is otherwise disqualified, the Commission must determine whether to hold a new auction or simply offer the BTA service area to the second-highest bidder. As we stated in the Second Report and Order, we believe that, as a general rule, when an auction winner defaults or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the BTA service area. Id. at 2383. Although we recognize that this may cause a brief delay in the initiation of service to the public, circumstances may change so significantly during the time between the original auction and the disqualification as to alter the value of the BTA service area to auction participants, as well as to parties who did not participate. In this situation, awarding BTA authorizations to the parties that value them most highly can best be assured through a re-auction. If, however, the default occurs within five business days after the bidding has closed, the Commission retains the discretion to offer the BTA service area to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the BTA service area to other bidders (in descending order of their bid amount) at the final bid levels. Moreover, if only a small number of relatively low value BTA service areas are to be re-auctioned and only a short time has passed since the initial auction, the Commission may choose to offer the BTA service areas to the highest losing bidders because the cost of holding another auction for MDS may exceed the benefits. *See id.*; 47 CFR 1.2109 (b) and (c).

115. If a new MDS auction becomes necessary because of default or disqualification more than five business days after bidding has ended, the Commission will afford new parties an opportunity to file applications. One of our primary goals in conducting auctions is to assure that all serious interested bidders are in the pool of qualified bidders at any re-auction. We believe that allowing new applications will facilitate achieving this goal, and that the short delay that may result from allowing new applications in a re-auction is warranted. Indeed, if we were not to allow new applicants in a re-auction, interested parties might be forced into an after-market transaction to obtabtain the BTA authorizations, which would itself delay service to the public and may prevent the public from recovering a reasonable portion of the value of the spectrum resource. See Second Report and Order at 2384; 47 CFR 1.2109(c).

116. Post-Auction Application Procedures. Unlike other services where auction winners may file a single long-form application to obtain a single license for the entire geographic area auctioned, the winning bidder for each BTA service area will be required, in accordance with our existing rules, to submit separate long-form applications for each channel group and location within the BTA for which the bidder wants to obtain an MDS station license. The winning bidder for each BTA service area will therefore be required to submit a separate long-form application for each Channel E group, for each Channel F group, and for each Channel 1, 2 (or 2A), H1, H2, and H3 within the BTA for which the winning bidder wishes to receive a license.

117. The long-form application for the initial MDS station license within each BTA service area will be due from the winning bidder for that BTA within thirty business days after such bidder has been notified of its winning bidder status.[53] After the Commission receives the winning bidder's down payment and the long-form application for the initial MDS station license within the BTA, we will review the long-form application, which must include, among other items, a FCC Form 430 and exhibits concerning the winning bidder's involvement in bidding consortia and status as a designated entity.[54] If the long-form application is found to be acceptable, the Commission will release a public notice announcing this fact, triggering the thirty day filing window for petitions to deny. If the Commission denies or dismisses all petitions to deny (if any are filed), and is otherwise satisfied that the applicant is qualified, the BTA authorization will be issued and the initial conditional MDS station license within the BTA service area of the auction winner will be granted, assuming that the auction winner (except for a small business making installment payments) has made full payment as set forth in ¶ 109. See Second Report and Order at 2383; 47 C.F.R. §§ 1.2107(c), 1.2108. Subsequent long-form applications for MDS station licenses within BTA service areas, which auction winners may submit at any time during the five year build-out period, will be reviewed by the Commission and granted in a similar manner, except, of course, that the winning bidders will need to make no further payments.

118. However, we realize that a number of BTA service areas may be so encumbered that the winning bidder for such a BTA may be unable to file a long-form application proposing another MDS station within the BTA while meeting the Commission's interference standards as to all previously authorized or proposed MDS and ITFS facilities. The winning bidder's objective in bidding on such a heavily encumbered BTA would likely be to purchase the previously authorized or proposed MDS stations within the BTA and to maintain full flexibility to make modifications. It also seems likely that a winning bidder for a heavily encumbered BTA may itself possess most or all of the previously authorized or proposed MDS stations within that BTA, and the bidder's goal in obtaining the authorization for the BTA in which it already had MDS stations would similarly be to preserve full flexibility to make modifications. The winning bidder for a BTA service area so heavily encumbered that it believes it cannot file an acceptable long-form application proposing an MDS station with average transmitted power within its BTA should follow the post-auction procedures set forth below.

119. After notification of its status as a winning bidder for a heavily encumbered BTA service area, the bidder must make its down payment within five business days in the normal manner. Within thirty business days after notification of its winning bidder

[53] We realize that other services have generally required the filing of long-form applications within ten days of notification of the winning bidders. However, given the need for MDS auction winners to protect all previously authorized or proposed MDS and ITFS facilities within their BTA service areas from harmful interference, we believe that such winning bidders will likely require a longer period of time to complete the requisite engineering studies and interference analyses before filing their initial long-form applications for MDS station licenses.

[54] The content of these exhibits is set forth in Section 21.956(b) of our amended rules.

status, the winning bidder must file with the Commission, in lieu of a long-form application for an MDS station license, a statement of intention with regard to the BTA service area, showing the encumbered nature of the BTA, identifying the incumbents, and describing in detail its plan for obtaining the previously authorized or proposed MDS stations within the BTA. We do not intend to force winning bidders to file long-form applications for MDS station licenses in BTAs so encumbered that the only proposed station to not cause harmful interference to incumbents would, for example, be a facility with a one watt transmitter and a highly directional antenna, serving no significant population. Winning bidders must, however, document in their statements of intention that additional MDS stations with average transmitted power could not be constructed in their BTAs without causing harmful interference to previously authorized or proposed MDS and ITFS facilities. If a winning bidder fails to file either this statement of intention or a long-form application within the thirty day period, it will be in default and will be subject to the appropriate default payments. The statement of intention should also include a FCC Form 430, a drug certification, and the same exhibits concerning the winning bidder's involvement in bidding consortia and status as a designated entity that must be attached to initial long-form applications. See supra ¶ 117.

120. The Commission will, following its review of the winning bidder's statement of intention, issue the BTA authorization to the winning bidder. Such issuance of the BTA authorization will, of course, be made only following full payment by the winning bidder as set forth in ¶ 109, except for a small business making installment payments. Parties wishing to comment on or oppose the issuance of a BTA authorization issued in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

121. Period of MDS Station Licenses. Under the Commission's rules, licenses for MDS stations are to be ''issued for a period not to exceed 10 years.'' 47 CFR 21.45(a). ''Unless otherwise specified by the Commission,'' the expiration of MDS station licenses as a class is, however, set on a single date (May 1) ''in the year of expiration'' (*i.e.*, the year which is ten years from the last expiration date of the class of MDS licenses, which was 1991). *Id.* Thus, the current term for all MDS station licenses as a class will expire on May 1, 2001, regardless of when these licenses are awarded. Because MDS station licenses as a class are due to expire on this set date, an MDS licensee who receives its station license on, for example, May 1, 1996 would in effect have the license for only five years before the licensee must apply for renewal.

122. For the reasons set forth herein, we believe that MDS auction winners should not be subject to the fixed MDS station license renewal cycle which, under existing rules, will expire on May 1, 2001, only five years or so from the time that any auction winner could expect to receive its initial station license in its BTA service area. We believe all winning bidders in the MDS auction should be assured of receiving station licenses of a duration sufficient so that they may have a reasonable period of time to construct their systems and earn a return on the amounts they invested in acquiring the BTA authorizations and MDS station licenses by competitive bidding. In addition, we realize that bidders who must arrange financing will need to assure lenders that they will have possession of their MDS station licenses for a reasonably lengthy period of time. We therefore determine that all MDS station licenses granted in every BTA service area auctioned should be for a ten year period (the maximum specified in Section 21.45(a)) to run from the date that the Commission declares bidding in the MDS auction to be closed.

123. We conclude that awarding MDS station licenses with definite ten year terms, rather than much briefer, indeterminate terms dependent on when the license is granted, serves both prospective bidders and the Commission well. As described above, the set ten year period is of sufficient certainty and length to be fair to parties who must now pay considerable sums, and perhaps obtain outside financing, in order to acquire BTA authorizations and MDS station licenses. In addition, we note that granting MDS station licenses with set ten year terms will allow small businesses eligible for installment financing to make payments over a period comparable to the length of their initial station licenses. Furthermore, specifying that MDS licenses for stations located in BTA service areas acquired by competitive bidding will be for ten year terms dated from the close of bidding in the MDS auction, rather than from the actual date of issuance of each individual station license, will be administratively convenient for the Commission. Because all MDS station licenses granted within BTA service areas acquired by competitive bidding will expire on the same date, the Commission will be able to easily process those licenses and to deal more expeditiously with their renewal. In accordance with Section 21.45(a), we hereby specify that all MDS station licenses granted in every BTA service area auctioned will have ten year terms from the date that the Commission declares bidding in the MDS auction closed.

6. Regulatory Safeguards

124. Unjust Enrichment and Anti-Trafficking Provisions. Congress directed that we take steps to prevent unjust enrichment due to trafficking in licenses that were obtained through competitive bidding. See 47 U.S.C. 309(j)(4)(E). In Section 7 below, we adopt specific rules to prevent designated entities from taking advantage of special provisions for such entities by transferring control of their BTA authorizations immediately following the MDS auction. Moreover, the MDS rules already contain provisions to reduce trafficking. See 47 CFR 21.39 (generally prohibiting assignment or transfer of MDS conditional station licenses prior to completion of construction of facility). These existing anti-trafficking provisions will continue to apply to MDS conditional station licenses granted prior to the institution of competitive bidding procedures. Consistent with the Second Report and Order, however, the existing MDS-specific anti-trafficking provisions will not apply to BTA authorizations and MDS conditional station licenses granted within auctioned BTA service areas.

125. With regard to BTA authorizations obtained by auction outside of the designated entity context, an applicant seeking approval for an assignment or transfer of control of a BTA authorization within three years of receipt of such authorization by means of competitive bidding must, together with its assignment or transfer application, file with the Commission a statement indicating that its authorization was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the assignment or transfer of the authorization. We will give particular scrutiny to auction winners who have not yet begun commercial service within their BTA service areas and who seek approval for an assignment or transfer of control of their authorizations within three years after

the receipt of such authorizations, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. See Second Report and Order at 2385–2386; 47 CFR 1.2111(a).

126. Construction Build-out Requirements. Congress has directed that the Commission, in implementing auction procedures, ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' 47 U.S.C. 309(j)(4)(B). In the Second Report and Order, we decided that it was generally unnecessary to impose additional construction build-out or other performance requirements for auctionable services beyond those already provided in service rules. *Id.* at 2386. However, following a review of our existing MDS rules, we determined to alter the construction requirements that will be applicable to the holders of BTA authorizations obtained by competitive bidding.

127. Our current rules require the completion of construction of MDS stations within twelve months from the date of the conditional station license grant. 47 CFR 21.43. We will continue to apply this existing requirement to MDS conditional station licenses granted prior to the institution of competitive bidding procedures. We will not, however, apply this twelve month construction requirement to MDS conditional station licenses granted in the future in the BTA service areas of auction winners. Instead, we will require the holders of BTA authorizations to meet the five year build-out requirements set forth at ¶ 31.

128. We believe that this change in our construction requirements is necessitated by our decision to grant BTA-based authorizations to MDS auction winners. Our goal in imposing any construction or other performance requirement is to insure that each auction winner provides service throughout its BTA. We believe that the imposition of a general BTA-wide build-out requirement will better achieve this goal than our continued imposition of a twelve month construction requirement on each particular MDS facility within the BTA.

129. Rules Prohibiting Collusion. In the generic auction rules, we adopted special provisions to prevent collusive conduct in the context of competitive bidding. 47 CFR 1.2105(c). We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially larger firms, from agreeing in advance to bidding strategies that might divide the market according to their strategic interests and to the disadvantage of other bidders. Such rules could also strengthen confidence in the bidding process. Second Report and Order at 2386. These rules apply to all auctionable services, including MDS. Applicants are required to identify in an exhibit to their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the BTA service areas being auctioned. Applicants are also required to certify that they have not entered into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular BTA service areas on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(viii) and (ix). Except as otherwise provided in ¶130, after the short-form applications are filed and prior to the time the winning bidder has made its required down payment, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing settlement agreements, with other applicants, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicants' short-form application. *See* 47 CFR 1.2105(c)(1). Communications among applicants concerning matters unrelated to the MDS auction will, however, be permitted after the filing of short-form applications. See Fourth Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 6858, 6869 (1994), 59 Fed. Reg. 53364 (Oct. 24, 1994).

130. Despite the restrictions set forth in ¶129, applicants may amend their short-form applications to reflect formation of bidding consortia or changes in ownership after the short-form application filing deadline has passed, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied to bid on the same BTA service areas. In addition, after the filing of short-form applications, applicants may make agreements to bid jointly for BTA service areas, provided the parties to the agreement have not applied for the same BTA service areas. A holder of a non-controlling attributable interest in an entity submitting a short-form application may also, following the filing of the short-form application and under certain conditions specified in 47 CFR 1.2105(c)(4), acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for the same BTA service areas. To reflect these changes in ownership or in the membership of consortia or joint bidding arrangements, applicants must amend their short-form applications by submitting a revised short-form, filed within two business days of any such change; such modifications will not be considered major amendments of the applications. However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form. See supra ¶100; 47 CFR 1.2105(c)(2), (3) and (4); Second Memorandum Opinion and Order at 7254; Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 7684, 7688–7689 (1994), 59 Fed. Reg. 64159 (Dec. 13, 1994). Finally the winning bidder for each BTA service area must, as an exhibit to its initial long-form application or statement of intention, explain the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement it had entered into relating to the competitive bidding process prior to the time bidding was completed. See 47 CFR 1.2107(d).

131. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may, among other remedies, be subject to the loss of their up front payment, down payment or their full bid amount, cancellation of their BTA authorizations, and may be prohibited from participating in future auctions. See Second Report and Order at 2388; 47 CFR 1.2109(c).

7. Treatment of Designated Entities

132. General Considerations. Section 309(j) of the Communications Act provides that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' 47 U.S.C. 309(j)(4)(D). To achieve this congressional goal, the

statute directs the Commission to ''consider the use of tax certificates, bidding preferences, and other procedures.'' *Id.* In addition, Section 309(j)(3)(B) instructs the Commission, in establishing eligibility criteria and bidding methodologies, to promote ''economic opportunity and competition * * * by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women,'' which are collectively referred to as ''designated entities.'' 47 U.S.C. 309(j)(3)(B); 47 CFR 1.2110. Section 309(j)(4)(A) further provides that to promote these objectives, the Commission shall consider alternative payment schedules, including lump sums or guaranteed installment payments. 47 U.S.C. 309(j)(4)(A).

133. In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was aware of the problems that designated entities would have in competing against large, well-capitalized companies in auctions and the difficulties they encounter in accessing capital. For example, the legislative history accompanying our grant of auction authority states generally that the Commission's regulations ''must promote economic opportunity and competition,'' and ''[t]he Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women. H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (1993) (House Report). The House Report states that the House Committee was concerned that, ''unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries.'' *Id.* More specifically, the House Committee was concerned that the adoption of competitive bidding should not have the effect of ''excluding small businesses from the Commission's licensing procedures,'' and anticipated that the Commission would adopt regulations to ensure that small businesses would ''continue to have opportunities to become Commission licensees.'' *Id.* at 255.

134. Consistent with Congress' concern that auctions not operate to exclude small businesses, the provisions relating to installment payments in Section 309(j) were clearly intended to assist small businesses. The House Report states that these provisions were drafted to ''ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women.'' *Id.* at 255. It also states that the provisions in Section 309(j)(4)(A) pertaining to installment payments were intended to promote economic opportunity by ensuring that competitive bidding does not inadvertently favor incumbents with ''deep pockets'' ''over new companies or start-ups.'' *Id.*

135. Moreover, with regard to access to capital, Congress had made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that ''small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit.'' Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102–366, § 331(a)(3), 106 Stat. 986, 1007 (1992). As a result of these difficulties, Congress resolved to consider carefully legislation and regulations ''to ensure that small business concerns are not negatively impacted'' and to give priority to passage of ''legislation and regulations that enhance the viability of small business concerns.'' *Id.* at § 331(b)(2) & (3).

136. In our initial implementation of Section 309(j), the Commission established in the Second Report and Order eligibility criteria and general rules that would govern the special measures for small businesses, rural telephone companies, and businesses owned by minorities and women. We also identified several measures, including installment payments, bidding credits and spectrum set-asides, that we could choose from in formulating the rules for auctionable spectrum-based services. In addition, we established rules to prevent unjust enrichment by designated entities seeking to assign or transfer licenses obtained through use of one of these special measures. *See* Second Report and Order at 2388–2400.

137. In adopting provisions to provide designated entities opportunities in MDS, we note that, while Section 309(j) lists the various designated entities together, the statute does not indicate that each group must be afforded the same type of treatment. *See Competitive Bidding Notice* at 7646. We have consistently emphasized that the provisions applicable to particular designated entities would vary depending on the nature of each individual service. In particular, we have evaluated the capital requirements, the nature of the expected pool of bidders, and other characteristics of each service to determine the appropriate measures to achieve the objectives of the auction statute. See Second Memorandum Opinion and Order at 7256; Fourth Report and Order at 2336.

138. With regard to MDS, we note that this service differs from the other services that have been auctioned to date in several important ways. First, unlike PCS and IVDS, wireless cable is a heavily encumbered service with many of the channels in most major markets already occupied. Given the limited amount of remaining usable spectrum and the need to protect incumbents from harmful interference, we anticipate that the BTA service areas will be auctioned for relatively modest amounts, particularly in comparison to the sums bid in the PCS auctions. Second, it is necessary for MDS channels within a geographic area to be aggregated under the control of a single wireless cable operator, to allow it to compete with wired cable television systems in the same area. Notice at 7667. Thus, our goal in this proceeding is not to set the stage for the development of an entirely new industry, such as PCS, but to allow the progression and rationalization of the existing wireless cable industry. Accordingly, we cannot adopt designated entity rules that would hinder the accumulation of MDS channels within BTAs by entities financially capable of operating wireless cable systems and providing competitive service to the public.

139. In this Report and Order we adopt specific designated entity measures appropriate for MDS, based on the record in this proceeding and on the unique characteristics of the service as identified above. Specifically, we have determined to make installment payments, reduced upfront payments and bidding credits available to small businesses, including those owned by minorities and women, and to small business consortia. We also adopt the unjust enrichment provisions set forth in the Second Report and Order applicable to installment payments and bidding credits. *Id.* at 2395; 47 CFR 1.2111(c) & (d). We decline to adopt spectrum set-asides. Such a measure is inappropriate for MDS, given the heavily encumbered nature of this

service and the lack of sizable, discrete blocks of spectrum to auction.[55]

140. Entities Eligible for Special Measures. Although we will offer installment financing, reduced upfront payments and bidding credits to small businesses, we have concluded that the provision of additional measures for rural telephone companies is unnecessary in the MDS auction. Congress intended by including rural telephone companies in the category of designated entities to ensure that rural consumers received the benefit of new technologies. *See* 47 U.S.C. 309(j)(3)(A); Fourth Report and Order at 2337 n.66. However, many rural consumers and residents of smaller communities already receive the benefit of wireless cable services. Numerous wireless cable operators focus on uncabled rural areas and small towns, and rural states, such as North and South Dakota, Oklahoma, and Nebraska, have among the highest numbers of operating and planned wireless cable systems. Moreover, given the anticipated modest auction prices of authorizations for sparsely populated rural BTAs, we do not believe that rural telephone companies will need either a special exemption from the MDS competitive bidding process or additional measures provided to them in order to compete in the auction process. Rural telephone companies will, of course, be eligible for the incentives provided to small businesses generally if they meet those eligibility requirements. This determination not to provide additional measures for rural telephone companies is consistent with the Commission's decisions in the PCS and IVDS auction rules.

141. In addition, we expect rural telephone companies to take advantage of the partitioning option described above at ¶¶ 34–35, so they will not have to bid on entire BTAs to obtain authorizations for the rural areas they are interested in serving. Thus, rural telephone companies should be able to obtain authorizations for partitioned BTAs by private negotiation and agreement with auction winners. Rural telephone companies could also form bidding consortia to participate in MDS auctions, and then partition the BTAs won among consortia participants. In our opinion, the offering of this broad partitioning option to all interested entities, including rural telephone companies, also serves to make the provision of additional measures for rural telephone companies unnecessary.

142. Although we will offer installment financing, reduced upfront payments and bidding credits to minority and women-owned small businesses, we have also for several reasons determined, in the absence of evidence in the record to the contrary, that the provision of special measures to minority and women-owned enterprises, regardless of size, is unnecessary. First, we note that installment financing, reduced upfront payments and bidding credits will not be limited to certain BTA service areas, but will be available to small businesses for every BTA service area to be auctioned. We believe that broadening the scope of opportunity for small businesses in this manner should also create substantial opportunity for minority and women-owned enterprises. Census data has shown that approximately ninety-nine percent of all women-owned and ninety-nine percent of all minority-owned businesses generate annual receipts of one million dollars or less.[56] Thus, we expect that virtually all minority and women-owned enterprises will be eligible for the special measures adopted herein for small businesses. Moreover, we note that we are permitting consortia of small businesses to utilize installment financing, reduced upfront payments and bidding credits, if each member of the consortia is individually eligible. Small minority and women-owned enterprises may therefore join together in consortia to participate in MDS auctions and still remain eligible for all special measures available to small businesses individually.

143. Second, we believe that small minority and women-owned entities, with the various incentives they will receive as small businesses, should be able to participate successfully in competitive bidding, given the anticipated relatively modest value of many of the BTA service areas to be auctioned. Due to the heavily encumbered nature of the wireless cable industry, the Commission has estimated that the amounts bid in the MDS auction will not approach the levels reached in earlier auctions, particularly PCS. Thus, additional incentives for minority and women-owned enterprises, regardless of their size, appear less necessary for MDS than for other auctionable services.

144. Moreover, we note that minority and women-owned entities may also, like rural telephone companies, take advantage of the broad partitioning option set forth above at ¶¶ 34–35. Unlike other services that have limited the availability of partitioning to rural telephone companies, we are allowing any type of entity to negotiate with auction winners to obtain authorizations for partitioned BTAs. Thus, minority and women-owned entities that do not wish to bid on entire BTAs should be able to acquire authorizations for partitioned portions of those service areas.

145. This determination not to provide additional measures for minority and women-owned companies, regardless of their size, is consistent with the Commission's position in other auction rules. In the Fifth Report and Order, we specifically observed that, due to the expected high auction value of the PCS spectrum and the substantial build-out costs, it would be necessary to provide additional assistance to women and minority enterprises to ensure their opportunity to participate in broadband PCS than would be ''necessary in other, less costly spectrum-based services.'' *Id.* at 5572–5573. We believe that the installment financing, reduced upfront payments and bidding credits available to all small businesses, along with the broad partitioning option, should be sufficient to give minority and women-owned entities the opportunity to participate in the ''less costly'' MDS auction.

146. Installment Payments. In this Report and Order, we approve installment financing for small businesses. Permitting a winning bidder to pay through installments is the equivalent of having the government extend credit to the bidder. With this installment financing option, a prospective bidder may not need to rely as heavily on private financing either before or after an auction. Given the difficulties experienced by small businesses in obtaining credit (*see supra* ¶ 135), this governmental extension of credit should be particularly valuable to small businesses that are winning bidders in spectrum auctions. Installment payments should therefore be both an effective method of promoting the participation of designated entities in the provision of spectrum-based services and a means of distributing licenses and services among geographic areas. Second Report and Order at 2389–2390. In the Second Report and Order, we determined that installment payments should be offered only to small businesses (including those owned by minorities and women), and then only in instances where use of the spectrum being auctioned was likely to match the business objectives of *bona*

[55] This decision is consistent with the Commission's previous determination that, due to the small amount of spectrum available, spectrum set-asides were not appropriate for IVDS. *See Fourth Report and Order* at 2336.

[56] See Women-Owned Businesses, WB 87–1, 1987 Economic Census, at 144, Table 8; Survey of Minority-Owned Business Enterprises, MB 87–4, 1987 Economic Census, at 81–82, Table 8.

fide small businesses. *Id.* at 2390. We also specifically noted that the legislative history of the Budget Act indicates that large enterprises with established revenue streams are not intended the beneficiaries of installment financing. *Id.* Given the considerable number of small enterprises currently involved in the wireless cable industry, we believe that MDS has offered, and will continue to offer, bona fide business opportunities to small enterprises.

147. We will therefore permit the use of installment payment plans in all MDS auctions, and follow the general procedures set forth in the Second Report and Order. The installment payment option will allow a small business to pay the full amount of its winning bid in installments (less the upfront payment and the down payment, half of which is due five business days after notification to the winning bidder and the other half five days after the public notice stating that the BTA authorization is ready for issuance). Only interest payments will be due for the first two years, with principal and interest both being amortized over the remaining years of the ten year period running from the date that the BTA authorization is issued. Also, interest charges will be fixed at the time of issuance of the BTA authorization at a rate equal to that of ten year U.S. Treasury notes, plus two and one half (2.5) percent. See Second Report and Order at 2390. Timely payments of all installments will be a condition of the issuance of the BTA authorization. Failure to make such timely payments on or before the date due is also grounds for cancellation of the BTA authorization, although limited grace periods for defaulting small businesses may be considered on a case-by-case basis. *See id.* at 2391. If a small business making installment payments seeks to assign or transfer its BTA authorization to a non-small business entity, we will require payment of any remaining unpaid principal balance, and of any unpaid interest accrued, as a condition of the assignment or transfer. *See id.* at 2395.

148. Reduced Upfront Payments. Upfront payment requirements are designed to ensure that bidders are qualified and serious and to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal payments. See Second Report and Order at 2377–2379. Although the Commission has not chosen to create a general exception to our upfront payment requirements for designated entity applicants (*see id.* at 2380), we have previously allowed designated entities to make reduced upfront payments. See, e.g., Fifth Report and Order at 5600. We believe that allowing small businesses to make reduced upfront payments should facilitate auction participation by capital-constrained wireless cable operators (*see infra* ¶ 153), and permit them to conserve resources for building out their systems after the MDS auction.

149. Specifically, we will for the MDS auction reduce the upfront payment requirement by twenty-five percent for small businesses and for small business consortia. See Fifth Report and Order at 5600 (reducing upfront payment for bidders in entrepreneurs' block PCS auction by twenty-five percent). As discussed in ¶ 104, prior to the MDS auction, the Mass Media Bureau, in conjunction with the Wireless Telecommunications Bureau, will publish a public notice listing the upfront payment amount corresponding to each BTA service area to be auctioned. A prospective bidder claiming eligibility as a small business and wishing to bid on a particular BTA service area will thus be required to submit an upfront payment equal to seventy-five percent of the upfront payment specified in the public notice for that BTA. We believe that this reduction in the upfront payments for small businesses will properly permit wireless cable operators to conserve their capital for building out their systems and adding subscribers, while still serving to discourage insincere or speculative bidding.

150. Bidding Credits. Given the difficulties faced by small businesses in accessing capital (see supra ¶ 135), and based upon our expectations as to the numbers and types of bidders that will participate in the MDS auction, we conclude that a bidding credit is appropriate for small businesses in the MDS auction. A bidding credit, in effect, functions as a discount on the bid price a bidder will actually have to pay to obtain a BTA authorization and, thus, will address directly the financing obstacles encountered by small businesses. A bidding credit should accordingly ''level the playing field'' by helping small businesses, particularly incumbent wireless cable operators, to compete effectively in the MDS auction against larger enterprises, such as the large telecommunications carriers. We also believe the offering of a bidding credit may aid small businesses to more easily attract capital; specifically, outside investors may be more eager to invest in a small wireless cable operator if that operator will be benefited by a bidding credit in the MDS auction. For these reasons, we believe that a bidding credit will have a significant positive effect ,on the ability of small businesses to participate successfully in an MDS auction.

151. We will offer a fifteen percent bidding credit to small businesses, and to consortia of small businesses, bidding on any of the BTA service areas available in the MDS auction. Given the encumbered nature of MDS and the presence of incumbents in most BTAs, it appears impractical to restrict the availability of bidding credits to certain channels or spectrum blocks. Additionally, we believe that we would greater opportunities for small businesses, including incumbent wireless cable operators, if we offer bidding credits on all BTA service areas. We feel that these bidding credits will help achieve the objectives of Congress by providing small businesses, including women-owned and minority-owned small businesses, with a meaningful opportunity to obtain BTA authorizations and to conserve scarce capital for building out their wireless cable systems after the auction. Although other services have provided larger bidding credits to certain designated entities, we believe that the fifteen percent credit is sufficient for MDS because, unlike these other services, we will offer this bidding credit on all authorizations to be awarded to small businesses.[57]

152. To prevent unjust enrichment by small businesses trafficking in BTA authorizations acquired through the use of bidding credits, we will require small businesses to reimburse the government, as set forth below, if BTA authorizations are transferred or assigned to entities that do not fulfill the small business eligibility requirements. See Second Report and Order at 2395. Small businesses seeking to transfer or assign a BTA authorization to an entity not meeting the definition of small business will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate

[57] See, e.g., Third Report and Order at 2970 (providing twenty-five percent bidding credit on specified channels to certain designated entities in nationwide narrowband PCS auction); Third Memorandum Opinion and Order at 201 (providing forty percent bidding credit on specified channels to certain designated entities in regional narrowband PCS auction); Fourth Report and Order at 2337 (offering twenty-five percent bidding credit on one of two IVDS licenses available in each geographic license area). See also Second Report and Order and Second Further Notice of Proposed Rulemaking in PR Docket No. 89–553, PP Docket No. 93–253, and GN Docket No. 93–252, FCC 95–159 (released April 17, 1995), 60 FR 21987 (May 4, 1995), at ¶ 130 (proposing to provide ten percent bidding credit on all 900 MHz Specialized Mobile Radio channel blocks to be auctioned).

imposed for installment financing at the time the authorization was awarded, before transfer or assignment will be permitted. The amount of the required reimbursement will be reduced over time. A transfer or assignment in the first two years after issuance of the authorization will result in a reimbursement of one hundred percent of the value of the bidding credit; during year three, of seventy-five percent of the bidding credit; in year four, of fifty percent; in year five, of twenty-five percent; and thereafter, no reimbursement.

153. Eligibility for Installment Payments, Reduced Upfront Payment and Bidding Credits. In the Second Memorandum Opinion and Order, the Commission amended its generic auction rules to replace the small business definition used by the Small Business Administration (SBA) with a provision enabling the Commission to establish a small business definition in the context of each particular service, taking into consideration the characteristics and capital requirements of the particular service. See 47 CFR 1.2110(b)(1). We conclude that the definition adopted for the narrowband and broadband PCS is also appropriate for MDS. Under this approach, a small business is an entity that, together with its affiliates, has annual average gross revenues for the three preceding years not in excess of $40 million. We will also allow consortia of small businesses, each member of which individually meets the $40 million gross revenue standard, to qualify for installment payments, reduced upfront payments and bidding credits. See 47 CFR 1.2110(j). Consideration of the capital requirements of MDS has persuaded us to adopt this definition of small business. Wireless cable, although significantly less capital intensive than traditional coaxial cable, is not inexpensive. Tower and head end expenses may range from under $1 million for a small rural system to $2 to $3 million per system in major markets, and the cost of adding each new subscriber has been estimated to be $400 to $600. Thus, even though the cost of acquiring BTA authorizations at auction are estimated to be relatively modest in comparison to other services, considerable capital is nonetheless required to construct a competitive wireless cable system. Moreover, the wireless cable industry has historically had difficulty in obtaining financing, and the future success of wireless cable is crucially dependent upon its ability to obtain additional financing.[58]

154. Given the capital requirements of the wireless cable industry and its past difficulties in attracting capital, we believe that the $40 million gross revenue standard is appropriate for MDS. If the Commission were to adopt a significantly lower standard for the definition of small business, we would exclude companies with the financial wherewithal to operate wireless cable systems competitive with cable television from eligibility for installment payments, reduced upfront payments and bidding credits. See Second Memorandum Opinion and Order at 7268. We also believe that the standard SBA definition of small business—an entity with no more than $6 million net worth and no more than $2 million in annual profits—is similarly overly restrictive,[59] and we accordingly decline to adopt such definition of small business for MDS. We therefore conclude that the $40 million gross revenue standard utilized by other services is appropriate, as it would not exclude enterprises in need of special incentives to compete successfully in the wireless cable industry, but would not provide such incentives to larger telecommunications enterprises with well-established revenue streams and easier access to capital.

155. Records Maintenance and Audits. All holders of BTA authorizations acquired by auction that claim designated entity status will be required to maintain, at their principal place of business or with their designated agent, and updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest must maintain such files for a ten year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

156. BTA authorization holders claiming eligibility under designated entity provisions will be subject to audits by the Commission, using in-house or contract resources. Selection for an audit may be random, on-information, or on the basis of other factors. Consent to such audits is part of the certification included in the short-form application. Such consent will include consent to the audit of the holders' books, documents and other material (including accounting procedures and practices), regardless of form or type, sufficient to confirm that such holders' representations are, and remain, accurate. Such consent will also include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business or keeping records regarding licensed MDS offerings, and will also include consent to the interviewing of principals, employees, customers, and suppliers of the BTA authorization holders.

157. We believe that the above records maintenance and audit provisions are necessary to prevent abuse of the special measures offered to those MDS auction winners claiming designated entity status. These provisions requiring the retention of records should not prove overly burdensome, and they will help to ensure that only entities eligible under the auction rules will be able to take advantage of the designated entity measures.

158. Accordingly, it is ordered that, pursuant to the authority of Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), and 403, this Report and Order is adopted, and Part 21 of the Commission's Rules are amended as set forth herein.

159. It is further ordered that the rule amendments set forth herein will become effective September 15, 1995.

160. It is further ordered that, upon approval by the Office of Management and Budget, FCC Form 304 will supersede FCC Form 494.

List of Subjects in 47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602;

[58] See Gerard Klauer Mattison & Co., Inc., The Wireless Cable Industry: Summary of 1994 and Outlook for 1995 (Dec. 22, 1994) at 2; Dillon Read & Co. Inc., The Wireless Cable Industry (Aug. 22, 1994) at 10; Gerard Klauer Mattison & Co., Inc., The Wireless Cable Industry (Jan. 21, 1993) at 4.

[59] See Second Memorandum Opinion and Order at 7268; Third Memorandum Opinion and Order at 195; Fifth Report and Order at 5606–5608.

48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552, 554.

§ 21.2 [Amended]

2. In § 21.2, the following definitions are added in alphabetical order to read as follows:

§ 21.2 Definitions.

* * * * *

Basic Trading Area (BTA). The geographic areas by which the Multipoint Distribution Service is licensed. BTA boundaries are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39, and include six additional BTA-like areas as specified in § 21.924(b).

BTA authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a BTA.

BTA service area. The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and the registered receive sites of previously authorized and proposed ITFS stations.

* * * * *

Incumbent. An MDS station that was authorized or proposed before September 15, 1995, including those stations that are subsequently modified, renewed or reinstated.

* * * * *

Partitioned service area authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a partitioned service area.

Partitioned service area (PSA). The area within the coterminous boundaries of one or more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and the registered receive sites of previously authorized and proposed ITFS stations.

* * * * *

3. Section 21.7 is amended by revising the first sentence of the section to read as follows:

§ 21.7 Standard application form for domestic public fixed radio service licenses.

Except for the Multipoint Distribution Service, FCC Form 494 (''Application for a New and Modified Microwave Radio Station License Under Part 21'') shall be submitted and a license granted for each station prior to commencement of any proposed station construction.* * *

§ 21.13 [Amended]

4. Section 21.13 is amended by revising paragraphs (a)(4) and (b) introductory text to read as follows:

§ 21.13 General application requirements.

(a) * * *

(4) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, state specifically the reasons why a grant of the proposal would serve the public interest, convenience, and necessity.

* * * * *

(b) Applications in the Multipoint Distribution Service, the Digital Electronic Message Service (DEMS) and the Point-to-Point Microwave Service shall not cross-reference previously filed material. Applications other than for the Multipoint Distribution Service, DEMS and Point-to-Point Microwave Services may cross-reference previously filed material where documents, exhibits or the lengthy showings already on file with the Commission contain information which is required by an application form and may specifically refer to such information, if:

* * * * *

§ 21.15 [Amended]

5. Section 21.15 is amended by revising the first sentence of paragraph (a)(1) and by revising paragraphs (a)(3),(c), (e), introductory text and (g) to read as follows:

§ 21.15 Technical content of applications.

* * * * *

(a) (1) Except in the case of applicants for Multipoint Distribution Service, applicants proposing a new station location (including receive-only stations and passive repeaters) must indicate whether the station site is owned. * * *

* * * * *

(3) Except for BTA and PSA authorization holders, Multipoint Distribution Service applicants proposing a new station location must certify the proposed station site will be available to the applicant for timely construction of the facilities during the initial construction period.

* * * * *

(c) Each application involving a new or modified antenna supporting structure or passive facility, the addition or removal of an antenna, or the repositioning of an authorized antenna for a station or receive-only facility (except receive-only facilities in Multipoint Distribution Service and the Digital Electronic Message Service) must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc. and, if mounted on a building, its overall height above the building. The proposed antenna on the structure must be clearly identified and its height above-ground (measured to the center of radiation) clearly indicated. Alternatively, applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995 may provide this information in the MDS long-form application.

* * * * *

(e) Except for applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995, an applicant proposing construction of one or more new stations or modification of existing stations where substantial changes in the operation or maintenance procedures are involved must submit a showing of the general maintenance procedures involved to insure the rendition of good public communications service. The showing should include but need not be limited to the following.

* * * * *

(g) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, each application in the Point-to-Point Radio, Local Television Transmission and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include and antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC–ID number that indicates that the pattern is on file with the Commission, Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

* * * * *

§ 21.27 [Amended]

6. In § 21.27 paragraphs (a)(7) and (8) are added to read as follows:

§ 21.27 Public notice period.

(a) * * *

(7) The BTAs designated for licensing through the competitive bidding process and the filing date for short-form applications for those areas;

(8) the auction winners in the competitive bidding process;

* * * * *

7. Section 21.35 is amended by revising paragraph (a) introductory text to read as follows:

§ 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the competitive bidding process or random selection process do not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

* * * * *

§ 21.41 [Amended]

8. In § 21.41, paragraph (b)(7) is added to read as follows:

§ 21.41 Special processing of applications for minor facility modifications.

* * * * *

(b) * * *

(7) In the Multipoint Distribution Service, the modified facility would not produce a power flux density that exceeds—73 dBW/m2, pursuant to §§ 21.902 and 21.939 of this subpart, at locations on the boundaries of protected service areas to which there is an unobstructed signal path.

* * * * *

§ 21.42 [Amended]

9. Section 21.42 is amended by revising paragraphs (a), (b)(3), (c)(3)(ii) and (d), and by adding paragraphs (b)(4) and (c)(3)(iii) to read as follows:

§ 21.42 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if:

(1) The replacement equipment is identical (i.e., same manufacturer and model number) with the replacement equipment;

(2) For the Multipoint Distribution Service, the replacement transmitter, transmitting antenna, transmission line loss and/or devices between the transmitter and antenna, or combinations of the above, do not change the EIRP of a station in any direction.

(b) * * *

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 494, or for the Multipoint Distribution Service, and MDS long-form application, as applicable, within thirty days after the changes are made.

(4) In the Multipoint Distribution Service, the modified facility would not produce a power flux density at the protected service area boundary that exceeds—73 dBW/m2, pursuant to §§ 21.902 and 21.939 of this subpart.

(c) * * *

(3) * * *

(i) * * *

(ii) For Digital Electronic Message Service, the new antenna conforms with § 21.906 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(iii) For the Multipoint Distribution Service, the new antenna conforms with § 21.906 and the EIRP resulting from the new antenna does not exceed that resulting from the new antenna does not exceed that resulting from the previously authorized antenna by more than one dB in any direction.

* * * * *

(d) Licensees may be correct erroneous information on a license which does not involve a major change (i.e., a change that would be classified as a major amendment as defined § 21.23) without obtaining prior Commission approval by filing a completed FCC Form 494, or for the Multipoint Distribution Service licensees, by filing the MDS long-form application.

§ 21.43 [Amended]

10. Section 21.43 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 21.43 Period of Construction; certification of completion of construction.

(a) Except for Multipoint Distribution Service Station licenses granted to BTA and PSA authorization holders, each license for a radio station for the services included in this Part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. * * *

* * * * *

§ 21.44 [Amended]

11. Section 21.44 is amended by revising paragraph (a)(1) to read as follows:

§ 21.44 Forfeiture and termination of station authorization.

(a) * * *

(1) The expiration of the construction period specified therein, where applicable, or after such additional time as may be authorized by the Commission, unless within 5 days after that date certification of completion of construction has been filed with the Commission pursuant to § 21.43;

* * * * *

§ 21.900 [Amended]

12. Section 21.900 is amended by revising the concluding text to read as follows:

§ 21.900 Eligibility.

* * * * *

(c) * * *

The applicant shall state whether or not service will be provided on a common carrier or non common carrier basis. In addition, a common carrier applicant shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

§ 21.901 [Amended]

13. Section 21.901 is amended by revising the first sentence of paragraph (d)(5) and by revising paragraph (d)(7) to read as follows:

§ 21.901 Frequencies.

* * * * *

(d) * * *

* * * * *

(5) Notwithstanding the provision of § 21.31(a) all applications, except for those filed on or after September 15, 1995, that propose to locate transmission facilities within or within 24.1 kilometers (15 miles) of the border of a Standard Metropolitan Statistical Area (SMSA) will be considered together. * * *

* * * * *

(7) All applications for frequencies in this band, except for those filed on or after September 15, 1995, must contain a showing of how interference with the operation of adjacent channels will be avoided and what steps the applicant has taken to comply with § 21.902(a) of this part.

* * * * *

§ 21.902 [Amended]

14. Section 21.902 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (b)(4), (c) introductory text, (c)(1), (c)(1)(i), (c)(2), (c)(3), (d), (f) introductory text, (g) and (h), by removing paragraph (c)(5), and by adding paragraphs (b)(5), (b)(6), (f)(4), (f)(5), (f)(6), and (f)(7), and by amending

paragraphs (f)(1) and (f)(2) by revising the second sentence to read as follows:

§ 21.902 Frequency interference.

(a) All applicants, conditional licensees, and licensees shall make exceptional efforts to avoid harmful interference to other users and to avoid blocking potential adjacent channel use in the same city and cochannel use in nearby cities. In areas where major cities are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees, conditional licensees, and applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(b) As a condition for use of frequency in this service, each applicant, conditional licensee, and licensee is required to:

(1) Not enter into any lease or contract or otherwise take any action that would unreasonably prohibit location of another station's transmitting antenna at any given site inside its own protected service area.

* * * * *

(3) Engineer the system to provide at least 45 dB of cochannel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously proposed station that transmit, or may transmit, signals for standard television reception.

(4) Engineer the station to provide at least 0 dB of adjacent channel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously proposed station that transmits, or may transmit, signals for standard television reception.

(5) (i) Engineer the station to limit the calculated free space power flux density to -73 dBW/m^2 at the boundary of a 56.33 km (35 mile) protected service area, where there is an unobstructed signal path from the transmitting antenna to the boundary; or alternatively, obtain the written consent of the entity authorized for the adjoining area to exceed the -73 dBW/m^2 limiting signal strength at the common boundary.

(ii) In determining signal path conditions, the following shall be used: a 9.1 meter (30 feet) receiving antenna height, the transmitting antenna height, terrain elevations and 4/3 earth radius propagation conditions.

(6) If a proposed station is within 80 km (50 miles) of the Canadian or Mexican border, the station must be designed to meet the requirements set forth in international treaties. (c) The following interference studies must be prepared, must be available to the Commission upon request, and may be submitted as part of any application:

(1) An analysis of the potential for harmful interference within the 56.33 km (35 mile) protected service areas of any authorized or previously proposed incumbent station:

(i) if the coordinates of the applicant's proposed transmitter are within 160.94 km (100 miles) of the center coordinates of any authorized or previously proposed incumbent station with protected service area of 56.33 km (35 miles) as specified in § 21.902(d); or

* * * * *

(2) Applicants may design interference studies in any manner that demonstrates the avoidance of harmful interference, as defined in this subpart.

(i) In lieu of interference studies, applicants may submit in accordance with § 21.938 a written statement of no objection to the operation of the MDS station.

(ii) The Commission may direct applicants to submit interference studies of a specific nature.

(3) Except for new stations proposed in applications filed after September 15, 1995, in the case of a proposal to operate a non-colocated station within the protected service area of an authorized, or previously proposed, adjacent channel station, an analysis that identifies the areas within the protected service areas of both the authorized or previously proposed adjacent channel station and the proposed station that cannot be protected as specified in § 21.902(b)(4) and an explanation of why the proposed station cannot be colocated with the existing or previously proposed station.

* * * * *

(d) (1) Subject to the limitations contained in paragraph (e) of this section, each MDS station licensee shall be protected from harmful electrical interference, as determined by the theoretical calculations, for a protected service area of which the boundary will be 56.3255 kilometers (35 miles) from the transmitter site.

(2) As of September 15, 1995, the location of these protected service area boundaries shall become fixed. The center of the circular area shall be the geographic latitude and longitude of the transmitting antenna site specified in station authorizations or previously proposed applications filed at the Commission before September 15, 1995. Subsequent transmitter site changes will not change the location of the 56.3255 kilometers (35 mile) protected service area boundaries.

* * * * *

(f) In addressing potential harmful interference in this service, the following definitions, procedures and other criteria shall apply:

(1) * * * Harmful interference will be considered present when a free space calculation for an unobstructed signal path determines that this ratio is less than 45 dB.

(2) * * * Harmful interference will be considered present when a free space calculation for an unobstructed signal path determines that this ratio is less than 0 dB. * * *

* * * * *

(4) For purposes of this section, the received signal power level $(RSL)_{dBW}$ at the output of the FCC reference receiving antenna is obtained from the following formulas (or an equivalent adaptation):

$(RSL)_{dBW}=(EIRP)_{dBW}-(L_{FS})_{dB}+(G_{AR})_{dB}$

where the free space loss (L_{FS}) is

$(L_{FS})_{dB}=20 \log (4\pi d/\lambda)$dB

in which the parameters are defined as follows:

$(RSL)_{dBW}$ is the received power in decibels referenced to one watt.

$(EIRP)_{dBW}$ is the equivalent isotropically radiated power in decibels above one watt.

d is the distance of the signal path in meters.

λ is the wavelength of the signal in meters.

G_{AR} is the dB gain of the reference receiving antenna above an isotropic antenna (obtained from Figure 1 of this section.)

(5) A determination of signal path conditions shall use a 9.1 meters (30 feet) receiving antenna height, the transmitting antenna height, terrain elevation, and assume 4/3 earth radius propagation conditions.

(6) An application will not be accepted for filing if cochannel or adjacent channel interference is predicted at the boundary of the 56.33 km (35 mile) protected service area of an authorized or previously proposed incumbent station based on the following criteria:

(i) interference calculations shall be made only for directions where there is an unobstructed signal path from the site of a proposed station to the boundary of any protected area.

(ii) calculations of received power levels in units of dBW from the proposed station will be made at one degree intervals around the protected service area.

(iii) the assumed value of the desired signal level at the boundary of an

incumbent station shall be −83 dBW, which is the calculated received power in free space at a distance of 56.33 km (35 miles), given at EIRP of 2000 watts and a receiver antenna gain of 20 dBi.

(iv) harmful interference will be considered to occur at locations along the boundary wherever the ratio between the desired signal level of −83 dBw and the received power from a proposed cochannel or adjacent channel station is less than 45 dB or 0 dB for cochannel or adjacent channel proposals, respectively.

(7) Alternatively, MDS applications will be accepted on the basis of an executed written interference agreement between potentially affected parties filed in accordance with § 21.938.

(g)(1) All interference studies submitted pursuant to paragraph (c) of this section must be served on all licensees, conditional licensees, and applicants for the stations required to be studied by this section. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(2) MDS licensees, conditional licensees and applicants of facilities with 56.33 km (35 mile) protected service areas shall notify in writing the holders of authorizations for adjoining BTAs or PSAs of application filings for modified station licenses, provided the proposed facility would produce an unobstructed signal path to any location within the adjoining BTA or PSA. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(h) For purposes of § 21.31(a), an MDS application, except for those applications filed on or after September 15, 1995, filed for a facility that would cause harmful electrical interference within the protected service area of any authorized or previously proposed station will be presumed to be mutually exclusive with the application for such authorized or previously proposed station.

* * * * *

§ 21.904 [Amended]

15. Section 21.904 is amended by revising paragraph (c) to read as follows:

§ 21.904 Transmitter power.

* * * * *

(c) An increase in station transmitter power, above currently-authorized or previously proposed values, to the maximum values provided in paragraphs (a) and (b) of this section, may be authorized, if the requested power increase would not cause harmful interference to any authorized or previously proposed co-channel or adjacent-channel station with a transmitter site within 80.5 kilometers (50 miles) of the applicant's transmitter site, or if an applicant demonstrates that:

(1) A station, that must be protected from interference, potentially could suffer interference that would be eliminated by increasing the power of the interfered-with station; and

(2) The applicant requesting authorization of a power increase agrees to pay all expenses associated with the increase in power to the interfered-with station.

* * * * *

§ 21.913 [Amended]

16. Section 21.913 is amended by revising paragraphs (b), (c), (d), (e) and (g)(8) to read as follows:

§ 21.913 Signal booster stations.

* * * * *

(b) In addition to the other application requirements of this part, each application for a signal booster station that would retransmit an MDS signal must certify that the proposed booster station site is within the protected service area, as defined in §§ 21.902(d) and 21.933, of the MDS station.

(c) In addition to the other application requirements of this part, each application for a signal booster station that would retransmit an MDS signal must state in the application that it has prepared a study which demonstrates that the power flux density at the edge of the MDS protected service area does not exceed −73.0 dBW/m^2 at locations for which there is an unobstructed signal path to the boundary.

(d) In addition to the other application requirements of this part, each application for a signal booster station must state in the application that is has prepared a study which demonstrates that the proposed booster station will cause no harmful interference to co-channel and adjacent-channel existing or previously-proposed ITFS and MDS stations with transmitters within 80.5 kilometers (50 miles) of the proposed booster station's transmitter site.

(e) In addition to the other application requirements of this part, each application must include a written consent statement of the licensee of each MDS, ITFS, and OFS station whose signal is retransmitted.

* * * * *

(g) * * *

* * * * *

(8) The power flux density at the edge of the MDS station's protected service area does not exceed −73.0 dBW/m^2, if the signal of an MDS station is repeated;

* * * * *

17. Sections 21.921 through 21.939 are added, Sections 21.940 through 21.949 are reserved, and Sections 21.950 through 21.961 are added to read as follows: Subpart K—Multipoint Distribution Service

* * * * *

Sec.

§ 21.921 Basis and purpose for electronic filing and competitive bidding process.

(a) Basis. The rules for competitive biding procedures for the Multipoint Distribution Service (MDS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations, and § 309(j) of the Act, which vests authority

in the Commission to conduct competitive bidding.

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for Multipoint Distribution Service via the competitive bidding procedures.

(c) Scope. The rules in this part apply only to authorizations and station licenses granted under the competitive bidding procedures of this section. This subpart contains some of the procedures and requirements for the issuance of authorizations to construct and operate multipoint distribution services. One also should consult Part 1, Subpart Q of the Commission's rules, §§ 21.1 through 21.406 and 21.900 through 21.920 of this Part, and other Commission rules of importance with respect to the licensing and operation of MDS stations.

§ 21.922 Authorized frequencies.

The frequencies in the MDS service through the competitive bidding process are in the frequency allocations table of § 21.901 of this Part.

§ 21.923 Eligibility.

Any individual or entity, other than those precluded by §§ 21.4 and 21.912 of this Part, is eligible to receive a Basic Trading Area (BTA) authorization and a station license for each individual MDS station within the BTA. There is no restriction on the number of BTA authorizations or MDS station licenses, including multiple cochannel station licenses, sought by or awarded to a qualified individual or entity.

§ 21.924 Service areas.

(a) MDS service areas are regional Basic Trading Areas (BTAs) which are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The BTA Map is available for public inspection at the public reference room, Multipoint Distribution Service, Video Services Division, Mass Media Bureau, Room 207, 2033 M Street, NW., Washington, DC.

(b) The following additions will be available for licensing separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayagüez/Aguadilla-Ponce, Puerto Rico; and the United States Virgin Islands.

(c) The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service excludes the protected service areas of any incumbent MDS stations and the registered receive sites of previously authorized or proposed ITFS stations.

§ 21.925 Applications for BTA authorizations and MDS station licenses.

(a) (1) An applicant must file a short-form application and, when necessary, the short-form application supplement, identifying each BTA service authorization sought.

(2) For purposes of conducting competitive bidding procedures, short-form applications are considered to be mutually exclusive with each other if they were filed for, and specified the same, BTA service area.

(b) Separate long-form applications must be filed for each individual MDS station license sought within its the protected service area of a BTA or PSA, including:

(1) an application for each E-channel group, F-channel group, and single H, 1, and 2A channel station license sought;

(2) an application for authority to operate at an MDS station in the area vacated by an MDS station incumbent that has forfeited its station license; and

(3) an application for each ITFS-channel group station license sought in accordance with §§ 74.990 and 74.991.

(c) The Commission shall grant BTA authorizations to auction winners as set forth in § 21.958.

(d) No long-form application filed by the BTA authorization holder will be accepted prior to completion of the competitive bidding process and no long-form application will be granted until expiration of the 30-day petition to deny period following the public notice listing of the application as being accepted for filing

(e) Applicants may use the electronic filing procedures to file both the Multipoint Distribution Service short-form and long-form applications with the Commission.

§ 21.926 Amendments to long-form applications.

(a) A Multipoint Distribution Service long-form application may be amended as a matter of right up to the date of the public notice announcing the application has been accepted for filing provided that:

(1) the proposed amendments do not amount to more than a *pro forma* change of ownership and control;

(2) the Commission has not otherwise forbidden the amendment of pending applications.

(b) Requests to amend a long-form application placed on public notice as being accepted for filing may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record.

§ 21.927 Sole bidding applicants.

Where the deadline for filing MDS short-form applications has expired and a particular BTA service area has been specified in a single short-form application only, the applicant shall be named the auction winner for that BTA authorization.

§ 21.928 Acceptability of short- and long-form applications.

The acceptability of short- and long-form applications will be determined according to the requirements of §§ 21.13, 21.15, 21.20, 21.21 and 21.952.

§ 21.929 Authorization period for station licenses.

Notwithstanding § 21.45, each new MDS station licensed within a BTA or PSA will be granted for a term of ten years, terminating ten years from the date the Commission declared bidding closed in the MDS auction.

§ 21.930 Five-year build-out requirements.

(a) (1) A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area.

(2) This period is not extended by the grant of subsequent authorizations (*i.e.*, grant of a station license or modification).

(3) Timely certifications of completion of construction for each MDS station within a BTA or partitioned service area must be filed upon completion of construction of a station.

(b) Each BTA authorization holder has the exclusive right to build, develop, expand and operate MDS stations within its BTA service area during the five-year build-out period. The Commission will not accept competing applications for MDS station licenses within the BTA service area during this period.

(c) (1) Within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to § 21.907 that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations.

(2) Sixty days prior to the end of the five-year build out period, the BTA authorization holder must file with the Commission proof that demonstrates the holder has met the requirements of § 21.930(c)(1). The most recent census figures available from the U.S. Department of Commerce, Bureau of Census prior to the expiration of the

authorization holder's five-year build-out period will be used to determine compliance with population-based requirements. In no event shall census figures gathered prior to 1990 be used.

(d)(1) If the Commission finds that the BTA authorization holder has demonstrated that it has met the requirements of § 21.930(c)(1), the Commission will issue a declaration that the holder has met such requirements.

(2) If the Commission finds that the BTA authorization holder has not provided a signal as required in § 21.930(c)(1), the Commission shall partition from the BTA any unserved area, using county lines as a guide, and shall re-authorize service to the unserved area pursuant to the MDS competitive bidding procedures of this subpart. Applications for such unserved areas are not acceptable for filing until a filing date is announced through a public notice.

(i) The competitive bidding procedures set forth in §§ 21.950 to 21.961 shall be followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

(ii) The BTA authorization holder originally authorized to provide service is ineligible to participate in the competitive bidding process for the unserved areas partitioned from its BTA.

§ 21.931 Partitioned service areas (PSAs).

(a) (1) The holder of a BTA authorization may enter into contracts with eligible parties to partition any portion of its service area according to county boundaries, or according to other geopolitical subdivision boundaries, or multiple contiguous counties or geopolitical subdivisions within the BTA service area.

(2) (i) Partitioning contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned and include any documentation necessary to convey to the Commission the precise boundaries of the partitioned area.

(3) Parties to partitioning contracts must file concurrently with such contracts one of the following, where appropriate:

(i) an MDS long-form application for authority to operate a new MDS station within the PSA;

(ii) applications for assignment or transfer of existing stations with the PSA; or

(iii) a statement of intention as defined in § 21.956(a) along with a completed FCC Form 430.

(b) The eligibility requirements applicable to BTA authorization holders also apply to those individuals and entities seeking PSA authorizations.

(c) Any individual or entity acquiring the rights to a partitioned area of a BTA also acquires the rights to any previously authorized individual stations located within the partitioned area that were held by the previous authorization holder, provided that grantable applications for assignment and transfer of control, FCC Forms 702 and 704, are filed for existing stations and that acceptable amendments to pending long-form applications are filed. Pending long-form applications filed by the previous authorization holder for transmitter sites within the PSA may also be dismissed without prejudice at the applicant's request.

(d) Authorizations for PSAs will be issued in accordance with § 21.958; however, when individual stations within an PSA are assigned along with the partitioned area, the authorization will be granted concurrently with the grant of the applications for assignment and transfer of the existing stations.

(e) Subsequent to issuance of the authorization for a PSA, thee partitioned area will be treated as a separate protected service area.

(f) (1) When any area within a BTA becomes a PSA, the remaining counties and other geopolitical subdivisions within that BTA will also be subsequently treated and classified as a PSA(s).

(2) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a PSA authorization to the former BTA authorization holder.

(g) The duties and responsibilities imposed upon BTA authorization holders in this part and throughout the Commission's rules, such as § 21.930(c)(1), apply to the holders of PSA authorizations.

(h) The build-out period for PSAs voluntarily partitioned shall be the remainder of the five-year build-out period applicable to the BTA or PSA from which the PSA was drawn. For PSA authorizations issued pursuant to § 21.930(d)(2) and the competitive bidding process, the build-out period is five years, beginning on the date of the grant of the PSA authorization. The requirements of § 21.930(c)(1) also apply to the holders of authorizations for PSAs.

§ 21.932 Forfeiture of incumbent MDS station licenses.

(a) If the license for a incumbent MDS station is forfeited, absent the filing and grant of a petition for reinstatement pursuant to § 21.44(b), the 56.33 km (35 mile) protected service area of the incumbent station shall dissolve and the protected service area shall become part of the BTA or PSA surrounding it.

(b) If upon forfeiture the protected service area of a forfeited license extends across the boundaries of more than one BTA or PSA, the portions of the protected service area of the incumbent station shall merge with the overlapping BTAs or PSAs.

(c) The holder of the authorization for the BTA or PSA with which the service area of the forfeited incumbent station has merged has the exclusive right to file a long-form application to operate a station within the merged area and may modify the locations of its stations to serve the forfeited area.

§ 21.933 Protected service areas.

(a) The stations licensed to the holder of a BTA authorization shall have a protected service area that is coterminous with the boundaries of that BTA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and the registered sites of previously proposed and authorized ITFS facilities within that BTA.

(b) The stations licensed to the holder of a PSA authorization shall have a protected service area that is coterminous with the boundaries of the counties or other geopolitical subdivisions comprising the PSA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and the registered receive sites of previously proposed and authorized ITFS facilities within that PSA.

§ 21.934 Assignment or transfer of control of BTA authorizations.

(a) (1) A BTA or PSA authorization holder seeking approval for a transfer of control or assignment of its authorization within three years of receiving such authorization through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its authorization was obtained through competitive bidding.

(2) Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would

receive in return for the transfer or assignment of its authorization. This information should include not only a monetary price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) Transfers of control or assignments of BTA or PSA authorizations are subject to the limitations of §§ 21.4, 21.900 and 21.912 of this subpart.

(c) The anti-trafficking provision of § 21.39 does not apply to the assignment or transfer of control of a BTA or PSA authorization, which was granted pursuant to the Commission's competitive bidding procedures.

§ 21.935 Assignment or transfer of control of station licenses within a BTA.

Licenses for individual stations within a BTA or PSA area issued to authorization holders may not be transferred or assigned unless they are acquired as part of a PSA.

§ 21.936 Cancellation of authorization.

(a) The Commission may revoke or cancel a BTA or PSA authorization for gross misconduct, misrepresentation or bad faith on the part of the authorization holder.

(b) Cancellation of a BTA or PSA authorization shall result in termination of any rights the authorization holder holds in individual proposed or authorized stations within the BTA or PSA.

§ 21.937 Negotiated interference protection.

(a) The level of acceptable electromagnetic interference that occurs at or within the boundaries of BTAs, PSAs, or an incumbent MDS station's 56.33 km (35 mile) protected service area can be negotiated and established by an agreement between the appropriate parties, provided that:

(1) the parties to such an agreement file with the Commission a written statement of no objection, acknowledging that the parties have agreed to accept a level of interference that does not meet the protection standards set forth in §§ 21.902 or 21.938 of the Commission's rules;

(2) the statement bears the signatures of all parties to the agreement, or the signatures of their representative agents; and

(3) the statement is filed with the Commission within 30 days of its ratification or file in conjunction with an application with which the agreement is associated, whichever is earliest.

§ 21.938 BTA and PSA technical and interference provisions.

(a) BTA or PSA authorization holders are expected to cooperate with one another by designing their stations in a manner that protects service in adjoining BTAs and PSAs including consideration of interference abatement techniques such as cross polarization, frequency offset, directional antennas, antenna beam tilt, EIRP decrease, reduction of antenna height, and terrain shielding.

(b) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, stations licensed to a BTA or PSA authorization holder must not cause harmful electromagnetic interference to the following:

(1) the protected service area of other authorization holders in adjoining BTAs or PSAs.

(2) the 56.33 km (35 mile) protected service areas of authorized or previously proposed MDS stations (incumbents).

(3) registered receive sites and protected service areas of authorized or previously proposed stations in the Instructional Television Fixed Service pursuant to the manner in which interference is defined in § 74.903(a).

(c) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, it shall be the responsibility of a BTA or PSA authorization holder to correct at its expense any condition of harmful electromagnetic interference caused to authorized MDS service at locations within other BTAs or PSAs or within the 56.33 km (35 mile) protected service areas of authorized or previously proposed MDS stations (incumbents).

(d) Unless specifically expected, BTA or PSA authorization holders are governed by the interference protection and other technical provisions applicable to the Multipoint Distribution Service.

(e) The calculated free space power flux density from a station may not exceed -73 dBW/m^2 at locations on BTA or PSA boundaries for which there is an unobstructed signal path from the transmitting antenna to the boundary, unless the applicant has obtained the written consent of the authorization holder for the adjoining BTA or PSA.

(f) (1) Authorization holders for BTAs or PSAs must notify authorization holders of adjoining areas of their application filings for new or modified stations; provided the proposed facility would produce an unobstructed signal path anywhere within the adjoining BTA or PSA.

(2) This service of written notification must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(3) With regard to incumbent MDS stations, authorization holders for BTAs or PSAs must comply with the requirements of § 21.902.

(g) Where a PSA adjoins a BTA and both authorizations are held by the same individual or entity, the PSA shall be considered an extension of the protected service area of the BTA regarding the interference protection, limiting signal strength, and notification provisions of this section.

§ 21.939 Harmful interference abatement.

In the event harmful interference occurs or appears to occur, after notice and an opportunity for a hearing, Commission staff may require any Multipoint Distribution Service conditional licensee or licensee to:

(a) modify the station to use cross polarization, frequency offset techniques, directional antenna, antenna beam tilt, or

(b) order an equivalent isotropically radiated power decrease, a reduction of transmitting antenna height, a change of antenna location, a change of antenna radiation pattern, or a reduction in aural signal power.

§§ 21.940 through 21.949 [Reserved]

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive MDS initial applications are subject to competitive bidding. The general procedures set forth in 47 C.F.R. Chapter I, Part 1, Subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive MDS applicants, unless otherwise provided in 47 C.F.R. Chapter I, Part 21, Subpart K.

§ 21.951 MDS competitive bidding procedures.

(a) The following competitive bidding procedures will generally be used in MDS auctions. Additional, specific procedures may be set forth by public notice. The Commission may also design and test alternative procedures. *See* 47 C.F.R. §§ 1.2103 and 1.2104.

(1) Competitive bidding design. Simultaneous multiple round bidding will be used in MDS auctions, unless the Commission specifies by public notice the use of sequential oral (open outcry) bidding or sealed bidding (either sequential or simultaneous). Combinatorial bidding may also be used with any type of auction design.

(2) Competitive bidding mechanisms. The Commission may utilize the following mechanisms in MDS auctions:

(i) Sequencing. The Commission will establish and may vary the sequence in which the BTA service areas will be auctioned.

(ii) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinational bidding, the Commission will determine which BTA service areas will be auctioned simultaneously or in combination.

(iii) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a BTA service area subject to auction will not be awarded.

(iv) Minimum bid increments. The Commission will, by announcement before or during an MDS auction, require minimum bid increments in dollar or percentage terms.

(v) Stopping rules. The Commission will establish stopping rules before or during multiple round MDS auctions in order to terminate an auction within a reasonable time.

(vi) Activity Rules. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, the Commission will allow bidders to request and to receive automatically waivers of such rule, the number of which will be determined by the Commission.

(vii) Suggested minimum bid. The Commission may establish suggested minimum bids on each BTA service area subject to auction. Bids below the suggested minimum bid would count as activity under the activity rule only if no bids at or above the suggested minimum bid are received.

(b) Identities of bidders. The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers. The Commission will announce by public notice before the MDS auction where the bidders' identities will be revealed.

(c) Commission control of auction. The Commission may delay, suspend, or cancel an MDS auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 21.952 Bidding application procedures.

(a) Short-form applications. To participate in MDS auctions, all applicants must submit short-form applications, along with all required certifications and exhibits specified by such forms, pursuant to the provisions of § 1.2105(a) and any Commission public notices. See 47 CFR 1.2105(a).

(b) Filing of short-form applications. Prior to any MDS auction, the Commission will issue a public notice announcing the availability of BTA service areas and, in the event that mutually exclusive short-form applications (as defined by § 21.925(a)(2)) are filed, the date of the auction for those BTA service areas. This public notice also will specify the date on or before which applicants intending to participate in an MDS auction must file their short-form applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the material which must accompany the forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

(c) Modification and dismissal of short-form applications.

(1) Any short-form application that is not signed in some manner or form, including by electronic means, and does not contain all requisite certifications is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. Such short-form application will be dismissed with prejudice.

(2) The Commission will provide bidders a limited opportunity to cure certain defects specified herein and to resubmit an amended short-form application. For MDS, we classify all amendments to a short-form application as major, except those to correct minor errors or defects, such as typographical errors, or those to reflect ownership changes or formation of bidding consortia or joint bidding arrangements specifically permitted under § 21.953. A short-form application may be modified to make minor amendments. However, applicants who fail to correct defects in their short-form applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(3) A short-form application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

§ 21.953 Prohibition of collusion.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, after the filing of short-form applications, all applicants in an MDS auction are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the winning bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicant's short-form application. Communications among applicants concerning matters unrelated to the MDS auction will be permitted after the filing of short-form applications.

(b) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same BTA service area.

(c) After the filing of short-form applications, applicants may make agreements to bid jointly for BTA service areas, provided the parties to the agreement have not applied for the same service areas.

(d) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may, under the circumstances specified in § 1.2105(c)(4), acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for the same BTA service areas. See 47 CFR 1.2105(c)(4).

(e) To reflect the changes in ownership or in the membership of consortia or joint bidding arrangements specified in paragraphs (b), (c) and (d) of this section, applicants must amend their short-form applications by submitting a revised short-form application, filed within two business days of any such change; such modifications will not be considered major amendments of the applications within the meaning of § 21.952(c)(2). However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form.

(f) For purposes of this section, the terms ''applicant'' and ''bids or bidding strategies'' are defined as set forth in 47 CFR 1.2105(c)(5).

§ 21.954 Submission of up front payments.

(a) The Commission will require applicants to submit an upfront payment prior to the MDS auction. The amount of the upfront payment for each BTA service area being auctioned and the procedures for submitting it will be set forth in a public notice. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. No interest will be paid on upfront payments.

(b) For MDS auctions, the Commission will require each applicant to submit an upfront payment equal to the largest combination of activity units (as defined in the Commission's activity rules established pursuant to § 21.951(a)(2)(vi)) associated with the BTAs on which the applicant anticipates being active in any single round or bidding. Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c). If an upfront payment is not in compliance with the Commission's rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will be ineligible to bid, its application will be dismissed, and any upfront payment it has made will be returned.

(c) The upfront payment(s) of a bidder will be credited toward any down payment required for the BTA service areas on which the bidder is the winning bidder. Where the upfront payment amount exceeds the required down payment of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal payments are owned by that bidder. In the event a payment is assessed pursuant to § 21.959(a) for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the winning bidder may have.

§ 21.955 Submission of down payments

(a) After bidding has ended on all BTA service areas, the Commission will identify and notify the winning bidders and declare the bidding closed in the MDS auction. Within five (5) business days after being notified that it is a winning bidder on a particular BTA service area(s), a winning bidder must submit to the Commission's lockbox bank such additional funds as are necessary to bring its total deposits (upfront payment plus down payment) up to twenty (20) percent of its winning bid(s). This down payment may be made by wire transfer or by cashier's check in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(b) Winning bidders who are small businesses eligible for installment payments under § 21.960(b) are only required to bring their total deposits up to ten (10) percent of their winning bids. Such small businesses must pay the remainder of the twenty (20) percent down payment within five (5) business days following release of the public notice stating that their BTA authorizations are ready to be issued.

(c) Down payments will be held by the Commission until the winning bidder has been issued its BTA authorization and has paid the remaining balance of its winning bid, in which case it will not be returned, or until the winning bidder is found unqualified to be a station licensee or has defaulted, in which case it will be returned, less applicable default payments. No interest will be paid on any down payment.

§ 21.956 Filing of long-form applications or statements of intention.

(a) (1) Within 30 days of being notified of its status as a winning bidder, each winning bidder for a BTA service area will be required to submit either:

(i) an initial long-form application for an MDS station license, along with any required exhibits; or

(ii) a statement of intention with regard to the BTA service area, along with any required exhibits, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA.

(2) A winning bidder that fails to submit either the initial long-form application or statement of intention as required under this section, and fails to establish good cause for any late-filed application or statement, shall be deemed to have defaulted and will be subject to the payments set forth in § 21.959(a).

(b) Each initial long-form application for an MDS station license within an auction winner's BTA service area, and each statement of intention with regard to an auction winner's BTA service area, must also include the following:

(1) FCC Form 430;

(2) an exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 CFR 1.207(d));

(3) an exhibit complying with 47 CFR §§ 1.2110(i) and 21.960(e), if the winning bidder submitting the long-from application or statement of intention claims status as a designated entity. (c) Subsequent long-form applications for additional MDS station licenses within the BTA service areas of winning bidders may be submitted at any time during the five year build-out period and need not contain the exhibits specified in paragraph (b)(2) through (3) of this section.

§ 21.957 Petitions to deny against long-from applications; comments on statements of intention.

(a) Within thirty (30) days after the Commission gives public notice that a long-form application for an MDS station license submitted by a winning bidder within its BTA service area has been accepted for filing, petitions to deny that application may be filed. Any such petitions and oppositions thereto must comply with the requirements of §§ 47 CFR 1.2108 and 21.30.

(b) Parties wishing to comment on or oppose the issuance of a BTA authorization issued in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

§ 21.958 Full payment and issuance of BTA authorizations.

Each winning bidder, except for small businesses eligible for installment payments under § 21.960(b), must pay the balance of its winning bid for its BTA service area(s) in a lump sum within five (5) business days following the release of the public notice stating

that the BTA authorization(s) is ready to be issued. A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to § 21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to § 21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

§ 21.959 Withdrawal, default and disqualification.

(a) When the Commission conducts an MDS simultaneous multiple round auction, the Commission will impose additional payment requirements on bidders who withdraw high bids during the course of an auction, who default on down or full payments due after an auction closes, or who are disqualified. The withdrawal and default payments set forth below will be deducted from any upfront payments or down payments that the withdrawing, defaulting or disqualified bidder has deposited with the Commission.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(2) Default or disqualification after close of auction. If a winning bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (1) above, plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three percent payment will be calculated based on the defaulting bidder's bid amount.

(b) If the Commission were to conduct a sequential oral (open outcry) auction or sealed bid auction for MDS, the Commission may modify the payments set forth in paragraph (a) of this section to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified in paragraph (a) of this section.

(1) In the case of sealed bidding:

(i) If a bid is withdrawn before the Commission releases the initial public notice announcing the winning bidder(s), no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission release the initial public notice announcing the winning bidder(s), the bid withdrawal payment will be equal to the difference between the high bid amount and the amount of the next highest bid. Losing bidders will only be subject to this bid withdrawal payment for a period of thirty (30) days after the Commission release the initial public notice announcing the winning bidders.

(2) In the case of oral sequential (open outcry) bidding:

(i) If a bid is withdrawn before the bidder has declared the bidding to be closed for the BTA service area bid on, no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission has declared the bidding to be closed for the BTA service area bid on, the bid withdrawal payment of paragraphs (a)(1) and (2) of this section will apply.

(c) If a winning bidder withdraws it bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in paragraph (a)(2) of this section. In such event, the Commission may either re-auction the BTA service area to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.

(d) A winning bidder who is found unqualified to be an MDS station licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in paragraph (a)(2) of this section. In such event, the Commission will generally conduct another auction for the BTA service area, affording new parties an opportunity to file applications for such service area.

(e) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the MDS competitive bidding process may be subject, in addition to any other applicable sanctions, to loss of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 21.960 Designated entity provisions for MDS.

(a) Designated entities. As specified in this section, designated entities that are winning bidders for BTA service areas are eligible for special incentives in the auction process. See 47 CFR 1.2110.

(b) Installment payments. Small businesses and small business consortia may elect to pay the full amount of their winning bids for BTA service areas in installments over a ten (10) year period running from the date that their BTA authorizations are issued.

(1) Each eligible winning bidder paying for its BTA authorization(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 21.955 sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable for the payments set forth in § 21.959(a)(2).

(2) Within five (5) business days following release of the public notice stating that the BTA authorization of a winning bidder eligible for installment payments is ready to be issued, the winning bidder shall pay another ten (10) percent of its winning bid, thereby commencing the eligible bidder's installment payment plan. The Commission will issue the BTA authorization to the eligible winning bidder within ten (10) business days following notification of receipt of this additional ten (10) percent payment. Failure to remit the required payment will make the bidder liable for the payments set forth in § 21.959(a)(2).

(3) Upon issuance of a BTA authorization to a winning bidder eligible for installment payments, the Commission will notify such eligible BTA authorization holder of the terms of its installment payment plan. For MDS, such installment payment plans will:

(i) impose interest based on the rate of ten (10) year U.S. Treasury obligations at the time of issuance of the BTA authorization, plus two and one half (2.5) percent;

(ii) allow installment payments for a ten (10) year period running from the date that the BTA authorization is issued;

(iii) begin with interest-only payments for the first two (2) years; and

(iv) amortize principal and interest over the remaining years of the ten (10) year period running from the date that the BTA authorization is issued.

(4) A BTA authorization issued to an eligible winning bidder that elects installment payments shall be conditioned upon the full and timely performance of the BTA authorization holder's payment obligations under the installment plan.

(i) If an eligible holder making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a holder may request that the Commission permit a three (3) to six (6) month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the holder's payment history, including whether the holder has defaulted before, how far into the payment period the default occurs, the reasons for default, whether the holder has met construction build-out requirements within its BTA service area, the holder's financial condition, and whether the holder is seeking an eligible buyer. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining years of the ten (10) year payment period.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the BTA authorization will automatically cancel and the Commission will initiate debt collection procedures pursuant to Part 1, Subpart O of the Commission's rules.

(5) Unjust enrichment.

(i) If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(ii) If a BTA authorization holder that utilizes installment financing under this subsection seeks to make any change in ownership structure that would result in the holder losing eligibility for installment payments, the holder shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change in ownership structure as a condition of approval. Increases in gross revenues that result from revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(c) Reduced upfront payments. A prospective bidder that qualifies as a small business, or as a small business consortia, is eligible for a twenty-five (25) percent reduction in the amount of the upfront payment required by § 21.954. To be eligible to bid on a particular BTA, a small business will be required to submit an upfront payment equal to seventy-five (75) percent of the upfront payment amount specified for that BTA in the public notice listing the upfront payment amounts corresponding to each BTA service area being auctioned.

(d) Bidding credits. A winning bidder that qualifies as a small business, or as a small business consortia, may use a bidding credit of fifteen (15) percent to lower the cost of its winning bid on any of the BTA authorizations awarded in the MDS auction.

(1) Unjust enrichment.

(i) If a BTA authorization holder that utilizes a bidding credit under this subsection seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before assignment or transfer will be permitted. The amount of the required reimbursement will be reduced over time. An assignment or transfer in the first two years after issuance of the BTA authorization will result in a reimbursement of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement.

(ii) If a BTA authorization holder that utilizes a bidding credit under this subsection seeks to make any change in ownership structure that would result in the holder losing eligibility for bidding credits, the holder shall first seek Commission approval and must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, as a condition of approval. The amount of the required reimbursement will be reduced over time. Such a change in ownership structure in the first two years after issuance of the BTA authorization will result in the reimbursement of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement. Increases in gross revenues that result from revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(e) Short-form application certification; Long-form application or statement of intention disclosure. An MDS applicant claiming designated entity status shall certify on its short-form application that it is eligible for the incentives claimed. A designated entity that is a winning bidder for a BTA service area(s) shall, in addition to information required by § 21.956(b), file an exhibit to either its initial long-form application for an MDS station license, or to its statement of intention with regard to the BTA, which discloses the gross revenues for each of the past three years of the winning bidder and its affiliates. This exhibit shall describe how the winning bidder claiming status as a designated entity satisfies the designated entity eligibility requirements, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. *See* 47 CFR 1.2110(i).

(f) Records maintenance. All holders of BTA authorizations acquired by auction that claim designated entity status shall maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest shall maintain such files for a ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

(g) Audits. BTA authorization holders claiming eligibility under designated entity provisions shall be subject to audits by the Commission, using in-house or contract resources. Selection for an audit may be random, on information, or on the basis of other factors. Consent to such audits is part of

the certification included in the short-form application. Such consent shall include consent to the audit of the holders' books, documents and other material (including accounting procedures and practices), regardless of form or type, sufficient to confirm that such holders' representations are, and remain, accurate. Such consent shall also include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business or keeping records regarding licensed MDS offerings, and shall also include consent to the interviewing of principals, employees, customers, and suppliers of the BTA authorization holders.

§ 21.961 Definitions applicable to designated entity provisions.

(a) Scope. The definitions in this section apply to § 21.960, unless otherwise specified in that section.

(b) Small business; consortium of small businesses

(1) A small business is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

(2) Attribution and aggregation of gross revenues

(i) Except as specified in paragraph (b)(2)(ii) of this section, the gross revenues of the applicant (or BTA authorization holder) and its affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or holder) is a small business.

(ii) Where an applicant (or BTA authorization holder) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(3) A small business consortium is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the preceding relevant number of calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the preceding relevant number of fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(d) The definition of an affiliate of an applicant is set forth in 47 CFR 1.2110(b)(4).

[FR Doc. 95–17237 Filed 7–14–95; 8:45 am]

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Federal Register

Monday
July 17, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Confederated Tribes of the Chehalis Reservation Liquor Ordinance; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Confederated Tribes of the Chehalis Reservation Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that by Resolution No. 95–23, the Confederated Tribes of the Chehalis Reservation Liquor Ordinance was duly adopted by the Confederated Tribes of the Chehalis Reservation Business Committee on May 1, 1995. The Ordinance provides for the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Chehalis Reservation under the jurisdiction of the Confederated Tribes of the Chehalis Reservation. We understand from the Tribe that notices of the Tribe's intent to cancel or suspend a license under Part III, subsection 3.3.4, may be contested and reviewed in tribal court. Amendments to the ordinance pursuant to Part IV, section 4.2, may be effective as to tribal members prior to publication in the **Federal Register** but are not effective as to non-members until published in the **Federal Register**.

DATES: The Ordinance is effective as of July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240–4001, telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Confederated Tribes of the Chehalis Reservation Liquor Ordinance is to read as follows:

Confederated Tribes of the Chehalis Indian Reservation Tribal Liquor Control Ordinance

Part I. Policy and Definitions

Section 1.1. Public Policy Declared

This Tribal Liquor Control Ordinance shall be cited as the ''Chehalis Tribal Liquor Control Ordinance'' (the ''Ordinance''). Under the inherent sovereignty of the Confederated Tribes of the Chehalis Indian Reservation (the ''Tribe''), this Ordinance shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe. It is further the Tribe's policy to assure that any transaction, importation, sale or consumption involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this Ordinance, the laws of the United States and where applicable, the State of Washington.

Section 1.2. Definitions

The stated terms are defined as follows:

a. ''Alcoholic Beverage'' shall mean any intoxicating liquor, beer or any wine, as defined under the provisions of this Ordinance or other applicable law;

b. ''Business Committee'' shall mean the Tribal Business Committee of the Confederated Tribes of the Chehalis Indian Reservation, which is its governing body.

c. ''Legal Age'' shall mean the age requirements, as defined in Part II, Section 2.2.

d. ''Sale'' shall mean the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage by any means whatsoever for a consideration of currency exchange.

Section 1.3. General Prohibition

It shall be a violation of Tribal law to manufacture for sale, to sell, offer or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 1.4. Tribal Control of Alcoholic Beverages

The Business Committee shall have the sole and exclusive right to authorize the importation of alcoholic beverages into the Chehalis Reservation and Indian country over which the Chehalis Tribe has jurisdiction for sale or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverages into the Chehalis Reservation or Indian country over which the Chehalis Tribe has jurisdiction unless authorized by the Business Committee to do so.

Section 1.5. Community On-Site Sales

The Business Committee shall establish and maintain within the Chehalis Reservation a casino, including full-service restaurant, deli and bar, all of which are located within the casino facility, which shall be authorized to store and sell alcoholic beverages in conjunction with the operation of the restaurant, deli and bar and in accordance with the provisions of this Ordinance. The Business Committee shall set the prices of alcoholic beverages sold.

Section 1.6. State of Washington Licenses and Agreements

The Tribe/casino/licensee/operator may negotiate an agreement or obtain a State of Washington liquor license for any tribally-operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages to the extent required by applicable law in order to allow the Tribe to sell liquor on the Reservation or in Indian country under its control.

Part II. Compliance With the Laws of the State of Washington

Section 2.1. Applicability of State Law

The Tribe and its agents shall act in conformity with State laws regarding the sale of liquor to the extent required by applicable Federal law, including 18 U.S.C. 1161.

Section 2.2. Persons Under 21 years of Age: Restrictions

The Tribe shall comply with the State of Washington laws regarding restrictions on the sale of alcoholic beverages to persons under the age of 21 years in any tribal establishment operating pursuant to the provisions of this Ordinance.

Section 2.3. Restrictions on Intoxicated Persons

No tribally-operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

Section 2.4. Hours and Days of Sale

Any tribally-operated or licensed establishment shall sell or furnish alcoholic beverages for on-site consumption only during hours or on days which are in compliance with applicable Washington law.

Part III. Tribal Licensing and Regulation

Section 3.1. Power to license and Tax

The power to establish tribal licenses and levy taxes under the provision of this Ordinance is vested exclusively with the Tribe's Business Committee. If the Business Committee enters into any agreements with the State regarding the sale of liquor, the agreement shall be deemed to constitute tribal law.

Section 3.2. Tribally-Owned Establishments

The Business Committee can issue, by resolution, an appropriate license to a

Tribally-owned establishment upon determining the site for the establishment and obtaining the necessary licensing or agreement from the State of Washington.

Section 3.3. License of Retail Sales

3.3.1 The Business Committee shall have the power to issue licenses to any tribal or state chartered corporation, individual or partnership or other entity to undertake any sale or transaction which the Tribe itself has the power to undertake under this Ordinance for the sale of alcoholic beverages at a retail store.

3.3.2 Applications for a license shall be submitted in the form prescribed by the Business Committee or its authorized employees. The Business Committee may, within its sole discretion and subject to the conditions in this Ordinance, issue or refuse to issue the license applied for upon payment of such fee as the Business Committee may prescribe.

3.3.3 Every license shall be issued in the name of the applicant and no license shall be transferable or assignable without the written approval of the Business Committee, nor shall the licensee allow any other person or entity to use the license.

3.3.4 The Business Committee may, for violations of this Ordinance, suspend or cancel any license. A license is a privilege and no person shall have vested rights therein. Prior to cancellation or suspension of a license, the Business Committee shall send notice of its intent to cancel or suspend the license to the licensee.

3.3.5 No license issued under this Ordinance shall be valid for a period longer than one year.

Section 3.4 Regulations

The Business Committee may, consistent with this Ordinance, adopt regulations it deems necessary to implement this Ordinance.

Part IV. Construction

Section 4.1 Severability

If any part of this Ordinance, or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the section or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 4.2 Amendment or Repeal of Ordinance

This Ordinance may be amended or repealed by a majority vote of the Business Committee. Amendments of this Ordinance need not be published in the **Federal Register** to become effective.

Section 4.3 Sovereign Immunity

Nothing in this Ordinance is intended, nor shall anything contained in it be construed, as a waiver of the sovereign immunity of the Confederated Tribes of the Chehalis Indian Reservation.

Section 4.4 Effective Date

This Ordinance shall be effective upon the date that the Secretary of the Interior certifies this Ordinance and publishes it in the **Federal Register**.

Section 4.5 Jurisdiction

Notwithstanding anything in this Ordinance to the contrary, nothing herein is intended, nor shall it be construed, as a grant of jurisdiction from the Confederated Tribes of the Chehalis Indian Reservation to the State of Washington beyond that provided by applicable law. The tribe shall operate in conformity with State law and Tribal law to the extent provided pursuant to 18 U.S.C. 1161.

Dated: June 16, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–17426 Filed 7–14–95; 8:45 am]

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Federal Register

Monday
July 17, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Narragansett Indian Tribe Liquor Ordinance; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Narragansett Indian Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. TC–95–0228.1, the Narragansett Indian Tribe Liquor Ordinance was duly adopted by the Narragansett Indian Tribal Council on February 28, 1995. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Narragansett Indian Reservation under the jurisdiction of the Narragansett Indian Tribe.

DATES: This Ordinance is effective as of July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Narragansett Indian Tribe Liquor Ordinance is to read as follows:

Liquor Ordinance of the Narragansett Indian Tribe

Chapter 1 Declaration of Authority and Purpose

1.1. Title. This ordinance shall be known as the ''Narragansett Liquor Ordinance''.

1.2. Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub.L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and by the authority of the Narragansett Tribal Council.

1.3. Purpose. (a) The purpose of this Ordinance is to regulate and control the possession, sale, and distribution of alcoholic beverages on the tribal lands of the Narragansett Indian Tribe. The introduction, possession, sale and distribution of alcoholic beverages on lands of the Narragansett Tribe is a matter of special concern to the Tribe. The enactment of a tribal ordinance governing the trafficking of alcoholic beverages will increase the ability of the tribal government to reasonably control the distribution and possession of alcoholic beverages, promote temperance, and at the same time provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

(b) Federal law currently prohibits the introduction of liquor into Indian country, 18 U.S.C. 1154, unless the tribe having jurisdiction over that Indian country enacts an ordinance authorizing such introduction in accordance with 18 U.S.C. 1161. Because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution or consumption of liquor within Indian country, the Tribal Council recognizes the need for strict regulation and control over liquor transactions within the Tribe's lands. The Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of our Tribal members, and to address specific tribal concerns relating to alcohol use on the Tribe's lands. All of the provisions of this Ordinance shall be liberally construed for the accomplishment of that purpose.

(c) The Tribal Council therefore finds that it is in the best interests of the Tribe to enact this Ordinance. The purchase, distribution, sale and consumption of alcohol shall take place only at tribally-owned enterprises and/or tribally licensed establishments operating within the exterior boundaries of the Reservation.

1.4. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register** in accordance with 18 U.S.C. 1161.

Chapter 2 Definitions

2.1. Definitions. [3–1–1] Unless the context otherwise requires, the words and phrases herein defined are used in this ordinance in the sense given them in the following definitions:

(a) ''Alcoholic beverage'' or ''beverage''—Any liquid which either by itself or by mixture with any other liquid or liquids is or may become fit for human consumption as a drink and which contains five-tenths of one percent (.5%) or more of alcohol by weight. Alcoholic beverage is synonymous with the term ''liquor'' as defined herein.

(b) ''Commission''—The Narragansett Tribal Gaming Commission.

(c) ''Convention''—To include conventions, banquets, political rallies, trade shows, exhibitions, charity balls and other similar gatherings in conformity with ordinances of the Tribe which are held primarily for persons over eighteen (18) years of age.

(d) ''His, him, he'' or other masculine gender pronoun shall apply to the female as well as the male gender without distinction.

(e) ''Intoxicating beverage''—A beverage which contains more than three and two-tenths percent (3.2%) of alcohol by weight.

(f) ''Malt beverage''—Any beverage which is usually produced at breweries, as distinguished from distilleries.

(g) ''Nonintoxicating beverage''—A beverage which contains not more than three and two-tenths percent (3.2%) of alcohol by weight.

(h) ''Reservation''—All lands of the Narragansett Tribe, title to which is held in trust by the United States.

(i) ''State''—The State of Rhode Island and any state or local entity granted any licensing or regulatory authority pursuant to the Alcoholic Beverage Laws of Rhode Island.

(j) ''Tavern''—Any house where the principal business is the furnishing of food and sleeping accommodations.

(k) ''Tribal lands''—All lands of the Narragansett Indian Tribe, whether title thereto is held in trust by the United States or in fee subject to restriction against alienation imposed by the United States.

(l) ''Victualing house''—Any shop or place where a substantial part of the business is the furnishing of food for consumption at the place where it is furnished.

(m) ''Wholesale quantities''—Malt beverages in excess of eight (8) gallons, or in excess of three (3) gallons as to any wine or any non-malt beverage consisting in whole or in part of alcohol produced by distillation.

(n) ''Wines''—All fermented alcoholic beverages made from fruits, flowers, herbs, or vegetables and containing not more than twenty-four percent (24%) of alcohol by volume at sixty degrees Fahrenheit (60°F), except cider containing not more than three percent (3%) or containing more than six percent (6%), of alcohol by weight at sixty degrees Fahrenheit (60°F).

Chapter 3 Powers of Enforcement

3.1. Powers of Enforcement. [3–2–2] There is hereby established a branch of the Tribal Gaming Commission known as the Liquor Division. This branch shall be constituted as an agency and department of the Tribal Gaming Commission. The Tribal Council, in furtherance of this ordinance, delegates the following powers and duties to the Narragansett Gaming Commission:

(a) To publish and enforce rules and regulations which shall be adopted by

the Tribal Council governing the sale, manufacture, distribution and possession of alcoholic beverages on tribal lands;

(b) To employ personnel as shall be reasonably necessary to allow the Commission to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale, manufacture, distribution and transportation of liquor on tribal lands;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in a court of competent jurisdiction to enforce this ordinance as necessary;

(f) To determine and seek damages for violations of this ordinance;

(g) To make such reports as may be required by the Tribal Council;

(h) To collect taxes and fees levied or set by the Tribal Council and to keep accurate records, books and accounts; and

(i) To exercise such other powers as may be delegated by the Tribal Council.

3.2. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Narragansett Tribe from suit without the express written consent of the Tribal Council.

3.3. Inspection Rights. [3–12–3] The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and the liquor laws of the Tribe are being complied with.

Chapter 4 Sales of Alcoholic Beverages

4.1. License Required. [3–5–1] No sales or distribution of alcoholic beverages shall be made within the Reservation, except at a tribally-licensed or tribally-owned business operated within the Reservation.

4.2. Sales Only on Reservation. All alcoholic beverage sales shall be on the Reservation. No alcoholic beverage sales shall be allowed within the exterior boundaries of tribal lands which are not held in trust.

4.3. Sales for Cash. All alcoholic beverage sales authorized herein shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with the use of credit cards such as Visa, Master Card, American Express, etc., with the exception of such other credit arrangements as set forth in the Tribe-State compact.

4.4. Sale for Personal Consumption. All sales and distribution of alcoholic beverages shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Tribe's trust lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Tribe's trust lands and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

4.5. Solicitation and Sales. No person shall act as a solicitor or salesman for a manufacturer or wholesaler of alcoholic beverages on the licensed premises without having obtained a proper permit from the State and the Commission. Any applicant for a tribal permit under this section shall file with the Commission, a true and correct copy of his/her current state permit which shall entitle that person to solicit and sell on any tribally licensed premises, provided he complies with the terms and conditions of the tribal permit as set by the Commission. Any revocation or termination of the State permit shall constitute a simultaneous revocation or termination of the tribal permit.

Chapter 5 Licensing

5.1. License Required for Sale, Distribution or Importation of Beverages. [3–5–1] In order to control the proliferation of establishments on the Tribe's trust lands which sell or provide alcoholic beverages by the bottle or by the drink, no person shall at any time sell or suffer to be sold or distributed or keep or suffer to be kept on his premises or possession or under his charge for the purpose of sale or distribution within the Tribe's trust lands any beverage unless licensed thereto by the Commission as hereinafter provided.

5.2. State licensing. No person shall be allowed or permitted to sell or distribute alcoholic beverages on the Reservation if he does not also have a license from the State of Rhode Island. If such license from the State shall be revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

5.3. Application. Any person applying for license to sell or distribute alcoholic beverages on the Reservation must fill in the application provided for this purpose by the Commission and pay such application fees as determined herein from time to time by the Commission. Said application must be filled out completely in order to be considered.

5.4. Issuance of License. The Tribal Gaming Commission may issue a license if it believes that such issuance is in the best interests of the Tribe and its members. All licenses to be issued hereunder shall be in such form as shall be prescribed by the Commission; and the license shall be held under such rules and regulations as the Commission shall impose, establish and authorize; and the Commission is hereby authorized to establish such rules and regulations as in their discretion in the public interest shall seem proper to be made. Notwithstanding any of the foregoing provisions of this section, the adoption or authorization of rules and regulations by the Commission, and the modification or repeal of any rules and regulations previously adopted, shall be by written order of the Commission and adopted in accordance with the then current procedures or by-laws for conducting official functions of the Commission.

5.5. Signature on Licenses-Posting and Exhibition. [3–5–18] Licenses issued hereunder shall bear the signature written by hand of the Chairman of the Narragansett Tribal Gaming Commission, or other such Tribal Gaming Commissioner as designated and delegated by the Chairman, and shall not be printed, stamped, typewritten, engraved, photographed or cut from one instrument and attached to another; and shall be kept posted in plain view by the licensee in a conspicuous position in the room or place licensed, and shall be exhibited on demand to any Gaming Commissioner, Tribal Law Enforcement Officer, or authorized federal or state official.

5.6. Contents of Licenses. Any beverage license issued by the Commission shall state with specificity the following:

(a) Name and address of the licensed person or entity;

(b) Name and address of licensed premises;

(c) An exact description/location of the licensed premises;

(d) The days and hours when beverages may be sold or distributed;

(e) The expiration date of the license;

(f) The types of beverages authorized under the license or permit;

(g) The class of licenses or permits issued by the Tribe and State.

5.7. Non-Transferability of Licenses. [3–5–19] All licenses issued by the Commission under this ordinance shall be deemed non-transferable without prior written authority of the Commission.

5.8. Premises Covered. [3–5–9] Not more than one (1) retail license shall be issued for the same premises. Every license shall particularly describe the place where the rights thereunder are to be exercised and beverages shall not be kept for sale or sold by any licensee except at the place so described in his license.

5.9. Licenses to Keep or Sell Legal Beverages Only-Minimum Size of Containers. [3–5–12] Only beverages which have been legally manufactured and on which all taxes and charges—tribal, federal and state (if applicable)—have been paid, shall be kept for sale or sold by a licensee. Holders of Class B and J retailer's licenses shall not have on the licensed premises distilled or wine beverages in the containers, nor bottles, flasks or containers of less capacity than twenty-three ounces (23 oz.). Holders of Class B-H retailer's licenses are authorized to keep for sale and to sell distilled beverages in containers of a minimum capacity of fifty milliliters (50 mls.) or one and seven-tenths ounces (1.7 oz.).

5.10. Revocation or Suspension of Licenses; Fines for Violating Conditions of License. [3–5–21]

(a) Every license shall be subject to revocation or suspension, and the licensee shall be subject to civil fine by the Commission for breach by the holder thereof of the conditions on which it was issued, or for violation by the holder thereof of any rule or regulation applicable thereto, or for breach of any provisions of this section. Any revocation or suspension of a license or permit by the State shall constitute a simultaneous revocation or suspension by the Commission and no person or entity holding a license issued under this Ordinance shall be deemed to have acquired any vested interest therein. Any reinstatement of a license or permit by the State shall not constitute a reinstatement of the corresponding tribal license; the licensee must seek separate reinstatement of the tribal license from the Commission.

(b) Any fine imposed pursuant to this section shall not exceed Five Hundred Dollars ($500) for the first violation and shall not exceed One Thousand Dollars ($1,000) for each subsequent violation. For the purposes of this section, any violation committed by a licensee more than three (3) years after a previous violation shall be considered a first violation.

5.11. Revocation and Suspension of Tribal License or Permit. Unless otherwise stated in the notice of suspension or revocation, the licensee shall cease any business conducted by authority of the license within 24 hours. Notice may be served by United States mail, or by personal delivery to the licensee, or by delivery to the licensed premises.

5.12. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of the issuance.

5.13. Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of Rhode Island; provided, however, that the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Narragansett Tribe.

Chapter 6 Classes of Licenses

6.1. Classes of Licenses. There shall be several classes of tribal beverage licenses.

6.2. Class B License. [3–7–7]

(a) A retailer's license, Class B, shall be issued only to a duly licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m. and beverages may be sold or served to the maximum extent permitted by the laws of the State, except as otherwise limited by the Commission or other applicable law. It shall authorize the holder thereof to keep for sale and sell beverages including beer in cans, at retail at the place therein described and to deliver the same for consumption on the premises or place where sold, but only at tables or lunch bars where food is served; and it shall also authorize the charging of a cover, minimum or door charge; provided, however, that the amount of the cover, minimum or door charge shall be posted at the entrance of the establishments in a prominent place; provided, however, that holders of licenses shall not be permitted to hold dances within the licensed premises, unless proper permits have been obtained from the applicable licensing authorities; provided further, however, that any holder of a Class B license may upon the approval of the Tribe and State licensing authority, and for additional payment to the Commission of Five Hundred Dollars ($500) open for business at twelve o'clock (12:00) p.m.

(b) A holder of a retailer's license, Class B, shall be allowed to erect signs advertising his business and products sold on the premises, including neon signs, and shall be allowed to light those signs during all lawful business hours, including Sundays and holidays.

(c) The annual fee for the license shall be, for a tavern keeper $400–$1,500 and for a victualer $400–$1,000; provided, however, that in reservations with a population of less than 2,500 inhabitants as determined by the last census taken under authority of the United States or the State, the fee for each retailer's Class B license shall be determined by the Tribal Council, but shall in no case be less than $300; provided that if the applicant so requests in his application, any retailer's Class B license may be issued limiting the sale or distribution of beverages on the licensed premises to malt and wine beverages containing not more than twenty percent (20%) alcohol by volume, and the fee for that limited Class B license shall be $200 annually. The fee for any Class B license shall in each case be pro-rated to the year ending December 31, in every calendar year.

6.3. Class B–H License. [3–7–7.1]

(a) A retailer's license, Class B–H, shall be issued only to a duly licensed hotel. It shall authorize the holder thereof to keep for sale and sell or distribute as provided herein distilled beverages in containers of a minimum capacity of fifty milliliters (50 ml.) or one and seven tenths ounces (1.7 oz.). The foregoing beverages shall be sold and served only in the room of the registered hotel guest. The foregoing beverages may be served in said hotel room at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m., and may be served in said room on a continuous basis, except as otherwise limited by the Commission, or applicable law.

(b) A Class B and B–H liquor license may be issued for the same duly licensed hotel, notwithstanding anything to the contrary herein.

(c) The annual fee for such license shall be $100.

6.4. Class J Convention Hall License. [3–7–16] A retailer's license, Class J, shall authorize the holder thereof to keep for sale and to sell beverages at retail in the place therein described and to deliver the same for consumption on the premises where sold at the times when conventions may be held on those premises. The licensed premises may contain a bar. No Class J license shall be issued or held unless the licensee has adequate facilities to accommodate at tables five hundred (500) or more

persons at one time. Part of the licensed premises may be set apart as a kitchen and food may be served if the licensee is the holder of a victualing license. The Class J license shall authorize entertainment only in conformity with tribal and otherwise applicable ordinances, regulations, and laws. The annual fee for a Class J license shall be the same as for a Class B license.

6.5. Objection by Adjoining Property Owners-Proximity to Schools and Churches. Retailer's Class B license under this Ordinance shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200′) of any point of such building shall file with the Commission his objection to the granting of such license; nor, in any building within two hundred feet (200′) of the premises of any public, private, or parochial school or a place of public worship.

Chapter 7 Illegal Activities

7.1. Compliance with Applicable Laws. Any person or entity holding a license issued under this Ordinance shall comply with all statutes of the United States of America and the laws of the State of Rhode Island applicable to such licensee pursuant to said license, and the ordinances, resolutions, regulations and laws of the Tribe and Commission.

7.2. Illegal Sales of Liquor by Drink or Bottle. It shall be a violation of this Ordinance for any person to sell, by the drink or by the bottle, any liquor except as otherwise provided for in this Ordinance.

7.3. Illegal Transportation. It shall be a violation of this Ordinance for any person to sell or offer for sale or transport in any manner any liquor in violation of this Ordinance.

7.4. Illegal Purchase of Liquor. It shall be a violation of this Ordinance for any person within the exterior boundaries of the Reservation to buy liquor from any person other than at the properly authorized tribal retail outlet(s) or properly licensed enterprise operating on the Reservation.

7.5. Illegal Possession of Liquor; Intent to Sell. [3–5–1] It shall be a violation of this Ordinance for any person to keep or possess liquor upon his person or in any place or premises conducted or maintained by him as a principal or agent with the intent to sell it; unless such sale is otherwise authorized by this Ordinance.

7.6. Sales to Persons Visibly Intoxicated, Insane, Mentally Defective, Habitual User of Narcotics. [3–8–1] It shall be a violation of this Ordinance for any person to sell, furnish, give away, barter, exchange or dispose of in any manner or cause to be tendered any alcoholic beverage on or within the tribal lands to any person who is known to be insane or mentally defective; or to any person who is visibly intoxicated; or to any person who is known to drink alcoholic beverages to excess; or to any person who is known to be an habitual user of narcotics or other habit forming drugs.

7.7. Possession or Use of Alcoholic Beverages by Underage Persons. [3–8–10] It shall be a violation of this Ordinance for any person to sell, furnish, give away, barter, exchange or dispose of in any manner or cause to be tendered any alcoholic beverage on or within the tribal lands to any person under the age of twenty-one (21) years either for his own use, the use of his parents, or the use of any other person.

7.8. Furnishing Alcoholic Beverages to Underaged Persons. [3–8–11.1] It shall be a violation of this Ordinance for any person to permit any other person under the age of twenty-one (21) years to consume alcoholic beverages purchased on premises under his control or ownership.

7.9. Sale of Alcoholic Beverages to Underage Persons. [3–8–1] It shall be a violation of this Ordinance for any person to sell alcoholic beverages to any person under the age of twenty-one (21) years.

7.10. Unlawful Transfer of Identification. [3–8–6] It shall be a violation of this Ordinance for any person to attempt to purchase an alcoholic beverage through the use of a false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

7.11. Unlawful Drinking and Misrepresentation by Underage Persons. [3–8–6] (a) It shall be deemed a violation of this Ordinance for:

(1) Any person who has not reached his or her twenty-first (21st) birthday to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her alcoholic beverages; or

(2) Any person who has not reached his or her twenty-first (21st) birthday to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages or to purchase, attempt to purchase, or have another purchase for him or her any alcoholic beverage; or

(3) Any person to misrepresent or misstate his or her age, or the age of any other persons, or to misrepresent his or her age through the presentation of any of the following documents:

(aa) An armed service identification card, the identification card license, or any other documentation used for identification purposes that may belong to any other person who is of the age of twenty-one (21) years or older;

(bb) A motor vehicle operator's license which bears the date of birth of the licensee, and which is issued by the state of Rhode Island or any other state.

(cc) Any document presented for identification and known to such person to falsely represent the person's date of birth.

(b) Every licensee shall cause to be kept a book, or photographic reproduction equipment which shall provide the same information as required by the book, and such licensee and/or the licensee's employee shall require any person who has shown a document as set forth in this section substantiating his or her age, to sign that book or to permit the taking of his or her photograph and indicate what document was presented. Use of said photographic reproduction equipment shall be voluntary for every licensee.

(c) The ''sign-in as minor'' book and photographic reproduction equipment shall be the same as prescribed, published and approved at the direction and control of the state liquor control administrator.

(d) If a person whose age is in question shall sign the ''sign-in as minor'' book or have such photograph taken before he or she is sold alcoholic beverage or beverages and it is later determined that such person was a person who has not reached his or her twenty-first (21st) birthday at the time of said selling, it shall be considered prima facie evidence that the licensee and/or the licensee's employee acted in good faith in selling those alcoholic beverage or beverages to such person or persons so producing the document as set forth in this section misrepresenting his or her age.

7.12. Possession of Beverage by Underage Persons. [3–8–10] Any person who has not reached his or her twenty-first (21st) birthday who has in his or her possession any beverage as defined in this ordinance shall be fined One Hundred Dollars ($100) for the first violation; Two Hundred Dollars ($200) for the second violation; and Five Hundred Dollars ($500) for the third or subsequent violation.

7.13. Purchase or Procurement of Alcoholic Beverages for Underage Persons by Adults. [3–8–11.1] It shall be deemed a violation of this ordinance for any adult to purchase from any licensee or any employee of any licensee for the sale, delivery, service of or giving away to or causing or permitting or procuring

to be sold, delivered, served or given away any alcoholic beverage to any person who has not reached his or her twenty-first (21st) birthday.

7.14. Penalty for Violation of 7.13. [3–8–11.2] Any adult who shall violate any of the provisions of 7.13 shall be fined Two Hundred Dollars ($200) for a first violation, Four Hundred Dollars ($400) for a second violation, and One Thousand Dollars ($1,000) for the third or subsequent violation.

7.15. Penalty for Carrying Beverages for Unlawful Sale. [3–4–6] Every expressman, common carrier, or other person who, for the purpose of carrying to any other person, receives any beverage which has been sold or is intended for sale in violation of this Ordinance, having reasonable cause to believe that the same has been, or is intended to be so sold, shall be fined not more than $500.

7.16. Waybill or Memorandum of Shipment Required. [3–4–7] Whenever beverages shall be transported in wholesale quantities as herein defined from the place where sold for delivery to the purchaser, the person in charge of the vehicle in which the beverage shall be transported shall, during the transportation, have in his possession a waybill or a memorandum from the seller to the purchaser showing the name and address of the seller and of the purchaser and the quantity and character of the beverage sold and transported. Upon the demand of any Tribal Gaming Commissioner or Tribal law enforcement officer or other authorized law enforcement officer, the person in charge of the transportation shall exhibit the waybill or the memorandum. The foregoing provisions shall apply to interstate transactions to the extent the Tribe in the exercise of its sovereignty may impose them. Any person transporting beverages in violation of this section shall be fined not more than $50 for each violation.

7.17. Age Restriction for Bartenders. [3–8–2] It shall be a violation of this Ordinance for any person to be permitted to act as a bartender for the purposes of mixing, preparing, serving or selling from a bar which is used for the purpose of dispensing beverages in any licensed establishment operating under any license authorized by this Ordinance, who has not reached his eighteenth (18th) birthday.

7.18. Suspension of License for Employment of Underage Bartender. [3–8–3] Any licensee who violates, or permits to be violated, the provisions of section 7.17, shall be subject to the suspension of license for a period of at least three (3) calendar days for the first violation. The number of calendar days of suspension shall be determined by the Commission which shall increase the period fixed for suspension if additional violations occur, but not to exceed one year.

7.19. Drinking by or Hiring of Underage Persons. [3–8–4] It shall be a violation of this Ordinance for any licensee to hire any persons who have not reached their eighteenth birthday to sell or serve beverages in any place where those beverages may be consumed on the premises where sold.

7.20. Personal Consumption by Employees. It shall be a violation of this Ordinance for any employee of a tribally owned or tribally operated establishment selling or distributing alcoholic beverages, during his working hours or in connection with his employment, to obtain, or to purchase for himself, or to consume alcoholic beverages.

7.21. Hours of Retail Sale. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet to sell, dispose of, deliver, or give away alcoholic beverages on the retail outlet premises except during the normal posted business hours of the retail outlet. No sale, delivery or disposition of alcoholic beverages may occur on election days during the hours that polling places are open for voting.

7.22. Intoxicated Employees. It shall be a violation of this Ordinance for an employee of a tribally owned or operated retail outlet or enterprise which sells or distributes alcoholic beverages, when engaged in waiting on or serving customers, to consume alcoholic beverages or remain on or about the premises while in an intoxicated or disorderly condition.

Chapter 8 Hearings and Appeals

8.1. Petition to Commission for Rehearing. Any person aggrieved by a decision made or action taken by the Commission without notice and opportunity for hearing, may petition the Commission for a hearing and reconsideration. The petition shall be filed within thirty (30) days after the petitioner knew or should have known of the decision or action. The Commission shall grant a prompt hearing upon receiving such a petition, and shall reconsider its decision or action, affirm, modify, reverse and/or vacate its decision in writing to the aggrieved party or such party's representative in light of what is presented at a hearing.

8.2. Appeal of Commission Decision. Any person aggrieved by a decision made or action taken by the Commission after notice and opportunity for hearing may petition any court of competent jurisdiction for review. Such petition shall specifically set forth the reasons for aggrievement, and be filed with the court no later than thirty (30) days after the Commission's decision or action. The court shall set the matter for hearing no later than thirty (30) days after receipt of the petition, and may, upon establishing that it has jurisdiction, affirm, modify, reverse and/or vacate the Commission's order.

Chapter 9 Records and Reports

9.1. Reporting to Commission and State. All records, reports or other documentation required to be provided to State authorities by any licensee shall also be provided to the Commission on the same basis and in the same form as required by the State. True and correct copies in lieu of originals shall be acceptable for filing with the Commission.

9.2. Reporting of Alcoholic Beverages Relating to Gaming. The price of any alcoholic beverage sold to a gaming customer in partial consideration for amounts wagered need not be billed by separate charge to the individual customer; provided, however, that the price of each such alcoholic beverage deemed sold to a gaming customer in partial consideration for amounts wagered shall be no less than the price required for such sales pursuant to the laws of the State and shall be separately accounted for by the tribal operation, any tax due under the laws of the State for the retail sale of such beverages shall be paid with respect to such sales, and daily and monthly records shall be maintained with respect thereto and shall be available for inspection by the State gaming agency and by the State Department of Liquor Control or any successor State agency.

9.3. Petition of Commission for Late Filing. Any licensee paying a penalty for late filing, or becoming subject to such penalty, or failing to file a report on time, and who believes he has an acceptable excuse, may petition the Commission for a waiver of the penalty. The petition shall be filed within thirty (30) days after the licensee knew or should have known that the payment was due, but not more than six (6) months after the due date in any case.

Chapter 10 Taxes

10.1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of two percent (2%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of alcoholic beverages on the Reservation. No

municipality, city, town, county, nor the State of Rhode Island shall have any power to impose an excise tax on alcoholic beverages as defined by this Ordinance or govern or license the sale or distribution thereof in any manner within the Reservation except to the extent permitted by 18 U.S.C. 1161 and the provisions of the Tribal-State Compact. The tax hereunder shall not be effective until ordered by the Tribal Council and the Tribal Gaming Commission.

10.2. Distribution of Taxes. All taxes, license and permit fees, and profits from retail outlets owned or operated by the Tribe, shall be paid over to the Commission which in turn shall transfer such funds to the Treasurer of the Tribe and be subject to distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services; Provided, however, that priority in funding shall, to the greatest extent possible, be given to those tribal programs which demonstrate the greatest need and past successful performance in providing community services to Tribal members.

10.3. Income and Tax Reports. Along with payment of the taxes herein imposed, the taxpayer shall submit an accounting for the quarter, of all income from the sale or distribution of said beverages as well as for the taxes collected.

10.4. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Tribal Gaming Commission or Tribal Council such a review or audit is necessary to verify the accuracy of reports.

Chapter 11 Severability

11.1. Severability. Each section of this Ordinance and each part of each section is hereby declared to be a separable and independent section, and the holding of any section or sections or part or parts thereof to be void, ineffective or unconstitutional for any cause, shall not be deemed to affect any other section or part thereof, unless necessary to the operation thereof.

Chapter 12 Miscellaneous

12.1. Conformity with State Laws and Tribal Liquor Ordinance. The introduction, possession, transportation and sale of beverages within tribal lands shall be in conformity with the provisions of this Ordinance and the laws of the State of Rhode Island as that term is used in 18 U.S.C. 1161.

12.2. No Divestment of Jurisdiction or Immunity. Nothing in this ordinance grants or shall be construed to grant to the State or any agency, department or commission thereof, general state civil regulatory or taxing authority over the Tribe or its lands, property, members or activities except as expressly required by 18 U.S.C. 1161, or recognized by a valid Tribal-State Compact approved by the Secretary of the Interior. Additionally, nothing in this ordinance shall waive or be construed to waive the immunity of the Tribe or any agency, department, enterprise or commission thereof from suit without the express consent of the Tribe.

12.3. Tribe-State Compact. To the extent that any provision of any Tribal-State Compact entered into between the Narragansett Tribe and the State of Rhode Island are inconsistent with any provision of this Ordinance, the provisions of the compact shall govern.

12.4. Conflict of Interest. No member of the Narragansett Tribal Council or the Narragansett Gaming Commission or its employees, nor any member of the immediate household of any of the above may, directly or indirectly, individually or as a member of a partnership or as a shareholder of a corporation, have any interest whatsoever in the sale of alcoholic beverages or have any compensation or profit therefrom as may be licensed or permitted by this Ordinance. For purposes of this Ordinance ''immediate household'' is defined as son(s), daughter(s), step-son(s), step-daughter(s), spouse or spouses recognized by common-law and members of the family or of the household living in the same house.

12.5. Environmental Aspects. Any person or entity operating under a tribal beverage license shall maintain adequate and sufficient procedures for the separation, storage and re-cycling of all plastic, glass and aluminum waste products generated by virtue of its operation under the tribal license and shall at all times keep the licensed premises in a clean and orderly condition.

12.6. Access for State Agents or Inspectors. Duly authorized agents or inspectors of the State shall, upon presentation of their credentials, be granted immediate access to inspect any premises where beverages are stored, distributed or sold and to examine all books and records pertaining to the business conducted by virtue of the license. In the event such officials desire access to the licensed premises of any licensee of the Commission, said official shall first present his or her credentials to the Commission representative on duty in the licensed premises who, together with an authorized representative of the licensed establishment, and an authorized representative of the management contractor, if any, shall insure that all officials are provided with all lawful access.

12.7. Administration and Bonding.

(a) The administration of all matters relating to the conduct of any business by virtue of a tribal beverage license shall be through the auspices of the Commission. The Commission may, at any time before or after the issuance of any license, order any applicant or licensee to post an acceptable surety bond in such an amount as is deemed appropriate, or to increase the amount of any existing bond.

(b) The amount of any bond or the increase in any bond shall be based upon such factors as the Commission deems material to the circumstances, including, by way of illustration, the financial stability and strength, and the business history of the applicant or licensee, or such other considerations as may be relevant to the applicant or licensee. The Commission shall provide any applicant or licensee with reasonable explanation of the basis for establishing or changing the amount of any bond and with sufficient time within which to acquire additional bond amounts, should the Commission make such an order.

Chapter 13 Tribal Jurisdiction and Enforcement

13.1. Authority. The Tribal Council, until such time as the Tribe has established and staffed a Tribal Court, shall have jurisdiction over all offenses and unlawful acts enumerated in this Ordinance when committed by an Indian, whether or not the violator is a member or non-member of the Narragansett Tribe.

13.2. Proof of Unlawful Activity. In any proceeding under this Ordinance, proof of one unlawful sale or distribution of alcoholic beverages shall suffice to establish prima facie intent or purpose of unlawfully keeping alcoholic beverages for sale, selling alcoholic beverages or distributing alcoholic beverages in violation of this Ordinance.

13.3. General Penalties. Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty as set forth herein. The Tribal Gaming Commission may adopt by separate rule or regulation, subject to Tribal Council approval, a schedule of fines for each type of violation, taking into account its seriousness and the

threat it may pose to the general health and welfare of the Tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary fines in excess of those otherwise imposed for a first offense.

13.4. Illegal Items Declared Contraband. Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Tribal Gaming Commission to enforce this section shall seize all contraband which he shall have the authority to seize. All seized contraband shall be preserved in a secured area provided for storage of impounded property and he shall promptly prepare an inventory, a copy of which shall be promptly delivered to the Tribal Gaming Commission. Upon being found in violation of this Ordinance by the Tribal Gaming Commission, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Narragansett Tribe.

Chapter 14 Transmission to Secretary

14.1. Transmission to Secretary. The Tribal Council shall, upon approval of this Ordinance, evidenced by a Tribal resolution, transmit the Ordinance, together with the Tribal resolution to the Secretary of the Interior for certification and publication.

Chapter 15 Amendment

15.1. Amendment of Ordinance. This Ordinance may only be amended by a majority vote of the Tribal Council. The Tribal Gaming Commission may, when it deems it necessary in aid of its administration of this Ordinance, propose written amendments to this Ordinance to the Tribal Council for consideration and adoption.

Dated: June 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–17427 Filed 7–14–95; 8:45 am]

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Federal Register

Monday
July 17, 1995

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Public Use Regulations for the Alaska Peninsula/Becharof National Wildlife Refuge Complex; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AD30

Public Use Regulations for the Alaska Peninsula/Becharof National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes regulations to implement portions of the ''Alaska Peninsula/Becharof National Wildlife Refuge Complex Public Use Management Plan.'' The proposed rulemaking would allow the Service to manage public uses by adopting regulations addressing off-road vehicles, camping, and temporary facilities. The regulations will provide for continued public use of the refuge complex while protecting refuge resources and resolving conflicts between refuge users.

DATES: Written comments, suggestions, or objections will be accepted until September 15, 1995.

ADDRESSES: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Attention: Bob Stevens, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Ronald E. Hood, Refuge Manager, Alaska Peninsula/Becharof National Wildlife Refuge Complex, P.O. Box 277, King Salmon, AK 99613, telephone: (907) 246–3339; or Bob Stevens, Public Involvement Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, telephone: (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 et seq.) was signed into law on December 2, 1980. The broad purpose of this law is to provide for the disposition and use of a variety of Federally owned lands in Alaska. Section 302 of ANILCA established Alaska Peninsula and Becharof National Wildlife Refuges (NWRs) and Section 303 of ANILCA expanded Alaska Maritime National Wildlife NWR. ANILCA states that the purposes for which Alaska Maritime, Alaska Peninsula and Becharof NWRs were established and shall be managed include:

(A) Alaska Maritime Refuge * * * to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to marine mammals, marine birds and other migratory birds, the marine resources upon which they rely, bears, caribou and other mammals;

(B) Alaska Peninsula Refuge * * * to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, brown bears, the Alaska Peninsula caribou herd, moose, sea otters and other marine mammals, shorebirds and other migratory birds, raptors, including bald eagles and peregrine falcons, and salmonids and other fish;

(C) Becharof Refuge * * * (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, brown bears, salmon, migratory birds, the Alaskan Peninsula caribou herd, and marine birds and mammals;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge[s].

In 1987, the Service decided to manage the Ugashik and Chignik units of the Alaska Peninsula NWR, the Seal Cape area of the Alaska Maritime NWR and the Becharof NWR as a ''complex.'' These units share a contiguous boundary and common resources and resource issues. Legislation to formalize the ''complex'' has been drafted. The Public Use Management Plan, and the proposed regulations cover the Ugashik and Chignik Units of Alaska Peninsula NWR, the Seal Cape area of the Alaska Maritime NWR, and Becharof NWR.

Refuge Planning

Section 304(g) of ANILCA directs the Secretary of Interior to prepare a comprehensive conservation plan (comprehensive plan) for each national wildlife refuge in Alaska. The Alaska Maritime NWR comprehensive plan was completed in 1988; the Alaska Peninsula NWR comprehensive plan was completed in 1987; and the Becharof NWR comprehensive plan was completed in 1985. A number of public use management issues were identified and resolved in the comprehensive plans. Other issues involving public use of the refuges were identified as needing more thorough investigation. These issues were addressed in the Public Use Management Plan (public use plan) approved in May 1994.

Public involvement was an important part of the public use management planning process. In February 1989 a citizen participation plan was approved and initiated. The plan specified that public involvement activities were to occur during the winter months when most rural Alaskans and other interested citizens would be available.

On March 1, 1989, a letter announcing the start of the planning process was sent to each address on the mailing list as well as to each box holder/general delivery recipient in the refuge complex area. That letter was followed by two workbooks which were sent to those people indicating a desire to be a planning participant. Each workbook was also followed by a newsletter summarizing comments from the workbooks.

In December of 1989, 12 public workshops were held in local villages and in Anchorage and Kodiak addressing Workbook No. 2. Written responses on Workbook No. 2 were received from 80 people and 130 people attended the public workshops. Individuals accounted for almost two thirds of the written responses. Commercial operators, conservation organizations, and local and State governments represented the remainder.

Because of the Exxon Valdez oil spill, the refuge complex staff needed to devote extensive time and energy to projects related to that event. As a result the pace of the planning process slowed. A newsletter was mailed to all entries on the refuge complex mailing list in October 1992; it was also distributed within each community in the area of the refuge complex. The purpose of the newsletter was to bring the public up-to-date on the planning process and let people know that the draft plan would be released for public review during the winter of 1993. This newsletter summarized earlier efforts and identified key issues and proposed management alternatives.

Personal contacts were also made with over 50 interested citizens and group representatives to make certain they had received the newsletter and to determine if they had any major concerns about public use of the refuge complex that were not addressed in one or more of the preliminary alternatives. Comments were not formally solicited on the newsletter; however, 43 written comments were received.

These comments, previous comments, and analysis of the impacts of each preliminary alternative led to the construction of the preferred alternative identified in the draft public use management plan and environmental assessment which was released to the public for review on March 1, 1993.

Public Use Management Plan Issues Addressed in the Proposed Rule

Relevant issues identified through the public involvement activities discussed above and addressed in the draft and final public use management plan and these proposed regulations are outlined below.

1. Off-Road Vehicles (ORVs): Should additional ORV use be allowed on the refuge complex or are additional limits needed on ORV use on the refuge complex? Motor vehicle use, including ORVs, had occurred historically in some areas and on some trails in the refuge complex.

2. Guided and Non-Guided Use: Should the number of guided and/or non-guided users and/or the length of time they are allowed to stay at one location be limited to protect important refuge complex resources or to reduce conflicts between user groups?

3. Temporary Facilities: Are additional temporary facilities (especially tent platforms) needed? How should temporary facility applications be evaluated? How should temporary facilities be managed?

Public Comments Received on the Draft Public Use Management Plan

The draft public use management plan was released for public review March 1, 1993. Over 1,000 notices of availability were mailed to persons on the refuge complex mailing list; notices were also sent to all post office box holders in the 12 refuge complex area communities. Approximately 500 copies of the plan were distributed. Public workshops were held in Anchorage, Chignik Bay, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Kodiak, Naknek, Perryville, Pilot Point, Port Heiden, and South Naknek during March and April of 1993. One hundred thirty-four people signed-in at these workshops. Public comments were documented at each of the workshops.

Public comments were accepted until June 30, 1993. Forty-seven written responses were received: 34 from individuals, four from the guiding industry, four from Native corporations/organizations, two from conservation organizations, and three from state or local government. Twenty-nine of the comments were from the Alaska Peninsula/Bristol Bay area, six from other parts of Alaska and 12 from other states. The vast majority of public comments were from Alaskans, predominately those residing within or near the refuge complex. All public comments (workshop and written) were used to develop the final public use management plan.

Comments relative to the proposed regulations are summarized below: (1) Off-Road Vehicles (ORVs): The greatest number of comments addressed ORV use. The overwhelming majority of comments supported the continued use of ORVs for subsistence. Some opposed ORV use and several recognized that they could be destructive. One suggested allowing ORV use only on established trails. Local residents provided detailed information about where and when they use ORVs for subsistence activities.

The State objected to the Service determining, independently and without study, what access to allow or prohibit. They recommended a cooperative State and Service study to document traditional subsistence access prior to any limits being placed on this access.

(2) Guided and Non-Guided Use: Some commented that guided visitors and perhaps non-guided visitors should be limited. Comments ranged from support for to opposition to camping limits. Those supporting camping limits suggested two days, seven days, and 10 days. Some questioned the need for a seven day camping limit in an area that is otherwise uncrowded. A guide organization said limits on camping in key areas should not be implemented until a specific and documentable problem is defined. Concerns about the cost of enforcing camping limits were expressed.

(3) Temporary Facilities: Several people suggested allowing temporary facilities; some said they should be allowed for local residents only. Those who said temporary facilities should be allowed said they should not be allowed in sensitive areas. One individual said that when tent frames are allowed, a property ownership atmosphere is created. Conservation groups and some individuals suggested the Service prohibit new temporary facilities. Conservation groups suggested removal of existing facilities that cause conflicts, eyesores, or concentrate use leading to adverse impacts on refuge complex values and resources.

The final public use management plan was prepared considering these public comments. The preferred alternative for ORV use was changed to allow the continued subsistence use of ORVs throughout the refuge complex while proposed regulations limit the weight of these vehicles to protect refuge complex soils and vegetation. Additional details about ORVs appear in the section by section analysis which follows.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, (16 U.S.C. 668dd–668ee) authorizes the Secretary of the Interior to permit and regulate the use of any area within the National Wildlife Refuge System for any purpose whenever it is determined that such uses are compatible with the major purposes for which such area was established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) authorizes the Secretary of the Interior to administer national wildlife refuges for public recreation as an appropriate incidental or secondary use when such use does not interfere with the primary purposes for which the area was established.

The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) Section 304(b) emphasizes the authority of the Secretary of the Interior to prescribe such regulations as necessary to ensure the compatibility of uses with refuge purposes. Section 811 states that the Secretary of the Interior ''shall permit * * * appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulations [emphasis added].'' Section 1316 states, in part, ''* * * the Secretary shall permit, subject to reasonable regulations to ensure compatibility, the continuance of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities * * * the Secretary may determine, after adequate notice, that the establishment and use of such new facilities or equipment would constitute a significant expansion of existing facilities or uses which would be detrimental to the purposes for which the affected conservation system unit was established, including the wilderness character of any wilderness area within such unit, and may thereupon deny such proposed use or establishment.''

Executive Order 11644, ''Use of Off-road Vehicles on the Public Lands,'' February 8, 1972, (37 FR 2877) called for each agency to establish regulations addressing off-road vehicle use. ''These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.'' The Order also states, ''* * * trails shall be located in * * * National Wildlife Refuges and Game Ranges only if the * * * agency head determines that off-road vehicle

use in such locations will not adversely affect their natural, aesthetic, or scenic values.''

Section-by-Section Analysis

Subsection 36.39(c)(1) states that the proposed regulations apply to the administratively established refuge complex consisting of Becharof NWR, the Seal Cape area of the Alaska Maritime NWR and the Ugashik and Chignik units of Alaska Peninsula NWR.

Subsection 36.39(c)(2) provides direction for management of off-road vehicles (ORVs) on the refuge complex. It begins by limiting the type and weight of ORVs authorized for subsistence use and on designated trails for general public use. It then designates three trails for general public ORV use. The final public use plan decision stated that the Service would also evaluate the use of airboats as off-road vehicles on the refuge complex. After additional research, it was determined that airboats have been used within refuge complex boundaries on waters that are probably navigable and thus managed by the State of Alaska. As long as this use continues at the present low level with no discernible effects on refuge complex resources there is no need for the refuge complex to attempt to regulate this airboat use. However, expansion of the use of airboats onto refuge complex lands and waters is likely to have significant adverse effects and therefore is not proposed to be allowed.

Subsection 36.39(c)(2)(i) proposes size and weight restrictions for general public and subsistence ORV use. These restrictions are proposed to address a number of public and resource concerns and are realistic to implement. The draft public use plan called for limiting subsistence use of ORVs to frozen water bodies and their adjacent non-vegetated shorelines. Other alternatives considered were: allowing subsistence ORV access with the same size and weight restrictions as proposed only when the ground is frozen; no ORV use; and certain designated winter trails.

In response to public comments received, field visits were made to sites where ORV use was known or reported to occur throughout the refuge complex. Photographs and narrative were used to document observed conditions. Off-refuge complex sites where heavy recreational ORV use was known to occur were also visited. Damage at these off-refuge complex sites was documented since similar damage could occur on the refuge complex if such use were permitted on the refuge complex.

The field review showed no significant ORV damage. In fact, no impacts could be detected in two areas where the refuge manager had observed winter ORV use occurring and expected to find impacts. Upon review of the public comments, these new data, relevant scientific literature, and the requirements of 50 CFR 36.12 for managing subsistence use of ORVs, the Service concluded that the current level of ORV use is not ''causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, . . . or other purposes for which the refuge was established.'' (50 CFR 36.12(b)).

It was also determined, after review of available scientific literature, that the first impacts likely to occur from ORV use in the refuge complex would be clearly visible and easy to monitor from the air with existing staffing and funding. Therefore, the Regional Director decided that continued use of ORVs for subsistence on the refuge complex was appropriate.

The final public use plan limits ORV use to three- and four-wheel vehicles with a gross vehicle weight of 650 pounds or less. Three- and four-wheel ORVs are commonly used in refuge complex area communities. The rationale for limiting the weight and width by regulation is that from studies (Ahlstrand and Racine 1990, Racine and Ahlstrand 1991, Sinnott 1990) it appears that smaller vehicles cause less damage. Ground pressure would probably be a more reliable predictor of impacts, however, through contacting ORV dealers the Service found that this information is not available. Therefore, it was determined to limit the gross vehicle weight which is readily available to a purchaser of an ORV and can be easily measured. Limiting vehicle weight and limiting the types of vehicles to those commonly used in refuge complex area communities would pose no hardship on local residents yet continue to provide protection for refuge complex resources. It is recognized that many ORV users also tow small trailers to carry items that will not fit on the ORV. The staff determined that there did not appear to be any need to regulate the use of trailers and the regulations do not include trailers with the understanding that their use is not restricted. The size and weight of trailers will indirectly be affected by size and weight restrictions on the vehicles that tow them.

Subsection 36.39(c)(2)(ii) designates three trails for general public ORV use: Yantarni Bay Airstrip, Yantarni Bay Airstrip to beach trail, and Yantarni Bay Airstrip to oil well site trail. The Yantarni Bay Airstrip is an approximately one mile long by 250 foot wide gravel landing strip located about six miles northeast of Yantarni Bay on the Pacific coast of the Alaska Peninsula. Constructed in the early 1980s for oil exploration, the airstrip provides access for wheeled aircraft to this rugged, remote coast. Public lands in this area were selected by the Afognak Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1624) prior to creation of the Alaska Peninsula NWR. These lands were relinquished to the refuge complex in 1994.

During the time the Yantarni Bay area lands were in private ownership, a sport fishing guide and several big game guide/outfitters began using the airstrip. Their operations included use of three- and four-wheeled ORVs to transport supplies and guests along the airstrip and the two connected trails. The connected trails are located on roads constructed for oil exploration. In the public use plan, it was decided to allow general public use of these ORV trails. Sport fishing, hunting, and guiding are all considered compatible uses of refuge complex lands and resources. As these trails are all located on constructed gravel roads, there is almost no potential for soil and resource damage with the current type of ORV use.

The trail to the oil well site allows hunters and others to get away from people at or near the airstrip. The trail to the beach is primarily used to transport anglers along the beach to fish at various nearby streams. The beach (below mean high tide) is owned by the State of Alaska and not subject to refuge complex regulations. The combined total distance of these trails is less than four miles. The beach to the airstrip trail is less than one-half mile long; the airstrip is approximately one mile long; and the airstrip to the oil well site trail is approximately one and one-half miles long.

Subsection 36.39(c)(2)(iii) allows subsistence use of ORVs to continue as authorized in 50 CFR 36.12(a) subject to the size and weight limitations of subsection 36.39(c)(2)(i).

Subsection 36.39(c)(3) addresses camping on the refuge complex. Subsection 36.39(c)(3)(i) clarifies that special use permits are required for campsite improvements that would remain after camping ceases. Temporary improvements, such as constructing fire rings, would be allowed under these regulations; but permanent improvements, such as leveling tent pads would not be allowed without a permit.

Subsection 36.39(c)(3)(ii) places limits on the length of time visitors may camp at one campsite at six specific locations

during the fall hunting season from August 1 through November 15, annually. All are popular camping areas during hunting season and conflicts were reported to have occurred between hunting parties using these areas. The camping limits were selected to ensure that no one party monopolizes a prime hunting area and that various members of the public can all have an opportunity to visit these locations. It is not likely to cause hardship to those users as the average fall hunting trip is seven days or less.

Camping limits do not apply to subsistence users at five of the six locations as reported conflicts have been between different parties of sport hunters or sport hunters and subsistence hunters. However, in the Big Creek area, conflicts have been reported among subsistence hunters. The area is located immediately adjacent to the two largest communities in the refuge complex area, Naknek and King Salmon. Most of the camping is by local residents. There is also substantial day-use by local residents engaged in subsistence activities along Big Creek.

Subsection 36.39(c)(4) addresses temporary facilities under authority of Section 1316 of ANILCA. Subsection 36.39(c)(4)(i) provides that temporary facilities shall be authorized by special use permits.

Under subsection 36.39(c)(4)(ii) new temporary facilities are prohibited within 1/4 mile of the Becharof Lake shoreline other than for subsistence or administrative purposes. Subsistence is a purpose of the refuge complex and having temporary camps located by others within this subsistence use area would have the potential to adversely affect subsistence activities of rural residents of the area. There are currently some sort of facilities, including abandoned structures which could be used in an emergency, located every few miles around the 100+ mile circumference of the lake.

Subsection 36.39(c)(4)(iii) closes five areas of the refuge complex to temporary facilities other than for administrative use. The Regional Director found in the public use plan that location of additional temporary facilities would be a significant expansion of existing facilities which would be detrimental to the purposes for which the unit [refuge complex] was established. The proposed closed areas already contain a number of facilities and receive relatively high levels of public use. It is unlikely that additional facilities would be necessary in these areas and their presence would potentially affect subsistence and general public access to and use of the areas. The closed areas were designed to be the minimum necessary to meet refuge complex purposes.

Gertrude Lake is approximately one mile long and the entire shoreline is clearly visible from any place along the lake. Placing a temporary facility at this popular hunting location would, in effect, ''privatize'' the lake—deterring others from using the area. Long Lake is a similar situation and is also on the boundary with Katmai National Park. The airstrip at the confluence of Gertrude Lake and King Salmon River is a small undeveloped landing area. If a facility were constructed adjacent to the strip, other users would likely be displaced from the area.

Upper and Lower Ugashik Lakes present a situation similar to Becharof Lake except they are smaller and contain relatively more facilities. There are several parcels of private land adjacent to the lakes and facilities present include numerous cabins, a lodge and other private developments. Locating additional facilities on public lands would likely affect use and enjoyment of refuge complex resources.

The Becharof Lake outlet area contains private and refuge complex lands. There are several facilities present in this area. Becharof Lake outlet is readily accessible by boats and aircraft. Additional facilities would detract from other refuge complex uses.

The prohibition on temporary facilities along Big Creek is in addition to the limit on camping. As stated before, Big Creek is very close to King Salmon and Naknek and receives substantial day use. Temporary facilities would potentially restrict use of important hunting areas by residents and visitors.

Request for Comments

A complete public involvement process was conducted during the development of the Alaska Peninsula/Becharof plan and the environmental assessment that accompanied the draft plan. As stated earlier in this document, public meetings were held in all refuge complex area communities, Kodiak and Anchorage during preparation of the draft and final public use management plans. Public comments received were reviewed and considered prior to drafting these proposed regulations.

As stated in the final public use plan, in addition to accepting written public comments regarding the proposed regulations, public hearings will be held during the public comment period. All relevant comments received in writing or at public hearings will be reviewed and considered prior to preparing the final regulations. During the 60-day public review period public hearings will be held in Chignik Bay, Chignik Lake, Chignik Lagoon, Egegik, Ivanof Bay, Naknek, Perryville, Pilot Point, Port Heiden, and South Naknek, Alaska.

Conformance With Statutory and Regulatory Authorities

The impact of these proposed regulations on subsistence uses has been evaluated as required by Section 810 of ANILCA. A subsistence evaluation was included in the public use management plan environmental assessment and the Regional Director found that the plan would not significantly restrict subsistence use on the Alaska Peninsula/Becharof National Wildlife Refuge Complex. Subsistence uses and access are expected to differ little, if any, from existing uses. The regulations are consistent with the purposes and intent of Section 810 and will result in no significant restrictions on subsistence uses.

These proposed regulations are consistent with the purposes for which the Alaska Maritime, Alaska Peninsula and Becharof national wildlife refuges were established. A compatibility determination was approved for the public use management plan.

Paperwork Reduction Act

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

National Environmental Policy Act

An environmental assessment accompanied the draft public use management plan. On May 21, 1994, a Decision Notice and Finding of No Significant Impact was signed by the Regional Director. Copies of these documents may be obtained from the Alaska Peninsula/Becharof National Wildlife Refuge Complex, P.O. Box 277, King Salmon, Alaska 99613. Telephone: (907) 246–3339. No further documentation is required by the National Environmental Policy Act (42 U.S.C. 4321–4347).

Economic Effects

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the proposed rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal

effect on such entities as the proposed rule impacts the refuge complex only to the extent that off-road vehicles and camping are better administered. Temporary facilities are only allowed for administrative and subsistence purposes at particular sites. These provisions are seen, therefore, as administrative in nature and having little or no impact on small entities.

References Cited

A complete list of all references cited herein is available upon request from Bob Stevens (See **ADDRESSES** above).

Primary Author

Helen Clough, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, Part 36 of Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

2. Section 36.39 *Public use* is amended by adding paragraph (c) to read as follows:

§ 36.39 Public use.

* * * * *

(c) *Alaska Peninsula/Becharof National Wildlife Refuge Complex*—(1) *Public use area.* The Alaska Peninsula/Becharof National Wildlife Refuge Complex includes the Becharof National Wildlife Refuge, the Chignik and Ugashik Units of the Alaska Peninsula National Wildlife Refuge and the Seal Cape Area of the Alaska Maritime National Wildlife Refuge.

(2) *Off-road vehicles.* (i) Off-road vehicles operated on the refuge complex under § 36.12(a) or paragraph (c)(2)(ii) or (c)(2)(iii) of this section are limited to three or four-wheeled vehicles with a maximum gross weight of 650 pounds as listed by the manufacturer.

(ii) The following trails are designated for off-road vehicle use: Yantarni Bay Airstrip; Yantarni Bay Airstrip to beach trail; and Yantarni Bay Airstrip to oil well site trail. Maps of the areas in this paragraph (c)(2)(ii) are available from the Refuge Manager.

(iii) Subject to the weight and size restrictions listed in paragraph (c) (2)(i) of this section, subsistence use of off-road vehicles, as authorized by § 36.12 (a) is allowed throughout the Alaska Peninsula/Becharof National Wildlife Refuge Complex.

(3) *Camping.* Camping is permitted on the Alaska Peninsula/Becharof National Wildlife Refuge Complex subject to the following restrictions:

(i) No permanent improvements may be made to campsites without a special use permit. All materials brought on to the refuge complex must be removed upon cessation of camping unless authorized by a special use permit.

(ii) Other than reserved sites authorized by special use permits, camping at one location is limited to seven consecutive nights from August 1 through November 15 within ¼ mile of the following waters: Becharof Lake in the Severson Peninsula area (Island Arm); Becharof Lake Outlet; Ugashik Narrows; Big Creek; Gertrude Lake; and Gertrude Creek between Gertrude Lake and the King Salmon River. Maps of the areas in this paragraph (c)(3)(ii) are available from the Refuge Manager.

(iii) Tent camps must be moved a minimum of one mile following each seven-night camping stay during the periods specified in paragraph (c)(3)(ii) of this section. The camping limits in this paragraph (c)(3)(iii) do not apply to subsistence users except at Big Creek where they apply to all refuge complex users.

(4) *Temporary facilities.* (i) New temporary facilities may be authorized on the Alaska Peninsula/Becharof National Wildlife Refuge Complex by special use permit only.

(ii) Except for administrative or subsistence purposes, new temporary facilities are prohibited within ¼ mile of the Becharof Lake shoreline.

(iii) Except for administrative purposes, new temporary facilities are prohibited in the following areas: within ¼ mile of the shorelines of Gertrude Lake and Long Lake; within ¼ mile of the airstrip on the south side of the King Salmon river approximately ½ mile above the confluence of Gertrude Creek and the King Salmon River; within ½ mile of the shoreline of Upper and Lower Ugashik lakes; within ¼ mile of the shoreline of Becharof Lake outlet; and within ¼ mile of the shoreline of Big Creek. Maps of the areas in this paragraph (c)(4)(iii) are available from the Refuge Manager.

* * * * *

Dated: June 16, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–17192 Filed 7–14–95; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday
July 17, 1995

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 5, et al.

Food Additives: Threshold of Regulation for Substances Used in Food-Contact Articles; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 25, 170, 171, and 174

[Docket Nos. 77P–0122 and 92N–0181]

Food Additives; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additive regulations to establish a process for determining when the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial as not to require regulation of the substance as a food additive. Although still a ''food additive,'' a substance exempted from regulation under this process will not be required to be the subject of a food additive listing regulation. Under this process, information about the proposed use of the substance will undergo an abbreviated review by FDA, as opposed to the extensive review normally required for food additives. This final rule also lists the criteria that FDA will use in its review in deciding whether it is necessary to regulate the use of a substance as a food additive and identifies the types of data that it will need to make this determination.

EFFECTIVE DATE: August 16, 1995.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3085.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 12, 1993 (58 FR 52719), the agency proposed to establish a process for determining when the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial as not to require regulation of the substance as a food additive. The proposal was in response to a number of comments from representatives of the food packaging and processing industries suggesting that FDA establish a threshold of regulation policy whereby those substances used in food-contact articles that result in minimal migration into food would be exempt from regulation as food additives.

The proposal also responded to a citizen petition (Docket No. 77P–0122) submitted by the Society of the Plastics Industry, Inc., requesting that FDA modify § 170.3(e) (21 CFR 170.3(e)), the regulation that defines ''food additive,'' to provide that the use of a substance that does not result in detectable levels of migration into food-simulating solvents (using validated analytical methods sensitive to at least 50 parts per billion (ppb)) would be exempt from regulation as a food additive unless there is scientific evidence that the substance presents a significant risk of harm to human health.

Traditionally, FDA had been reluctant to adopt any of these suggestions in the absence of data that clearly show that substances present in the daily diet at concentrations at or below the proposed threshold level would not pose safety concerns. However, data on the toxic effects of a large number of representative compounds have become available over the last 5 to 10 years that have made it possible for FDA to evaluate the feasibility of establishing a threshold of regulation for food-contact articles. These data show that noncarcinogenic and carcinogenic toxic effects usually occur within predictable ranges of dietary exposure. They make it possible to identify a specific level of dietary exposure that is well below the range of dietary exposures that typically induce toxic effects and, therefore, that poses only negligible safety concerns. This level can function as the ''threshold of regulation'' for components of food-contact articles.

A Federal court has addressed the issue of whether the use of a food-contact material that results in migration into food at insignificant levels can be exempted from regulation as a food additive. In *Monsanto* v. *Kennedy,* 613 F.2d 947 (D.C. Cir. 1979), the Monsanto Co. contended that no detectable migration of acrylonitrile copolymer resulted from the use of their beverage bottles that contained the substance, and that, therefore, the copolymer did not have to be regulated as a food additive. In its decision, the court stated that the Commissioner of Food and Drugs (the Commissioner) may determine that the level of migration into food of a particular substance is so negligible as to present no public health or safety concerns and, in such cases, may decline to define the substance as a food additive even though it comes within the strictly literal terms of the statutory definition of a food additive (613 F.2d at 956). The court also stated that the Commissioner has the discretion not to exercise this exemption authority (id.).

Based on available toxicological data showing that it is feasible to establish a threshold level below which dietary exposures to substances used in food-contact articles are so negligible as to pose no public health or safety concerns, the discretionary authority of the Commissioner to exempt those substances that present no public health concerns from regulation as food additives, and the agency's consideration of the comments that it received on the October 12, 1993, proposal, FDA is amending the food additive regulations to establish a process for determining when the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial as not to require that the substance be regulated as a food additive.

As part of this process, the agency is establishing two types of thresholds for the regulation of substances used in food-contact articles. The first type of threshold will exempt from regulation those substances whose use in food-contact articles results in a dietary concentration of the substance of 0.5 ppb or less. The second type of threshold will exempt regulated direct food additives from regulation when used in food-contact articles at levels that result in a dietary exposure of 1 percent or less of the acceptable daily intake (ADI) for the additive.

II. Comments on the Proposed Rule

The agency provided 60 days for comment on the proposed rule. It received two requests from industry for an extension of the comment period. The agency granted a 60-day extension of the comment period to February 11, 1994, in a notice published in the **Federal Register** of December 13, 1993 (58 FR 65139).

FDA received 20 comments from the food packaging industry and trade associations that represent the plastics and paper industries. One of these comments concerned the economic impact of the proposed action. This comment is discussed in section IV of this document. The other issues raised in the comments, and the agency's response to them, are set forth below.

A. The Exemption

Appropriateness of the 0.5 PPB Threshold Level for Components of Food-Contact Articles

1. Eight comments expressed the opinion that the 0.5 ppb threshold is more conservative and restrictive than is necessary to adequately protect the public health. In general, these comments expressed the view that current scientific data support the

establishment of a dietary concentration higher than 0.5 ppb as the threshold.

The agency does not agree that a 0.5 ppb threshold is unduly conservative, especially in light of the fact that a substance being considered for an exemption may not have been the subject of any toxicological testing. As discussed in the proposed rule, carcinogenic toxic effects in test animals typically occur at lower dietary concentrations than the levels at which noncarcinogenic toxic effects occur. Therefore, FDA's goal has been to establish a threshold that is low enough to ensure that even if an unstudied compound that is exempted from regulation is later shown to be a carcinogen, its use would not have represented any more than a negligible risk to the public health.

Although eight comments were received that expressed the opinion that the 0.5 ppb threshold is more conservative and restrictive than is necessary to adequately protect the public health, no data were provided in any of these comments to show that a threshold significantly higher than 0.5 ppb is adequate to ensure that substances present in the diet at or below the threshold would pose only negligible safety concerns. Therefore, as proposed, this final rule establishes 0.5 ppb as the threshold of regulatory concern for substances used in food-contact articles. We will reconsider this threshold if we receive new data that justify a higher level.

2. One comment objected to the agency's apparent use of a 200-fold safety factor when applying to humans the results of studies showing the noncarcinogenic toxic effects observed in animals subjected to chronic chemical exposure. The comment stated that FDA guidelines employ only a 100-fold safety factor. The comment argued that the use of the 100-fold safety factor would allow FDA to establish a threshold of regulatory concern higher than 0.5 ppb.

The agency emphasizes that it did not base its proposed threshold on noncarcinogenic toxic endpoints, and that, therefore, it did not employ the safety factor approach typically used when applying to humans the results of studies showing the noncarcinogenic toxic effects observed in animals subjected to chronic chemical exposure. Because carcinogenic effects typically occur in test animals at lower dietary concentrations than those at which noncarcinogenic toxic effects occur, as stated above, FDA's goal was to establish a threshold that is low enough to ensure that substances that are exempted from regulation under it will pose only negligible safety concerns even if they are ultimately shown to have carcinogenic effects.

Based on its analysis of the carcinogenic potencies of 477 chemicals, and using the assumptions that the distribution of carcinogenic potencies of the 477 chemicals studied are representative of all known and unknown carcinogens, and that it is very unlikely that an unstudied compound would both: (1) Be a carcinogen and (2) have an intrinsic carcinogenic potency far greater than the typical potency observed for the studied compounds, FDA has determined that, if an exempted substance present in the diet at 0.5 ppb were later found to be a carcinogen, the upper-bound lifetime risk resulting from the use of the substance is likely to be below one in a million. This level of risk is generally regarded as very low (i.e., one that poses only negligible safety concerns). Because carcinogenic effects typically occur at lower dietary concentrations than those at which noncarcinogenic toxic effects occur, an 0.5 ppb threshold would ensure that substances that pass under it pose negligible safety concerns from noncarcinogenic toxic effects as well. However, the fact that a 0.5 ppb threshold level happens to be 200, rather than a 100, times lower than the chronic exposure level at which potent pesticides induce noncarcinogenic toxic effects is merely coincidental and does not reflect the agency's reasoning.[1]

3. One comment expressed the opinion that the threshold should have been based on the mean TD_{50}[2] value of the 477 known carcinogens that were the subject of FDA analysis as opposed to the most probable TD_{50} value. This comment stated that the use of a mean TD_{50} would allow FDA to establish a threshold significantly higher than 0.5 ppb.

FDA does not agree that it is appropriate to establish a threshold level based on the mean TD_{50} value of the 477 known carcinogens that were the subject of FDA's analysis because this approach would give inappropriate weight to carcinogens with high TD_{50} values. Because the carcinogenic potency of a substance is inversely related to its TD_{50} value, this approach would give too much emphasis to carcinogens with low potencies. A more meaningful approach to estimating the likelihood that a substance will pose a potential health hazard at a given dietary concentration is to use the potency that it is most likely to have if it were later found to be a carcinogen. Because such an approach would be based on the frequency distribution of the potencies of a large number of carcinogens (i.e., a distribution showing the number of carcinogens whose potencies occur within particular dietary concentration ranges) and would not be based on the magnitude of the potencies themselves, this approach would not give undue weight to carcinogens with low potencies (i.e., high TD_{50} values).

In arriving at a threshold of regulation, FDA's analysis of the potencies of 477 animal carcinogens consisted in part of grouping them by dietary concentration ranges (Ref. 1). The agency plotted the potencies as a probability distribution on a semilogarithmic scale and found that they formed a bell-shaped distribution curve. Using this probability distribution for carcinogenic potencies, FDA determined that most known carcinogens pose less than one in a million upper-bound lifetime risk if present in the daily diet at 0.5 ppb or less.

4. One comment expressed the view that it was unlikely that a given packaging material would be present in the daily diet over the course of a lifetime. It asserted that, therefore, FDA should not have based its threshold on potential lifetime carcinogenic risks.

Because of the changing technology associated with the food-packaging industry, FDA agrees that is not always possible to predict whether a given type of packaging material is likely to be present in the daily diet over the course of a lifetime. However, because many of the substances considered for an exemption from regulation will not have been the subject of any toxicological testing, it is imperative, in establishing a threshold level, to use an approach that is not likely to underestimate the risk associated with the use of such additives. Therefore, the agency used an approach that assumed that a given packaging material would be present in the daily diet for an entire lifetime.

Lifetime upper-bound risks have traditionally been used by FDA to assess the overall safety of packaging materials containing small amounts of carcinogenic impurities, and the agency

[1] The agency typically uses a 100-fold safety factor when applying to humans the results of animal data obtained from long term exposure to a chemical (i.e., 2-year chronic feeding studies). Short term toxicological testing (i.e., 90-day subchronic feeding studies) may not always be long enough to show all of the toxic effects that may be induced by long term exposure to a chemical, and, therefore, in such cases, FDA often uses higher safety factors (1000-fold to 2000-fold).

[2] The TD_{50}, for the purposes of this regulation, is the feeding dose that causes cancer in 50 percent of the test animals when corrected for tumors found in control animals.

believes that it is appropriate to use a similar approach in assessing the likelihood of potential carcinogenic effects associated with substances exempted from regulation. Based on its analysis of the potencies of 477 known carcinogens and the lifetime upper-bound risks that they would pose if present in the daily diet over a lifetime, FDA has determined that a substance present in the daily diet for a lifetime at 0.5 ppb would pose only negligible risk even if it were later shown to be a carcinogen. Because of the conservatisms used by the agency in its approach to determining a threshold level, FDA is confident that an exempted substance present in the daily diet for a lifetime at 0.5 ppb would pose no regulatory concern.

5. Four of the comments recommended that FDA establish a higher threshold for substances that have been shown to be nonmutagenic or to have relatively high LD_{50}[3] values. For example, one comment recommended that for substances that have been shown to be nonmutagenic and to have LD_{50} values greater than 2,000 milligrams per kilogram (mg/kg), the threshold should be raised to 5 ppb.

FDA agrees with these comments that it may be possible to establish separate thresholds for compounds that have been the subject of toxicological tests that show that they are nonmutagenic, or that they have high LD_{50} values. However, a direct correlation will need to be firmly established showing that such compounds, if carcinogenic, are likely to be less potent than those that have been shown to be mutagenic or to have lower LD_{50} values. Such a correlation would provide confirmation that a substance that has been shown to be nonmutagenic or to have a high LD_{50} value poses a significantly lower risk from potential carcinogenic effects when present in the daily diet at the same level than one that has been shown to be mutagenic or to have a low LD_{50} value.

The correlation between mutagenicity or acute toxicity and carcinogenic potency is the subject of ongoing FDA analysis. If the results of FDA's analysis confirm that the likelihood that a substance poses a significant risk from potential carcinogenic effects is significantly lower when that substance has been shown to be nonmutagenic or to have a high LD_{50} value, it may be possible to establish a threshold for such substances that is higher than 0.5 ppb but that still ensures that their use in food-contact articles will pose only negligible health concerns.

6. Three comments suggested that FDA establish a higher threshold for compounds that do not possess structural concerns (i.e., that do not possess structural similarities to known carcinogens).

In general, the principle behind the use of quantitative structure activity relationships is that the analysis of the toxicity of a large number of compounds of known structure enables one to predict the relative toxicity of unstudied compounds based on the degree of similarity in chemical structure to studied compounds. While FDA may use structure activity relationships to ascertain whether there is a basis to suspect that a substance is a carcinogen, knowledge about such relationships is not reliable enough at this time to justify reliance on an analysis of them to establish a higher threshold of regulation for some compounds. The comments did not submit any evidence to support a contrary conclusion.

7. Three comments recommended that the threshold be raised for compounds that have been shown to be noncarcinogenic. For example, one comment recommended that the threshold be raised to 100 ppb for substances that have been shown to be negative in 2-year bioassays.

FDA agrees that it may be possible in the future to establish a threshold higher than 0.5 ppb for substances that have been shown to be noncarcinogenic based on results obtained from appropriate 2-year bioassays. As discussed above, carcinogenic effects in test animals typically occur at lower dietary concentrations than do noncarcinogenic toxic effects. Therefore, FDA proposed to establish 0.5 ppb as the dietary concentration threshold because this level is low enough to preclude the likelihood of all but negligible risk even if an unstudied compound is later shown to be a carcinogen. In the case of noncarcinogens, however, the threshold of regulation could be based solely on the level at, and below which, noncarcinogenic toxic effects are unlikely to occur.

As stated in the proposed rule (58 FR 52719 at 52722), FDA's analysis of the data on 18,000 acute oral feeding studies in rats and mice found that all of the acute toxic effects occurred above 1,000 ppb. The results of 2-year chronic oral feeding studies on 220 compounds have shown that only 5 of the 220 chemicals exhibited toxic effects below 1,000 ppb, and that all 5 of these chemicals were pesticides, compounds that are expected to be more toxic than most substances. Even for these five pesticides, none exhibited toxic effects at dietary concentrations below 100 ppb. These results suggest that it may be feasible to establish a separate threshold for substances that have been appropriately tested and found not to be carcinogens. Such a threshold would likely be well below the level at which noncarcinogenic toxic effects are likely to occur but higher than the 0.5 ppb threshold that FDA is establishing to minimize the risk from potential carcinogens. FDA is not establishing a separate threshold for noncarcinogenic substances at this time, however, because the number of chemicals, particularly pesticides, that have been analyzed is not sufficient to ensure that the results of this analysis are representative of substances used in the manufacture of food-contact articles. An analysis of the dietary concentrations at which a large number and a wide variety of potent toxicants, such as pesticides, exhibit noncarcinogenic toxic effects is needed before FDA can determine whether establishment of a threshold significantly higher than 0.5 ppb for noncarcinogenic substances is justified.

Appropriateness of the 1-Percent ADI Threshold for Regulated Direct Additives

8. One comment recommended that once the final rule has been established, and the policy has been put into practice for a time, FDA should reassess the 1 percent of the ADI threshold for regulated direct food additives used in food-contact articles to see whether this threshold can be raised.

As stated in the proposal, a 1-percent ADI threshold for regulated direct food additives used in food-contact articles is appropriate because this level of dietary exposure will contribute only a small fraction of the ADI of a substance and, therefore, will be well within the margin of safety for those direct food additives with small cumulative dietary exposures. For substances with high cumulative dietary exposures resulting from regulated direct food additive uses, a level of exposure that is 1 percent of the ADI would be within the margin of error for the estimated daily intake. It would, therefore, not significantly affect the cumulative dietary exposure, even in the event that a particular substance is granted exemptions for several different types of uses in food-contact articles.

The agency would like to emphasize that no comments were received that expressed any safety concern about the 1 percent of the ADI threshold. As for raising this threshold above the 1-

[3] The LD_{50} is the dose in acute feeding studies that causes lethality in 50 percent of the test animals.

percent ADI level, FDA's main concern is with those cases in which a particular substance may be granted exemptions for a number of different types of new uses, each of which results in a dietary exposure at or near the threshold level. In such cases, the dietary exposure resulting from all of the exempted uses could represent a significant increase in the cumulative dietary exposure for the substance and, in cases where the estimated dietary intake from currently regulated uses is close to the ADI, may not be supported by existing safety data. It is possible, however, that once the threshold of regulation process is put into practice, other factors will surface that mitigate the agency's concerns on this issue. If the latter situation proves to be the case, the agency may find it appropriate to reassess the 1 percent of the ADI threshold for regulated direct food additives used in food-contact articles.

9. One comment recommended that FDA publish or otherwise make available the ADI's for currently regulated direct food additives. In cases where such ADI's are not readily available, FDA should consider other sources (e.g., the European Union's Scientific Committee for Foods) or provide guidelines for the calculation of appropriate ADI's.

FDA agrees that the ADI's for currently regulated direct food additives should be made more readily available. Therefore, FDA plans to incorporate this information into its priority based assessment of food additives (PAFA) data base and make this data base accessible to the public (Ref. 2). In the meantime, requestors can obtain this type of information on a specific substance by submitting a written request to FDA's Office of Premarket Approval (HFS–200, 200 C St. SW., Washington, DC 20204). In some cases, especially for those uses of direct additives that result in low dietary exposures such as flavoring agents, FDA may not have an ADI in its files. Therefore, in those relatively few cases where FDA does not have an appropriate ADI for a regulated direct food additive, the agency would consider the use of an ADI value from another appropriate source, such as the Joint World Health Organization/Food and Agriculture Organization (WHO/FAO), Expert Committee on Food Additives, or the European Union's Scientific Committee for Foods, assuming that the data or other information on which that ADI value is based are also available. FDA is revising proposed § 170.39(a)(2)(ii) to state that FDA may use other appropriate sources for ADI values.

FDA disagrees with the comment's suggestion that the agency provide guidelines for the calculation of appropriate ADI's for review under the process specified in this final rule. Regulated direct food additives for which an appropriate ADI does not exist are not suitable candidates for an abbreviated review under the threshold of regulation process. This process is not appropriate for reviewing submissions containing detailed toxicity studies on a substance for the purpose of calculating an ADI value or for verifying an ADI value calculated by the requestor. Such extensive reviews are better handled by the food additive petition process.

10. One comment recommended that FDA expand the proposed threshold of regulation process for regulated direct food additives to include exemptions for direct uses in food, provided the dietary exposures from such uses do not exceed 1 percent of the ADI. The proposed rule limited such exemptions to only those uses that may result in their indirectly becoming components of food (i.e., resulting from their use in food-contact articles).

FDA does not agree that the final rule should be expanded in this manner. There is a fundamental difference in regulatory significance between substances that are deliberately added directly to food to accomplish a technical effect in the food and substances that are used in food-contact articles in a manner such that they may reasonably be expected to become components of food indirectly and to have no technical effect in that food. The purpose of the food additive provisions of the act is to ensure that substances added to food are safe and will have their intended technical effect in the food that is to be consumed (S. Rept. 2422, 85th Cong., August 18, 1958). Thus, given this purpose, there simply would not be circumstances in which a direct additive would be of such little regulatory concern as to justify application to it of the de minimis[4] doctrine that underlies the threshold of regulation concept (see *Monsanto* v. *Kennedy, supra*). For indirect food additives, in contrast, the substance is being used for its technical effect in a food-contact article, not in an article that will itself be consumed.

Moreover, on occasion, it is foreseeable that, while the exact amount of an indirect additive that will get into food is unclear, it will not exceed an extremely small amount. It is in the latter circumstances that it is fair to say that, given the purposes of the Federal Food, Drug, and Cosmetic Act (the act), the use of the substance is of no significant regulatory concern, and thus the use can be exempted from regulation under the food additive provisions of the act. In light of the purposes of the food additive provisions, however, FDA concludes that it is not appropriate to extend the threshold of regulation concept to substances intended for direct use in food.

11. One comment expressed the opinion that the proposed regulation is unduly restrictive for the use of regulated direct food additives in food-contact articles when the direct additive does not have any specific use level restrictions. An example of the type of situation raised by the comment would be flavoring agents where the level of their use in food would be self limiting (i.e., use at high levels would make the food unpalatable, and, therefore, FDA did not find it necessary to impose specific maximum use levels as part of the regulations authorizing the use of such substances). The comment emphasized that, because of the time required to obtain FDA approval (as a result of FDA's current backlog of work), the consumer's access to new packaging technologies is often delayed. Not requiring premarket approval of such substances would save FDA resources, reduce the backlog of work, and enable the consumer to have quicker access to new packaging formulations.

The comment argued that, based on the extremely small levels of dietary exposure that would result from the use of direct additives in food-contact articles, particularly in comparison to the levels of exposure that result from the direct uses of these substances, and based on the fact that direct food additives have been the subject of extensive safety testing, FDA should modify § 174.5(d) (21 CFR 174.5(d)) to allow those direct food additives that are regulated without specific use level limitations to be used as components of food-contact articles. The comment asserted, however, that four restrictions on such use were appropriate: (1) The use of the substance in a food-contact article must not result in a dietary exposure that exceeds 1 percent of the ADI for that substance; (2) the use level must not exceed good manufacturing practice (GMP) or that necessary to accomplish the intended technical effect; (3) the substance must be of a purity suitable for the intended use; and (4) the technical effect for such additives must be as a formulation aid or some other technical effect for which the substance has been listed as a direct

[4] This doctrine is expressed in Latin as de minimis non curat lex (the law does not concern itself with trifles).

food additive (e.g., a substance approved for use as a stabilizer and thickener in food would be allowed to be used as a stabilizer and thickener in the manufacture of food-contact articles). The comment cited FDA's approach to handling generally recognized as safe (GRAS) substances as a precedent for this approach. Under 21 CFR 186.1(a), ingredients affirmed as GRAS for direct use in part 184 (21 CFR part 184) are also affirmed as GRAS for use as indirect human food ingredients in accordance with § 184.1(a).

The agency notes that the issue raised by this comment is outside the scope of the proposed threshold of regulation process. The comment is about whether the uses in question should be approved as food additive uses, not about whether they should be exempted from regulation under the food additive provisions of the act.

Although outside the scope of this rulemaking, FDA would like to comment on the merits of the approach recommended in this comment because the agency is always interested in evaluating ways that may help it to more effectively implement the food additive provisions of the act. FDA's main concern with the recommended approach is that those direct food additives that are regulated without specific use level limitations, and which meet the other restrictions specified in this comment, could be used as components of food-contact articles without any further safety review by FDA. Although it is true that the dietary exposure resulting from the use of a substance added directly to food is usually much higher than that resulting from the use of that substance as a component of a food-contact article, the existing safety data in FDA files used to support the direct additive use may not always be adequate to support even a modest increase in the dietary exposure resulting from its use as an indirect food additive.

Some direct food additives have been regulated for uses in which only a narrow margin exists between the cumulative estimated dietary exposure and the acceptable dietary exposure. Many other direct additives have been regulated for uses for which, initially, the margin between the estimated daily intake and the ADI was reasonably broad, but as the substance has been subsequently regulated for other uses, the margin has become quite narrow. Because existing safety data may not be adequate to support the use of direct additives as components of food-contact articles in all cases, such uses must be evaluated on a case by case basis, either as the subject of a food additive petition (if the dietary exposure is likely to be greater than 1 percent of the ADI) or as a request for an exemption from regulation (if the dietary exposure is likely to be below the 1-percent ADI threshold of regulatory concern).

Another agency concern with the recommended approach is that some of the direct food additives may also have been regulated at a time when FDA did not conduct reviews on the possible environmental effects resulting from such uses. (FDA regulations for considering the environmental effect of its actions in accordance with the National Environmental Policy Act (NEPA) were established on March 15, 1973.) It may be possible that the manufacture, use, and disposal of food-contact articles containing regulated direct food additives may have an adverse impact on the environment. Therefore, the potential environmental effects resulting from the intended use of a direct food additive in a food-contact article need to be evaluated by FDA either as part of a review of a petition or as part of a review of an exemption from regulation request. Further discussion of this issue is found later in this final rule in the agency's response to comments 28 and 29.

For the reasons listed above, FDA has concluded that the use of a regulated direct food additive in a food-contact article should either be the subject of a specific food additive regulation authorizing such use or be exempted from regulation as a food additive by FDA under the procedures specified in this final rule. Application of the Food Additive Definition

12. Two comments expressed the opinion that the *Monsanto* decision gives FDA the flexibility to consider those substances migrating out of food-contact articles in trivial amounts not to be food additives. These comments went on to say that the Delaney Clause (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), which prohibits the use of known carcinogens as food additives, would therefore not apply.

FDA disagrees with the comments. It is true that *Monsanto* stated that the Commissioner has discretion to implement the statutory scheme established by the Food Additives Amendment, and that this discretion includes the option of declining to define a substance as a food additive (613 F.2d at 956). However, the court also said that the Commissioner's discretion is limited (id.). The Commissioner's exercise of discretion must be consistent with the statutory scheme. He cannot exercise his discretion to vitiate that scheme. Under the Food Additives Amendment, a carcinogenic additive is deemed to be unsafe, no matter how low the exposure to the additive or how low the risk from the additive (see *Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988)). Given these facts, FDA has formulated the threshold of regulation regime to exempt substances from regulation as food additives based on the level of dietary exposure but has conditioned that exemption on such substances not having been shown to be carcinogens. No other approach would be consistent with the act.

13. Three comments recommended that FDA clarify whether companies can make their own threshold of regulation determinations. The comments stated that, in those cases where the use of the substance meets the definition of a ''food additive'' in section 201(s) of the act (21 U.S.C. 321(s)), individual manufacturers should be able to make their own determination as to whether the use of a substance in a food-contact article meets the criteria for an exemption from regulation. One of the comments requested that the agency's position on this issue be explicitly stated in the final regulations.

According to *Monsanto*, only the Commissioner has the statutory authority to exempt a substance from regulation as a food additive. A substance that meets the definition of a food additive in section 201(s) of the act must, therefore, either be the subject of a regulation authorizing its use or be exempted from regulation by FDA under the process specified in new § 170.39, unless the use of the substance conforms to an exemption for investigational use issued under section 409(i) of the act.

From a policy standpoint, the procedure outlined in this final rule, whereby FDA makes all exemption decisions, offers a number of advantages over an approach that allows individual manufacturers to make their own threshold of regulation decisions. One advantage is that the agency's determination as to whether a substance used in a food-contact article meets the criteria for an exemption from regulation as a food additive will be binding on the agency. Thus, manufacturers of food-contact articles will be able to rely on these determinations and market their products without fear of regulatory action.

This approach also will result in more consistent decisions. Qualified experts may disagree on what specific assumptions are appropriate for estimating the dietary concentrations resulting from the use of substances in

food-contact articles. Thus, allowing individual manufacturers to make their own determinations would increase the likelihood of inconsistent decisions.

For example, in cases where there is no detectable migration into food or food simulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, the validated detection limit of the method used to analyze for the substance would need to be considered in order to estimate the dietary concentration from the intended use. Qualified experts may disagree not only on the specific numeric value for this detection limit but also on what percentage of the detection limit should be used in such situations to estimate actual migration (e.g., 100 percent versus 50 percent). Qualified experts may also disagree on the appropriate consumption factor to use in estimating dietary concentrations. Different conclusions on the environmental effects resulting from the use of a food-contact article may also arise from such independent determinations. The agency believes that having all such exemption decisions made by a review team consisting of a small number of agency personnel will help lessen the likelihood of inconsistent decisions on these matters.

Having such determinations made by FDA will also mean that the agency will have more complete information on what materials industry is actually using in food-contact articles. As a result, FDA will be able to make more informed decisions in the event that data become available that raise significant concerns about whether the continued use of a component of a food-contact article is safe.

Although only the Commissioner of FDA has the statutory authority to exempt a substance from regulation as a food additive in those cases where the use of the substance meets the ''food additive'' definition in section 201(s) of the act, FDA emphasizes that nothing in this final rule limits the use of a substance exempted by FDA from regulation to only the manufacturer who submitted the request for an exemption. Other manufacturers may use exempted substances in food-contact articles as long as the conditions of use (e.g., use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued.

Consistent with this fact, FDA plans to give general notice by means of the **Federal Register**, should it ever decide to revoke an exemption. The notice will state that continued use of such a substance would constitute the use of an unapproved food additive, unless a petition is filed, and the substance is listed for use in FDA's regulations. It will also set out the reasons for FDA's decision to revoke the exemption, thereby providing manufacturers with the opportunity to submit relevant data to the agency and to request that the exemption be reinstated.

FDA does not believe, however, that it would be practical to routinely provide notice in the **Federal Register** of its intent to revoke an exemption. Such a process would only unduly delay and burden the revocation process. It would be inconsistent with the intent of the threshold of regulation process to minimize the use of agency and industry resources for those substances whose use in food-contact articles poses only negligible safety concerns. Accordingly, FDA is revising § 170.39(g) to make clear that the agency plans to provide notice in the **Federal Register** after it has decided to revoke an exemption issued for a specific use of a substance in a food contact article.

FDA has decided, however, not to include in § 170.39 a statement that only the Commissioner can make threshold of regulation determinations. It is not the agency's usual practice to enumerate in its regulations those regulatory decisions that are reserved to the agency. Therefore, the agency is not doing so here.

Scope of the Exemption

14. Two comments recommended that FDA expand its proposed threshold of regulation to enable the agency to exempt entire classes of compounds. Under the scheme suggested by these comments, FDA would review one or more compounds within a given class, and, if it determined that these individual chemicals qualified for an exemption, the agency would exempt all of the chemicals within the class. One of these comments expressed the view that many manufacturers do not use their proprietary chemicals for food-contact applications because of FDA's requirement that they be regulated based on their chemical identity, and that the use of such an approach would remove impediments that stifle innovation in the food industry.

FDA disagrees with this approach for a number of reasons. Because the level of migration, and resulting dietary concentration, of the chemical depend on both its molecular weight and chemical properties, it would be impossible to predict whether the use of all compounds within a class would result in dietary concentrations below the threshold based on the migration properties of just one or two sample chemicals. For example, polymeric materials manufactured from the same monomer but having significantly different molecular weights would belong to the same class of chemicals but would be expected to have different migration properties. Similarly, the intrinsic toxic potencies for chemicals within a certain class may vary significantly. For example, the polychlorinated dibenzo-*p*-dioxins are a class of 75 congeners that exhibits a wide range of toxicity depending on the degree of chlorination and the location of the chlorine atoms within the chemical structure. As a result, the likelihood that a substance poses a health hazard is not necessarily determinable based on the information about the toxicity of other chemicals that are in the same class. In addition, it would be difficult to predict the environmental impact that would result from the manufacture, use, and disposal of all substances within a class based on the impact of one or two chemicals. Therefore, FDA does not believe that it is possible, based on the review of one or more compounds within a given class, to justify an exemption for all other chemicals belonging to the same class.

For the foregoing reasons and because the dietary concentration of a specific chemical is dependent on the conditions of its use (e.g., type of use, temperature, food type, and contact time), FDA concludes that to adequately safeguard the public health, it is necessary to limit exemptions under § 170.39 to those conditions of use of a chemical that it has evaluated.

15. One comment recommended that rather than require a submission for each chemical and each proposed use, FDA should publish guidelines based on categories of uses that would provide performance standards that could be used by manufacturers to guide customers on how to stay below the threshold exposure.

As discussed earlier, the dietary concentration resulting from the use of a substance in a food-contact article may vary considerably depending on the type of use and the conditions of use. Therefore, it would not be feasible to establish guidelines for use with respect to all possible food-contact articles under all possible conditions. Interpretation of such complicated guidelines by individual manufacturers and customers would inevitably lead to confusion and inconsistencies.

The process specified in this final rule, as part of which a small team of agency personnel will review each request for an exemption, will result in more consistent decisions. Having all such determinations made by FDA

using the process specified in the final rule should also result in the agency having more complete information on what substances are being used in food-contact articles. This information will permit the agency to take action in the event that data become available that raise significant questions as to whether the continued use of a substance in a food-contact article is safe.

16. One comment stated that the 0.5 ppb threshold was too low for the use of pigments in food-contact articles because such pigments are less toxic than other chemicals. Because these pigments are relatively insoluble, they would also have lower bioavailability.

FDA does not believe that it is feasible to establish specific thresholds of regulation for each of the many types of chemicals used in food-contact articles. Such an approach, with many different thresholds, would be cumbersome. Moreover, as discussed in a previous comment, the toxicological properties of chemicals within a class can vary greatly. Therefore, it would be extremely difficult to establish a single threshold for all the chemicals within a given class. Because of this difficulty, FDA is not taking any action in response to this comment.

The agency believes that it may be feasible in the future to establish a higher threshold based on a substance's toxicological properties rather than based on its type or on the class of chemicals to which it belongs. For example, as discussed in a previous comment, it may be possible in the future to establish separate thresholds for substances that either have been shown to be noncarcinogenic by appropriate 2-year bioassays or, based on the results of short-term toxicity testing (e.g., mutagenicity and acute oral feeding studies), are likely to have a low carcinogenic potency if they are, in fact, carcinogenic.

17. One comment requested that FDA specifically address whether biocides would be eligible for consideration under the threshold of regulation regime. Because such substances must be registered with the Environmental Protection Agency (EPA) in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et al.*), and must undergo an extensive review for safety and efficacy, the comment stated that biocides are well suited for an abbreviated review under FDA's threshold of regulation process.

As long as the criteria specified in this final rule are met, FDA will grant exemptions from regulation as food additives for biocides that become components of food-contact articles.

18. Two comments requested that FDA clarify how the presence of a ''barrier'' (one that would limit the migration of a packaging substance into food) would be factored into threshold of regulation decisions. In particular, the comment asked whether, in cases where there is a functional barrier, and no migration can be detected, FDA would still consider the validated detection limit of the method used to analyze for the substance in its dietary exposure estimate.

The key factor in FDA's decision to grant an exemption from regulation for a substance used in a food-contact article is whether the dietary concentration of the substance resulting from its use is below the threshold. Thus, if the presence of a functional barrier limits the migration of the substance into food such that the resulting dietary concentration is below the threshold, FDA will grant an exemption for the intended use of that substance, provided that the other criteria specified in this final rule are met.

In most cases, the effectiveness of a material to act as a barrier to migration will depend not only on the physical and chemical properties of the barrier material and the potential migrant but also on the thickness of the barrier layer and the conditions of use (e.g., temperature, food type, contact time). Therefore, it is usually not possible to draw any conclusions regarding the effectiveness of a barrier material in the absence of migration data. In such cases, requests for exemptions from the food additive regulations would need to contain data showing that the barrier material precludes all but minimal migration of the substance into food (i.e., the resulting dietary concentration is at or below the threshold). FDA will consider the validated detection limit of the method used to analyze for the substance in arriving at its dietary exposure estimate.

There are a number of specific situations, however, where FDA would not require data to show that a barrier material precludes all but minimal migration of the substance into food. For example, some packaging materials such as aluminum foil, when used as the inner layer of laminates, have been generally recognized as being able to provide an effective barrier to migration of the outer layer components into food under a variety of conditions. In such cases, it would not be necessary for the requestor to carry out and submit extraction studies designed to show the effectiveness of the barrier layer. Another example involves those cases in which FDA has reviewed the barrier material and has established specific conditions under which the material would indeed function as a barrier. In these cases, the agency will be able to make decisions on similar constructions in the absence of any additional extraction studies, as long as the conditions of use do not differ significantly from those the agency reviewed.

19. One comment inquired as to whether the final rule establishing a threshold of regulation for substances used in food-contact articles will be applicable to regulated direct animal feed additives that are intended to be used as components of articles that may contact animal feed (i.e., indirect animal feed additives).

This final rule will allow those substances exempted under § 170.39 to be used in articles contacting animal feed as long as the intended conditions of use of the substance are those for which the exemption was issued. This result follows from §§ 174.6 and § 570.14 (21 CFR 570.14) of FDA's regulations. Under § 174.6 *Threshold of regulation for substances used in food-contact articles*, FDA will exempt substances from regulation as food additives whose use in food-contact articles meet the criteria in § 170.39. Authority to use substances exempted under § 174.6 in articles contacting animal feed is set out in § 570.14 *Indirect food additives resulting from packaging materials for animal feed and pet food*, which states that the regulations providing for the use of food-packaging materials in parts 174 through 179 (21 CFR parts 174 through 179) are applicable to packaging materials used in animal feed and pet food.

Moreover, in cases where the exemption request concerns the use of a substance in an article that is used only in contact with animal feed, the criteria used by FDA to determine whether an exemption from regulation is warranted will be those specified in new § 170.39. Because § 570.14 contains a cross-reference that includes § 174.6, in accordance with that provision, FDA can review a request for exemption of a substance used only in contact with animal feed under § 170.39.

Sections 170.39, 174.6, and 570.14, however, will not provide for the use in articles contacting animal feed, at a level that is 1 percent or less of their ADI, of substances that are currently regulated for direct use in animal feed in part 573 (21 CFR part 573). To provide for such a review, FDA will have to adopt a regulation similar to § 170.39 that applies to direct animal feed additives that have not been

regulated for direct addition to human food. However, such a regulation is outside the scope of this rulemaking and would require a separate proceeding.

Application of the Exemption

20. One comment inquired whether exempted substances may be used in contact with all types of food.

Because the dietary concentration resulting from the use of a substance in a food-contact article is dependent on the type of food with which it comes in contact, the use of a substance in an article contacting one type of food may result in a dietary concentration below the threshold, while the use of the same material in contact with another type of food may not. Therefore, FDA will limit exemptions to those conditions of use warranted by the available data.

B. The Regulation

21. One comment recommended that FDA revise the language in § 170.39(a)(1) to make clear whether the phrase ''there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen'' refers to impurities within the substance or the substance itself.

FDA agrees with this comment and is revising proposed § 170.39(a)(1) to make it clear that the phrase ''there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen'' refers only to the substance itself.

22. One comment recommended that FDA revise the language in proposed § 170.39(c)(1) to make clear that the description of the chemical composition of the substance for which the request is made should include, whenever possible, the name of the chemical in accordance with current chemical abstracts service (CAS) nomenclature guidelines and a CAS registry number if available.

FDA agrees with this comment and has revised proposed § 170.39(c)(1) accordingly.

23. One comment recommended that the word ''substance'' in proposed § 170.39(c)(4)(ii) and (c)(4)(iii) should refer to the singular case for consistency.

FDA agrees and has made the changes that respond to this comment in this final rule.

24. One comment recommended that the regulation define in detail the types of information required by FDA in submissions requesting exemptions from the food additive regulations.

FDA agrees that a detailed description of the information that needs to be included in a request for an exemption should be readily available to interested parties. However, FDA does not believe that it is necessary or appropriate to include this information in the Code of Federal Regulations (CFR). The agency considers it appropriate to make this information available in a manner similar to that which FDA uses with respect to the contents of food additive petitions. For food additive petitions, FDA generally describes the information that must be submitted in part 171 (21 CFR part 171) of its regulations and maintains more detailed guidelines that are available from the agency upon request. While FDA publishes modifications in the CFR only annually, it can modify guidelines whenever necessary, thereby providing requestors with up-to-date guidance. This flexibility in modifying detailed guidelines is needed to take into account ongoing advances in the development of food-contact articles and in the methodologies used to quantify migration of components of such articles into food.

Therefore, FDA is adding § 170.39(h), which states that guidelines to assist requestors in the preparation of submissions seeking exemptions from the food additive regulations are available from FDA's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204.

Because it is not practical to provide guidelines that would cover all of the possible topics associated with these types of submissions, this final rule encourages interested parties to obtain specific guidance from FDA on the protocols to use in obtaining extraction data, on the validation of the analytical methods used to quantify migration levels, on the procedures to use to relate migration data to dietary exposures, and on any other issue not specifically covered in FDA's guidelines.

FDA formerly proposed to announce the availability of guidelines in § 170.39(c)(4)(v) because the guidelines were meant to focus on questions associated with the dietary concentration resulting from the intended use of a substance in a food-contact article. However, the agency believes it is more appropriate to include such language as part of § 170.39(h) to emphasize that interested parties may seek guidance on any issue involving exemption requests. Therefore, FDA is revising § 170.39 to include this provision and has deleted proposed § 170.39(c)(4)(v).

C. Procedural Issues

Obtaining an Exemption

25. One comment commended FDA for its statement in the preamble that manufacturers may make their own determination as to whether the use of a substance in a food-contact article meets the ''food additive'' definition in section 201(s) of the act and recommended that FDA explicitly state this fact in the final regulation.

In response to this comment, FDA would like to reaffirm its position that nothing in the regulatory scheme presented in this rule would prevent a company from making its own determination that a particular use of a substance does not meet the definition of a ''food additive'' in section 201(s) of the act. However, as noted in the proposal, companies make such determinations at their own risk. If the agency learns of the use of a substance from, for example, a competitor and reaches a different conclusion than the company, the agency may take regulatory action against the substance as an unsafe food additive or against the company that makes the substance for introducing an adulterated food into interstate commerce. Therefore, in cases where it is not clear whether the use of a food-contact article meets the ''food additive'' definition, FDA recommends that manufacturers seek a determination under the procedures specified in this rule to avoid the possibility of regulatory action.

FDA does not believe, however, that it is appropriate to address this issue in the regulation. The issue raised by the comment applies generally to FDA's application of the ''food additive'' definition in section 201(s) of the act. This rulemaking concerns only the threshold of regulation process. Therefore, the question of whether, and how, to incorporate into FDA's regulations the statement that the comment seeks is outside the scope of this rulemaking.

26. Seven comments recommended that the agency establish a time limit for reviewing and responding to requests for exemptions from regulation as food additives to ensure timely responses. Two of the comments suggested specific time limits of 60 and 90 days.

The agency agrees that such reviews should be carried out in a timely manner. Timely review will mean that manufacturers and suppliers of substances that are exempted from regulation as food additives will be able to market their products much more quickly than has been the case. Timely review will also mean that manufacturers and suppliers of substances that are not exempted will receive prompt notice of the need to file a food additive petition.

A pilot study carried out by FDA showed that such reviews can usually

be completed within 3 to 4 months as compared to the 1 to 2 years typically required for indirect food additive petitions. The agency is concerned, however, that establishing a formal time limit for completion of such reviews will unduly restrict its ability to allocate its limited resources to projects that may be more critical. Therefore, the agency has decided not to establish a time limit for reviewing and responding to requests for exemptions from regulation as food additives at this time. As the agency gains experience with its threshold of regulation policy, it will consider establishing an appropriate time limit. In the interim, however, the agency is committed to reviewing exemption requests as expeditiously as resources allow.

27. One comment recommended that there be a phase-in process that would allow companies to carefully evaluate products that are on the market and to obtain exemption determinations where, and if, required.

As discussed previously, if the use of a substance results in, or is reasonably expected to result in, migration into food, even at low levels, and is not specifically excluded from the definition of a ''food additive'' in section 201(s) of the act, then the substance is a food additive that must either be the subject of a regulation authorizing its use or be exempted from regulation by FDA under the process specified in this rule. However, if the use of a substance in a food-contact article currently on the market involves low levels of migration into food (i.e., results in a dietary concentration at or below the threshold of regulatory concern), and is the subject of a request for an exemption under the process specified by this final rule, it is unlikely that FDA would take regulatory action during the time needed by the agency to complete its review. Therefore, the agency does not believe it is necessary to establish a phase-in program to allow companies to evaluate food-contact articles currently on the market.

28. One comment recommended that § 170.39 be revised to include an abbreviated review (i.e., one that does not require a review of environmental impact data and toxicological feeding study data) for those exemption requests that deal only with new uses of regulated indirect food additives that involve the same manufacturing process but a different technical effect (e.g., a substance currently regulated as a defoamer in the manufacture of paper and paperboard under § 176.170 that is the subject of an exemption request for its use as a deposit control agent in the manufacture of paper and paperboard).

The agency is currently reevaluating its environmental regulations under NEPA, and is committed to expanding the list of categorical exclusions found in § 25.24 (21 CFR 25.24). However, as indicated earlier, a key factor in FDA's decision to grant an exemption from regulation is whether the substance has a significant impact on the environment. A new use of a regulated indirect food additive that involves the same manufacturing process but a different technical effect may have, as a result of its use or subsequent disposal, a significantly different environmental exposure than any previously regulated use of the substance. Therefore, an abbreviated review (i.e., one that does not include a review of environmental impact data) is not justified for all such substances. Although these types of uses do not currently qualify for a categorical exclusion, some may qualify in the future (the categorical exclusion list is currently under consideration for expansion).

In regard to reducing the requirements for the submission of toxicological feeding studies, FDA emphasizes that § 170.39 requires only that submissions contain the results of an analysis of existing toxicological information on the substance and its impurities. This information is needed to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or potent toxin. FDA also requires this type of information to enable it to determine whether any of the impurities present in the substance have been shown to be carcinogenic, and, if carcinogenic, whether their TD50 value is greater than 6.25 mg/kg bodyweight per day (see § 170.39(a)(1)). To clarify this issue, FDA is revising the language in § 170.39(c)(5) to state that the only toxicological information that must be included in a submission for an exemption from the food additive regulations is an analysis of existing toxicological information on the substance and its impurities.

29. Two comments stated that exempted substances should not be subjected to the environmental impact reviews typically required for food additives. The comments asserted that, instead, exempted substances should come under a newly created ''categorical exclusion'' that would exclude such actions from the requirement that an environmental assessment be prepared.

An FDA decision to exempt a substance from regulation as a food additive is an agency action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321). Under NEPA, an agency action must include a consideration of the environmental effects resulting from the intended use, unless it is the subject of one of the categorical exclusions listed in 21 CFR 25.24. Actions are made subject to an exclusion either because, as a class, they will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance into the environment, or because they meet specific criteria that are intended to ensure they will not cause significant environmental effects. As stated above, the agency is actively examining its categorical exclusion regulations. However, neither of the subject comments provided information to show that as a class, substances used in food-contact articles would not be introduced into the environment or to support the establishment of a new categorical exclusion. The agency welcomes the submission of data and information that would support the establishment of a categorical exclusion for these substances. At this time, however, all requests for threshold of regulation exemptions must include an abbreviated environmental assessment.

Availability of the Information Submitted

30. Six comments were submitted on the general subject of what types of information contained in submissions under § 170.39 should be made publicly available (i.e., on display at the Dockets Management Branch or released in response to requests submitted under the Freedom of Information Act (FOIA) (5 U.S.C. 552)). Three of these comments were quite general, recommending that FDA handle the confidential information contained in such submissions in the same manner that it has traditionally treated other documents submitted. A more specific comment recommended that the information released under FOIA should be consistent with that released from food additive petitions. One comment expressed the opposite viewpoint, stating that exempted substances should not be considered food additives, and that, therefore, the rules governing the release of information submitted on food additives should not apply. This comment also requested that the final regulation include a statement recognizing the possible trade secret status of information submitted in support of an exemption request. Another comment stated that the names of companies receiving exemption letters are trade secret.

As a general matter, the FOIA requires that agencies make the fullest possible disclosure of records to the public. The procedures that FDA uses to handle the release of public information in accordance with FOIA are described in part 20 (21 CFR part 20). Under these procedures, information submitted to FDA, including that submitted on the use of food additives, is made publicly available to the greatest extent possible.

As for substances that become components of food below the threshold that FDA is establishing, they will be exempt from the requirement that their use be the subject of a food additive listing regulation. This exemption, like a listing regulation, allows these substances to be used in food contact articles. Given the similarity in effect between a food additive listing and the grant of an exemption, FDA concludes that it is appropriate for it to make publicly available under § 170.39(e) the same type of information that is releasable on regulated food additives. This information includes the name of the company that sought and received authorization to use the substance.

In response to the request that the final regulation include a statement recognizing the possible trade secret status of information submitted in support of an exemption request, FDA is revising § 170.39(e) to state that the agency will respond to all FOIA requests for information submitted under § 170.39 in accordance with part 20. Thus, data and information that are trade secret or confidential commercial or financial information are not available for public disclosure in accordance with § 20.61(c).

31. One comment stated that information contained in submissions under § 170.39 should not be released in response to FOIA requests.

FDA does not agree with this comment. As discussed in the previous comment, FOIA requires that agencies make the fullest possible disclosure of records to the public. The agency, however, recognizes that it has an obligation to protect trade secret and confidential commercial or financial information as defined in § 20.61(a) and (b). Therefore, FDA will not disclose this type of information.

32. Two comments stated that the chemical identities of exempted substances should not be publicly disclosed. One of these comments stated that such information is trade secret and considered by economists as ''circumstantially relevant business information.'' The comment stated that, if the company requesting an exemption regards this information as trade secret, keeping such information confidential is consistent with controlling case law interpretation of the confidentiality standard that is applied to FDA under *Critical Mass Energy Project* v. *NRC,* 975 F. 2d 871 (D.C. Cir. 1992). This comment also stated that, because these substances are exempt from regulation as food additives, FDA is not under any obligation to disclose their chemical identities. The comment stated that release of proprietary information could force companies to make their own determinations as to whether a food additive regulation is needed. This comment suggested that FDA adopt a system whereby the chemical would be identified only by the general class of chemicals to which it belongs. This comment also pointed out that EPA has used this type of system in Pre-Manufacture Notifications submitted under the Toxic Substances Control Act (40 CFR 720.85). One of these comments raised the possibility that exempted substances could be referred to only by their trade names.

FDA disagrees with the suggestion that exempted substances be referred to only by trade names or by reference to the general class of chemicals to which they belong. Two factors underlie FDA's disagreement. First, the provisions of the act added by the 1958 Food Additives Amendment permit any manufacturer to use any regulated food additive as long as the substance meets all applicable specifications, including those associated with the identity of the additive. Second, as previously discussed, FOIA requires that agencies make the fullest possible disclosure of records to the public. Under the procedures used by FDA to determine the releasability of information under FOIA, the agency has traditionally considered the chemical identity of food additives to be disclosable information, and thus, the regulations implementing the 1958 Food Additives Amendment refer to food additives by their chemical names. Because FDA's approach to exempted substances derives from the food additive provisions of the act, and, as stated above, FDA is acquiescing in the use of the substance, FDA concludes that the chemical identities of exempted substances are disclosable under FOIA.

Critical Mass is not to the contrary. While a company has an alternative to making a submission to FDA under § 170.39 (i.e., filing a food additive petition), and thus, the submission is in a sense voluntary, the key question under *Critical Mass* is whether the information is of a kind that would customarily not be released to the public by the person from whom it was obtained (975 F.2d at 879). As stated above, information about the chemical identity of food additives for which listing is sought is routinely disclosed to the public in the **Federal Register**, pursuant to section 409 of the act. Submitters are well aware of this fact. Thus, FDA finds no merit to the suggestion by the comment that the identity of substances subject to § 170.39 must be kept confidential. To provide differently for substances subject to § 170.39 would be to create a special exemption. Clearly, *Critical Mass* does not require such a result.

From a practical standpoint, chemical nomenclature has typically been used to characterize food additives because chemical names are universally recognized and are not subject to change as trade names often are. Moreover, trade names are often used to refer to formulations in which the chemical composition is held confidential. In such cases, referring to regulated food additives by trade names would make it impossible for other manufacturers to determine whether their chemical substances meet applicable regulations. A similar situation would occur if the list of exempted substances made publicly available did not include the chemical identities of such substances.

Making available the chemical identities of substances exempted from regulation will permit other manufacturers to use these substances as long as the conditions of use are no more likely to result in migration to food than those for which the exemption was originally issued. It will also allow interested persons to determine what substances have been exempted by FDA under the process established by this final rule. FDA believes that, in the interest of open government, it is essential that decisions made under this policy be available to the public. Therefore, for the reasons specified above, FDA will make publicly available the chemical identities of exempted substances.

33. One comment stated that the technical effect or function of the substance should not be made publicly available.

Under the procedures used by FDA to implement FOIA, the agency has not considered information on the technical effect or functionality of a food additive to be trade secret as defined in § 20.61(a) or confidential commercial or financial information as defined in § 20.61(b). Because the dietary exposure resulting from the use of a substance in a food-contact article may vary considerably depending on the technical effect of that additive, it is often necessary to include such information in the regulation authorizing a specific type of use of the food additive in order to restrict the

dietary exposure to levels that can be supported by existing safety data. For example, substances regulated in 21 CFR 178.3400 are restricted to use as emulsifiers and/or surface active agents in the manufacture of articles or as components of articles contacting food. Moreover, the provisions of the act added by the 1958 Food Additives Amendment permit any manufacturer to use any regulated food additive as long as the use of the substance meets all applicable specifications and limitations. Such limitations include those that restrict the use of the additive to a specific technical effect. Therefore, it is often necessary to include this information as part of the conditions of use set forth in the regulation authorizing the use of the additive so that other manufacturers may use the same substance under only those conditions that are safe. In addition to being made available as part of a regulation, the agency has routinely made technical effect information contained in food additive petitions available to the public in response to FOIA requests in accordance with § 171.1(h)(1)(i). Consistent with the explanation above, FDA sees no reason to change this policy with regard to food additives exempted from regulation.

Treatment of the List of Exempted Uses of Substances

34. One comment recommended that in addition to making available a list of exemptions at the Dockets Management Branch, FDA should publish this list in the **Federal Register**.

The public should have ready access to an up-to-date list of those uses of substances that have been exempted from regulation as food additives by FDA. However, maintaining such a list, updated on a regular basis, on display at the Dockets Management Branch, is the most efficient way of achieving this result. FDA anticipates being able to respond to exemption requests within 3 to 4 months. Thus, the list of exempted substances would be continually changing. Monthly updates in the **Federal Register** would be expensive and yearly updates of little value. Therefore, FDA has no plans to publish this list in the **Federal Register**.

However, to ensure that interested persons are aware that FDA is maintaining such a list at its Dockets Management Branch, the agency plans to publish annually a brief notice in the **Federal Register** on the availability of this list. An updated list of exempted substances can also be obtained by contacting FDA's Office of Premarket Approval (address above). FDA is revising § 170.39(e) to reflect this fact.

Revocation

35. One comment recommended that FDA establish timeframes for the revocation process. The comment suggested that the requestor would have 60 days to respond to FDA's tentative decision to revoke an exemption. Once the response is submitted, FDA would have 60 days to reach its final decision.

FDA agrees that in cases in which new information becomes available showing that continued exemption of a substance in a food-contact article from regulation under the food additive provisions cannot be supported in light of existing safety data, the requestor's response to FDA's tentative decision to revoke an exemption, and FDA's subsequent decision, should occur in a timely manner. However, because the complexity of such reviews may vary greatly and require varying amounts of time to complete, FDA does not consider it to be appropriate to establish specific timeframes for such reviews.

III. Other Actions

FDA is revising § 170.39(c) to state that three copies of a request for an exemption from regulation are to be submitted. The agency is requiring three copies to help expedite its review of such requests. To further expedite such reviews, the agency is revising § 170.39(c) to state that if part of the submitted material is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate in accordance with § 10.20(c)(2) (21 CFR 10.20(c)(2)).

IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Under Executive Order 12866, a regulatory action is economically significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is otherwise considered significant under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that this final rule will not have a significant impact on a substantial number of small businesses.

38. One comment suggested that the proposed threshold of regulation process would have an adverse impact on small businesses. FDA disagrees. The regulation that FDA is adopting does not prohibit or restrict any present activity and, therefore, does not generate compliance costs for either large or small firms. In addition, FDA has received no information that the benefits of the proposed action will accrue differentially to large firms. In fact, this approach should minimize the burden on all businesses by providing a procedure that is less burdensome than the food additive petition process. Without this threshold of regulation process, those components of food-contact materials whose use results in low levels of migration into food would require premarket approval through the food additive petition process.

Based on information provided to FDA by representatives of the food packaging and processing industries, the collection of information and preparation of an exemption request for review under the process established by this final rule is estimated to cost anywhere from $1,400 to $25,000 depending on the complexity of the project. If analytical studies are required to be carried out to show that the dietary exposure resulting from the proposed use is below the threshold of regulation, FDA estimates that the additional cost would vary from $10,000 to $50,000 depending on the complexity of the project (e.g., the number of substances or food simulating solvents involved, and the method of analysis). Thus, the agency estimates that the total cost to submit exemption from regulation requests may vary from $1,400 to $75,000.

The time required to prepare such requests would also vary with the type of data needed to estimate the dietary exposure associated with the intended use. A simple request (i.e., one that does not contain any analytical work) would typically contain: (1) Identity and use information; (2) a literature search of the existing toxicological data on the substance and its impurities; and (3) information on the environmental impact resulting from the proposed use of the substance. Based on information provided to FDA by representatives of the food packaging and processing industries, the average time to prepare such requests is estimated to be 68

hours. The average time to prepare requests that include analytical work (e.g., extraction studies carried out using food-simulating solvents, analytical studies to determine the residual level of the substance in the food-contact article) is estimated to be 108 hours.

Although the preparation of requests for exemptions from regulation may cost anywhere from $1,400 to $75,000 and require on average 68 hours to complete (108 hours for submissions requiring analytical data), these estimates demonstrate that there will be a significant decrease in the overall burden to businesses for those components of food-contact articles that are exempted from regulation by this expedited process but that previously would have required premarket approval via the food additive petition process. (Petitions on these types of issues can require on average 2,600 hours to prepare and cost anywhere from $85,000 to $100,000.) Whenever possible, FDA will provide assistance to requestors to minimize the likelihood that unnecessary work will be performed. Based on the preceding considerations, FDA finds that the proposed action will not have an adverse impact on small businesses.

In summary, the comments do not provide a basis on which to change the conclusions of the economic analysis prepared for the proposed rule or to establish that another option would provide higher net benefits.

V. Environmental Impact Considerations

The agency has previously reviewed the environmental effects of this rule as announced in the proposal (see 58 FR 52719, October 12, 1993). The agency determined under 21 CFR 25.24(a)(8) that neither an environmental assessment nor an environment impact statement is required. No new information or comments have been received that would affect the agency's previous determination.

The agency is required to consider the environmental impact of each action to exempt a component of a food-contact article from regulation as a food additive. The final rule sets out the type of information that FDA needs to determine the impact on the environment resulting from the intended use. The agency's finding of no significant impact, and the evidence supporting that finding, contained in an environmental assessment, will be made available for public inspection at the Dockets Management Branch (address above) for those substances whose use in food-contact articles has been exempted from regulation by the process established by this rule.

VI. Paperwork Reduction Act

Section 170.39 of this final rule contains information collection requirements that were submitted for review and approval to the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0298.

VII. Conclusions

Although a number of comments expressed the opinion that the 0.5 ppb threshold is more conservative and restrictive than is necessary to adequately protect the public health, no data were submitted that would justify FDA establishing a threshold of regulatory concern at a dietary concentration level higher than 0.5 ppb. Based on its analysis of the available evidence, FDA concludes that this evidence does not support a threshold significantly higher than 0.5 ppb, especially where the substance being considered for an exemption has not been the subject of any toxicological testing. Therefore, this final rule establishes 0.5 ppb as the threshold of regulatory concern for substances intended for use in food-contact articles. This final rule also establishes the threshold of regulatory concern for regulated direct food additives used in food-contact articles as that dietary exposure that is at or below 1 percent of the ADI for that substance.

Listed below are the revisions that are being incorporated into this final rule based on comments received in response to the proposal:

(1) FDA is revising § 170.39(a)(1) to make it clear that the phrase ''there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen'' refers only to the substance itself (see comment 21 of this document).

(2) FDA is revising § 170.39(a)(2)(ii) to state that, for requests seeking an exemption on the basis that the substance is a regulated direct food additive whose use in a food-contact article will result in a dietary exposure at or below 1 percent of the ADI for that substance, FDA's review will not necessarily be restricted to ADI values based on data in FDA files. In particular, in cases where FDA has not calculated an ADI value for a regulated direct food additive, the agency will consider ADI values from other appropriate sources (see comment 9 of this document).

(3) FDA is adding paragraph (h) to § 170.39 to state that guidelines to assist requestors in the preparation of submissions seeking exemptions from the food additive regulations are available from FDA's Office of Premarket Approval (HFS–200, 200 C St. SW., Washington, DC 20204). Because it is not practical to provide guidelines that would cover all of the possible topics associated with these types of submissions, § 170.39(h) encourages interested parties to obtain specific guidance from FDA on the appropriate protocols to be used for obtaining extraction data, on the validation of the analytical methods used to quantify migration levels, on the procedures used to relate migration data to dietary exposures, and on any other issue not specifically covered in FDA's guidelines (see comment 24 of this document).

(4) FDA is revising § 170.39(c)(1) to state that the description of the chemical composition of the substance for which the request is made should include, whenever possible, the name of the chemical in accordance with current CAS nomenclature guidelines and a CAS registry number, if available (see comment 22 of this document).

(5) For consistency, FDA is revising § 170.39(c)(4)(ii) and (c)(4)(iii) so that the word ''substance'' refers to the singular case (see comment 23 of this document).

(6) FDA is revising the language in § 170.39(c)(5) to state that the only toxicological information that must be included in a submission for an exemption from the food additive regulations is an analysis of existing toxicological data on the substance and its impurities. This information is needed to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or potent toxin. This type of information on the impurities is needed to show whether any of them are carcinogenic and, if carcinogenic, whether their TD_{50} value is greater than 6.25 mg/kg bodyweight per day in accordance with § 170.39(a)(1) (see comment 28 of this document).

(7) FDA is revising § 170.39(e) to state that interested persons may obtain a list of exempted substances by contacting FDA's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204 (see comment 34 of this document).

(8) FDA is also revising § 170.39(e) to state that FDA will handle requests for copies of releasable information contained in submissions requesting exemptions from the food additive

regulations in accordance with FDA's FOIA procedures as described in part 20. In particular, data and information that fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure in accordance with 21 CFR 20.61(c) (see comment 30 of this document).

(9) FDA is revising the language in § 170.39(g) to state that the agency plans to notify manufacturers by means of a notice published in the **Federal Register** of its decision to revoke an exemption issued for a specific use of a substance in a food-contact article (see comment 13 of this document).

(10) FDA is revising § 170.39(c) to state that three copies of a request for an exemption from regulation are to be submitted. If part of the submitted material is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate in accordance with § 10.20(c)(2) (see Section III. of this document: Other Actions). In addition to these changes, FDA is clarifying its definition of TD_{50} in § 170.39(a)(1). This minor change from the October 12, 1993, proposal ensures the scientific soundness of this definition.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rulis, A., ''Threshold of Regulation: Options for Handling Minimal Risk Situations,'' in *Food Safety Assessment*, edited by Finley, J. W., S. F. Robinson, and D. J. Armstrong, American Chemical Society Symposium Series 484, pp. 132–139, 1992.

2. Rulis, A. M., D. G. Hattan, and V. M. Morgenroth III, ''FDA's Priority Based Assessment of Food Additives,'' *Regulatory Toxicology and Pharmacology*, vol. 4, pp. 37–56, 1984.

List of Subjects

21 CFR Part 5

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

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 171

Administrative practice and procedure, Food additives.

21 CFR Part 174

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5, 25, 170, 171, and 174 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.61 is amended by adding new paragraph (h) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.

* * * * *

(h) The following officials are authorized to issue letters concerning substances determined to be below the ''threshold of regulation'' under § 170.39 of this chapter:

(1) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director, Office of Policy, Planning and Strategic Initiatives, CFSAN.

(3) The Director, Office of Premarket Approval, CFSAN.

(4) The Directors of the Divisions of Petition Control and Product Policy, Office of Premarket Approval, CFSAN.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

3. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b–264); 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514 as amended by E.O. 11991; E.O. 12114.

4. Section 25.22 is amended by revising paragraph (a)(10) to read as follows:

§ 25.22 Actions requiring preparation of an environmental assessment.

(a) * * *

(10) Approval of food and color additive petitions, approval of requests for exemptions for investigational use of food additives, and granting of requests for exemption from regulation as a food additive.

* * * * *

5. Section 25.31a is amended by revising the introductory text of paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 25.31a Environmental assessment for proposed approvals of FDA-regulated products—Format 1

(a) For proposed actions to approve food or color additives, drugs, biological products, animal drugs, and class III medical devices, for proposed actions to affirm food substances as generally recognized as safe (GRAS), and for proposed actions to grant requests for exemption from regulation as a food additive, the applicant or petitioner shall prepare an environmental assessment in the following format:

* * * * *

(b)(1) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles present in the finished food-packaging material at a level not greater than 5-percent-by-weight, the following information is required for the format items specified:

* * * * *

(b)(2) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles to be used in surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use, the following information is required for the items specified:

* * * * *

PART 170—FOOD ADDITIVES

6. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

7. Section 170.3 is amended by redesignating paragraph (e) as (e)(1) and

by adding new paragraph (e)(2) to read as follows:

§ 170.3 Definitions.

* * * * *

(e)(2) *Uses of food additives not requiring a listing regulation*. Substances used in food-contact articles (e.g., food-packaging and food-processing equipment) that migrate, or may be expected to migrate, into food at such negligible levels that they have been exempted from regulation as food additives under § 170.39.

* * * * *

8. New § 170.39 is added to subpart B to read as follows:

§ 170.39 Threshold of regulation for substances used in food-contact articles.

(a) A substance used in a food-contact article (e.g., food-packaging or food-processing equipment) that migrates, or that may be expected to migrate, into food will be exempted from regulation as a food additive because it becomes a component of food at levels that are below the threshold of regulation if:

(1) The substance has not been shown to be a carcinogen in humans or animals, and there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen. The substance must also not contain a carcinogenic impurity or, if it does, must not contain a carcinogenic impurity with a TD_{50} value based on chronic feeding studies reported in the scientific literature or otherwise available to the Food and Drug Administration of less than 6.25 milligrams per kilogram bodyweight per day (The TD_{50}, for the purposes of this section, is the feeding dose that causes cancer in 50 percent of the test animals when corrected for tumors found in control animals. If more than one TD_{50} value has been reported in the scientific literature for a substance, the Food and Drug Administration will use the lowest appropriate TD50 value in its review.);

(2) The substance presents no other health or safety concerns because:

(i) The use in question has been shown to result in or may be expected to result in dietary concentrations at or below 0.5 parts per billion, corresponding to dietary exposure levels at or below 1.5 micrograms/person/day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per person per day); or

(ii) The substance is currently regulated for direct addition into food, and the dietary exposure to the substance resulting from the proposed use is at or below 1 percent of the acceptable daily intake as determined by safety data in the Food and Drug Administration's files or from other appropriate sources;

(3) The substance has no technical effect in or on the food to which it migrates; and

(4) The substance use has no significant adverse impact on the environment.

(b) Notwithstanding paragraph (a) of this section, the Food and Drug Administration reserves the right to decline to grant an exemption in those cases in which available information establishes that the proposed use may pose a public health risk. The reasons for the agency's decision to decline to grant an exemption will be explained in the Food and Drug Administration's response to the requestor.

(c) A request for the Food and Drug Administration to exempt a use of a substance from regulation as a food additive shall include three copies of the following information (If part of the submitted material is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate in accordance with § 10.20(c)(2) of this chapter):

(1) The chemical composition of the substance for which the request is made, including, whenever possible, the name of the chemical in accordance with current Chemical Abstract Service (CAS) nomenclature guidelines and a CAS registry number, if available;

(2) Detailed information on the conditions of use of the substance (e.g., temperature, type of food with which the substance will come into contact, the duration of the contact, and whether the food-contact article will be for repeated or single use applications);

(3) A clear statement as to whether the request for exemption from regulation as a food additive is based on the fact that the use of the substance in the food-contact article results in a dietary concentration at or below 0.5 parts per billion, or on the fact that it involves the use of a regulated direct food additive for which the dietary exposure is at or below 1 percent of the acceptable dietary intake (ADI);

(4) Data that will enable the Food and Drug Administration to estimate the daily dietary concentration resulting from the proposed use of the substance. These data should be in the form of:

(i) Validated migration data obtained under worst-case (time/temperature) intended use conditions utilizing appropriate food simulating solvents;

(ii) Information on the amount of the substance used in the manufacture of the food-contact article; or

(iii) Information on the residual level of the substance in the food-contact article. For repeat-use articles, an estimate of the amount of food that contacts a specific unit of surface area over the lifetime of the article should also be provided. (In cases where data are provided only in the form of manufacturing use levels or residual levels of the substance present in the food-contact article, the Food and Drug Administration will calculate a worst-case dietary concentration level assuming 100 percent migration.) A detailed description of the analytical method used to quantify the substance should also be submitted along with data used to validate the detection limit.

(iv) In cases where there is no detectable migration into food or food simulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, the Food and Drug Administration will, for the purposes of estimating the dietary concentration, consider the validated detection limit of the method used to analyze for the substance.

(5) The results of an analysis of existing toxicological information on the substance and its impurities. This information on the substance is needed to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or potent toxin. This type of information on the impurities is needed to show whether any of them are carcinogenic, and, if carcinogenic, whether their TD50 values are greater than 6.25 milligrams per kilogram bodyweight per day in accordance with paragraph (a)(1) of this section.

(6) Information on the environmental impact that would result from the proposed use of the substance. Depending on the type of use, this information should be in the form of an abbreviated environmental assessment as specified in § 25.31a(b)(1) or (b)(2) of this chapter.

(d) Data to be reviewed under this section shall be submitted to the Food and Drug Administration's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204.

(e) The Food and Drug Administration will inform the requestor by letter whether the specific food-contact application is exempt from regulation as a food additive or not. Although a substance that migrates to food at a level that results in a dietary concentration at or below the threshold of regulation will not be the subject of a regulation published in the **Federal Register** and will not appear in the Code of Federal Regulations, the Food and Drug Administration will maintain a list of substances exempted from regulation as

food additives under this section on display at the Dockets Management Branch. This list will include the name of the company that made the request, the chemical name of the substance, the specific use for which it has received an exemption from regulation as a food additive, and any appropriate limitations on its use. The list will not include any trade names. This list will enable interested persons to see the types of uses of food-contact materials being exempted under the regulation. Interested persons may also obtain a copy of the list of exempted substances by contacting the Food and Drug Administration's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, also will be available for public inspection at the Dockets Management Branch in accordance with § 25.41(b)(2) of this chapter. Requests for copies of releasable information contained in submissions requesting exemptions from the food additive regulations will be handled in accordance with the Food and Drug Administration's Freedom of Information Act procedures, as described in part 20 of this chapter. In particular, data and information that fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure in accordance with § 20.61(c) of this chapter.

(f) If the request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition to the Food and Drug Administration for reconsideration of the decision in accordance with the provisions of § 10.33 of this chapter.

(g) If the Food and Drug Administration receives significant new information that raises questions about the dietary concentration or the safety of a substance that the agency has exempted from regulation, the Food and Drug Administration may reevaluate the substance. If the Food and Drug Administration tentatively concludes that the information that is available about the substance no longer supports an exemption for the use of the food-contact material from the food additive regulations, the agency will notify any persons that requested an exemption for the substance of its tentative decision. The requestors will be given an opportunity to show why the use of the substance should not be regulated under the food additive provisions of the act. If the requestors fail to adequately respond to the new evidence, the agency will notify them that further use of the substance in question for the particular use will require a food additive regulation. This notification will be placed on public display at the Dockets Management Branch as part of the file of uses of substances exempted from regulation as food additives. The Food and Drug Administration recognizes that manufacturers other than those that actually made a request for exemption may also be using exempted substances in food-contact articles under conditions of use (e.g., use levels, temperature, type of food contacted, etc.) that are similar to those for which the exemption was issued. Because only requestors will be notified as part of the revocation process described in this section, the Food and Drug Administration plans to notify other manufacturers by means of a notice published in the **Federal Register** of its decision to revoke an exemption issued for a specific use of a substance in a food contact article.

(h) Guidelines to assist requestors in the preparation of submissions seeking exemptions from the food additive regulations are available from the Food and Drug Administration's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204. Interested persons are encouraged to obtain specific guidance from the Food and Drug Administration on the appropriate protocols to be used for obtaining migration data, on the validation of the analytical methods used to quantify migration levels, on the procedures used to relate migration data to dietary exposures, and on any other issue not specifically covered in the Food and Drug Administration's guidelines.

PART 171—FOOD ADDITIVE PETITIONS

9. The authority citation for 21 CFR part 171 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

10. New § 171.8 is added to subpart A to read as follows:

§ 171.8 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-processing equipment) that migrate or that may be expected to migrate into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines meet the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted use.

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

11. The authority citation for 21 CFR part 174 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

12. New § 174.6 is added to read as follows:

§ 174.6 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-processing equipment) that migrate, or that may be expected to migrate, into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines meet the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted use.

Dated: July 11, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–17435 Filed 7–14–95; 8:45 am]

BILLING CODE 4160–01–P

Federal Register

Monday
July 17, 1995

Part VIII

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51841; FRL–4959–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN), polymer exemption notices and test marketing exemption (TME) application requests received, both pending and expired. The information contained in this document clears a backlog of notices received from October 1994 to March 19, 1995 and monthly status reports from October 1994 to April 1995.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51841]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51841]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551. e-mail: TSCA-hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs, polymer exemption notices and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51841]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies. As stated in the previous paragraph, while generic use information is not included in this notice all future notices shall carry this information.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) Polymer exemptions received; (III) TMEs received; and (IV) Notices of Commencement to manufacture/import.

I. 877 Premanufacture Notices Received From: 10/01/94 to 03/19/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0001	10/03/94	12/29/94	CBI[1]	(G) Polyester polyurethane
P–95–0002	10/03/94	12/29/94	CBI[1]	(G) Thermoplastic polyimide
P–95–0003	10/03/94	01/01/95	Dow Corning[1]	(G) Organofunctional silica
P–95–0004	10/03/94	01/01/95	CBI[1]	(G) Substituted butane tetracarboxylate
P–95–0005	10/03/94	01/01/95	Swan Industries, Inc.[1]	(G) Modified sodium silicate
P–95–0006	10/04/94	01/02/95	Hoechst Celanese[1]	(S) A polymer of: bisphenol A, epichlorohydrine polymer; polypropyleneglycol 1010; bisphenol A; diethanolamine; *N,N*-dimethylaminopropylamine; 2-ethylhexylamine; acetic acid
P–95–0007	10/04/94	01/02/95	Hoechst Celanese[1]	(S) A polymer of: trimethylolpropane; butoxyethanol; diethyleneglycolmonobutyl ether; methylenediphenyldiisocyanate; *N,N*-dimethylaminopropylamine; formic acid
P–95–0008	10/04/94	01/02/95	CBI[1]	(G) Poly (acrylate alkyl ester/ acryl acid/ vinyl aryl)
P–95–0009	10/04/94	01/02/95	S.C. Johnson & Son, Inc.[1]	G) Acrylic emulsion polymer
P–95–0010	10/04/94	01/02/95	S. C. Johnson & Son, Inc.[1]	(G) Acrylic emulsion polymer
P–95–0011	10/04/94	01/02/95	Henkel Corporation[1]	(G) Branched poly ester/ether
P–95–0012	10/05/94	01/03/95	CBI[1]	(G) 2-Propenoic acid, reaction products with alkylene glycol
P–95–0013	10/06/94	01/04/95	CBI[1]	(G) Water-borne polyurethane dispersion
P–95–0014	10/05/94	01/03/95	Westvaco[1]	(G) Rosin, maleated polymer, with substituted phenols, paraformaldehyde and pentaerythritol
P–95–0015	10/07/94	01/05/95	Ciba-Geigy Corporation[1]	(G) Tetra-substituted benzeneproponanilide
P–95–0016	10/07/94	01/05/95	Ciba-Geigy Corporation[1]	(G) Substituted phenyl azo substituted phenyl azo substituted naphthalenesulfonic acid derivative
P–95–0017	10/07/94	01/05/95	MTM Hardwicke, Inc.[1]	(S) 1-Bromo-2, 5-dimethoxybenzene
P–95–0018	10/07/94	01/05/95	Huls America Inc.	(G) Dialkyl malonate, alkyl alkenoate polymer
P–95–0019	10/07/94	01/05/95	Unichema North America[1]	(G) Polyester polyol
P–95–0020	10/07/94	01/05/95	Unichema North America[1]	(G) Polyester polyol
P–95–0021	10/07/94	01/05/95	CBI[1]	(G) Urethane dicarbamate
P–95–0022	10/11/94	01/09/95	Ciba-Geigy Corporation[1]	(G) Substituted phenyl azo substituted phenyl amino triazinyl substituted naphthalenesulfonic derivative
P–95–0023	10/11/94	01/09/95	CBI[1]	(G) Hydrofluorocarbon ethers
P–95–0024	10/11/94	01/09/95	CBI[1]	(G) Chloroformate of ethoxylated alcohol
P–95–0025	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0026	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0027	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0028	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0029	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0030	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0031	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0032	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0033	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0034	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0035	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0036	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0037	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0038	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0039	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0040	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0041	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0042	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0043	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0044	10/11/94	01/09/95	CBI[1]	(G) Polyester resin

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P–95–0045	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0046	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0047	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0048	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0049	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0050	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0051	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0052	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0053	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0054	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0055	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0056	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0057	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0058	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0059	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0060	10/11/94	01/09/95	CBI[1]	(G) Polyester resin
P–95–0061	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0062	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0063	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0064	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0065	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0066	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0067	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0068	10/12/94	01/10/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0069	10/12/94	01/10/95	Adhesives Research, Inc.[1]	(G) Acrylic polymer
P–95–0070	10/12/94	01/10/95	Shipley Company, Inc.[1]	(G) Phenolic novolak resin
P–95–0071	10/12/94	01/10/95	Ciba-Geigy Corporation[1]	(S) A polymer of: triethylene glycol dimercaptan; 2,4,6-tris[(dimethylamino)methyl]phenol; epoxy phenolic novolac resin; bisphenol A epoxy resin
P–95–0072	10/13/94	01/11/95	Eastman Kodak Company[1]	(G) Substituted aminophenylacetamide
P–95–0073	10/13/94	01/11/95	CBI	(G) Amine functional epoxy resin salted with an organic acid
P–95–0074	10/13/94	01/11/95	CBI[1]	(G) Amine functional epoxy resin salted with an organic acid
P–95–0075	10/13/94	01/11/95	CBI[1]	(G) Amine functional epoxy resin salted with an organic acid
P–95–0076	10/13/94	01/11/95	CBI[1]	(G) Substituted phenolate salt
P–95–0077	10/13/94	01/11/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Methyl 2-(aminosulfonyl)-6-substituted-3-pyrinecarboxylate
P–95–0078	10/14/94	01/12/95	EMS American Grilon Inc.	(S) Reaction product of p-tert butyl phenol with formaldehyde and with mets-xylylene diamine
P–95–0079	10/14/94	01/12/95	CBI[1]	(G) Isomer mixture of oxabicycloalkane, alkyl-1-(trialkyl-cycloalkene)
P–95–0080	10/14/94	01/12/95	CBI[1]	(G) Polyarylphenol ethoxylate derivative
P–95–0081	10/14/94	0195	CBI[1]	(G) 3-Cycloalkene-1-carboxaldehyde, alkyl-1-(trialkyl-1-(trialkyl-3-cycloalkene)
P–95–0082	10/14/94	01/12/95	CBI[1]	(G) 3-Cycloalkene-1-methanol, alkyl-1-(trialkyl-3-cycloalkene)
P–95–0083	10/14/94	01/12/95	CBI[1]	(G) 3-Cycloalkene-1-acetaldehyde, trialkyl-alpha-alkene
P–95–0084	10/14/94	01/12/95	CBI[1]	(G) Modified acrylic polymer
P–95–0085	10/14/94	01/12/95	CBI[1]	(G) Substituted naphthalene sulfonic acid, alkali salt
P–95–0086	10/17/94	01/15/95	Ciba-Geigy Corporation[1]	(G) Benzenesulfonic acid amino substituted phenyl azo
P–95–0087	10/17/94	01/15/95	Essex Speciality Products, Inc.[1]	(G) Hydroxyl functional polycarbonyl (polyalkylene oxide) polyurea oligomer
P–95–0088	10/17/94	01/15/95	Essex Speciality Products, Inc.[1]	(G) Hydroxyl functional polycarbonyl (polyalkylene oxide) polyurea oligomer

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0089	10/17/94	01/15/95	Essex Speciality Products, Inc.[1]	(G) Hydroxyl functional polycarbonyl (polyalkylene oxide) polyurea oligomer
P–95–0090	10/17/94	01/15/95	E. F. Houghton & Company[1]	(S) Amine, cocoalkyl, ethoxylated compounds with cyclododecanol-cyclododecanone-nitric acid reaction product with boiling fraction and isonanoic acid
P–95–0091	10/18/94	01/16/95	CBI[1]	(G) Salt of a phosphate ester
P–95–0092	10/18/94	01/16/95	Wacker Silicones Corporation[1]	(G) Copolymer of vinylacetate a higher vinylester and acrylic ester
P–95–0093	10/18/94	01/16/95	3M [1]	(G) Hydrofluorocarbon
P–95–0094	10/18/94	01/16/95	Essex Speciality Products, Inc.[1]	(G) Glycol diisocyanate oligomer
P–95–0095	10/18/94	01/16/95	Hoechst Celanese[1]	(G) Urethane adduct of polyvinyl butyral polymer and isocyanatoethyl methacrylate
P–95–0096	10/18/94	01/16/95	Ciba-Geigy Corporation[1]	(S) A polymer of: bisphenol A epoxy resin; bisphenol F epoxy resin; carboxy terminated vinyl copolymer[1]
P–95–0097	10/18/94	01/16/95	CBI[1]	(G) Acyl phosphine oxide
P–95–0098	10/18/94	01/16/95	CBI[1]	(G) High solids acrylic modified alkyd
P–95–0099	10/18/94	01/16/95	Kerr-McGee Corporation E&P[1]	(S) Lithium manganese oxide, spine
P–95–0100	10/18/94	01/16/95	CBI[1]	(G) Polyolefin phenolic amide
P–95–0101	10/18/94	01/16/95	CBI[1]	(G) Carboxfunctional polymethylsiloxane
P–95–0102	10/18/94	01/16/95	CBI[1]	(G) Carboxfunctional polymethylsiloxane
P–95–0103	10/18/94	01/16/95	Shell Oil Company[1]	(S) A polymer of: 1,4-benzenedicarboxylic acid; 1,3-propanediol
P–95–0104	10/18/94	01/16/95	Shell Oil Company[1]	(S) A polymer of: 1,4-benzenedicarboxylic acid; 1,3 benzenedicarboxylic acid; 1,3-propanediol
P–95–0105	10/18/94	01/16/95	Ashland Chemical Company[1]	(G) Unsaturated polyester
P–95–0106	10/18/94	01/16/95	Dow Corning[1]	(G) Methylphenylsilsequioxane
P–95–0107	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0108	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0109	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0110	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0111	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0112	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted pyrimidine
P–95–0113	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted triazolo pyrimidine
P–95–0114	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted triazolo pyrimidine
P–95–0115	10/18/94	01/16/95	Dow Elanco[1]	(G) Substituted aniline
P–95–0116	10/19/94	01/17/95	Unimac Company, Inc.[1]	(G) Cleaning detergent
P–95–0117	10/19/94	01/17/95	Unimac Company, Inc.[1]	(G) Cleaning detergent
P–95–0118	10/19/94	01/17/95	Unimac Company, Inc.[1]	(G) Cleaning detergent
P–95–0119	10/19/94	01/17/95	Bedoukian Research, Inc.[1]	(S) 3,6-Nonadien-1-ol, (?,*Z*)-
P–95–0120	10/19/94	01/17/95	3M[1]	(G) Fluorinated oxazolidinone
P–95–0121	10/20/94	01/18/95	CBI[1]	(S) 2-Propenoic acid, polymer with butyl-2-propenoate, methyl 2-methyl-2-propenoate, and 3-oxo-, 2-((2-methyl-1-oxo-2-propenyl)oxy) ethyl butanoate reaction product with ammonia
P–95–0122	10/20/94	01/18/95	CBI[1]	(G) Acrylic polymer
P–95–0123	10/20/94	01/18/95	CBI[1]	(G) Modified acrylic polymer
P–95–0124	10/20/94	01/18/95	CBI[1]	(G) Modified acrylic polymer
P–95–0125	10/18/94	01/16/95	Gelest, Inc.[1]	(S) 3-Cyanopropyl (diisopropyl)dimethyl amino silane
P–95–0126	10/20/94	01/18/95	CBI[1]	(G) Oil modified polyester or alkyd resin
P–95–0127	10/24/94	01/22/95	CBI[1]	(G) Difunctional ketoximino silane

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P–95–0128	10/24/94	01/22/95	Rhone Poulenc Incorporated[1]	(G) Polysaccharide
P–95–0129	10/24/94	01/22/95	Witco Chemical Corporation[1]	(S) Fatty acids, $C_{16–18}$ and C_{18} unsat'd. reaction products with triethanol amine, dimethyl sulfate-quarternized
P–95–0130	10/24/94	01/22/95	Omya, Inc.[1]	(G) Saturated polyester resin
P–95–0131	10/24/94	01/22/95	CBI[1]	(G) Dicarboxylic acid ester
P–95–0132	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0133	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0134	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0135	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0136	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0137	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0138	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0139	10/24/94	01/22/95	CBI[1]	(G) Amine functional polyester polyol
P–95–0140	10/24/94	01/22/95	CBI[1]	(G) Blocked polyisocyanate
P–95–0141	10/25/94	01/23/95	OCG Microelectronic Materials, Inc.[1]	(G) Polyhalomethyl substituted triazine derivative
P–95–0142	10/25/94	01/23/95	CBI[1]	(G) Alkyl modified heptamethyltrisiloxane
P–95–0143	10/25/94	01/23/95	CBI[1]	(G) Alkylamine salt
P–95–0144	10/25/94	01/23/95	Mona Industries, Inc.[1]	(S) [Phosphinylidynetris (oxy) tris [3-aminopropyl -2-hydroxy-*N,N*-dimethyl-*N*-$C_{6–18}$-alkyl] trichlorides
P–95–0145	10/25/94	01/23/95	CBI[1]	(G) Hexanedioic acid dialkyl ester
P–95–0146	10/25/94	01/23/95	CBI[1]	(G) Molybdenum dialkyl dithiophosphate
P–95–0147	10/26/94	01/24/95	Eastman Kodak Company[1]	(G) Substituted sulfonamido substituted aromatic naphthalenecarboxamide
P–95–0148	10/26/94	01/24/95	CBI[1]	(G) Poly(quarternary ammonium salt) grafted styrene acrylate copolymer
P–95–0149	10/27/94	01/25/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Phosphorylated polyglycol acylate
P–95–0150	10/27/94	01/25/95	Hexcel Corporation[1]	(G) Amine terminated epoxy polymer
P–95–0151	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0152	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0153	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0154	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0155	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0156	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0157	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0158	10/27/94	01/25/95	CBI[1]	(G) Acrylic polymer
P–95–0159	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0160	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0161	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0162	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0163	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0164	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0165	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0166	10/27/94	01/25/95	CBI[1]	(G) Carbamate acrylic polymer
P–95–0167	10/31/94	01/29/95	CBI[1]	(G) Alkenyl succinic acid, ester with polyhydric alcohol
P–95–0168	10/31/94	01/29/95	Albright & Wilson Inc.[1]	(S) Phosphonic acid, 1,1-methylenebis-tetrakis(1-methylethyl) ester
P–95–0169	10/31/94	01/29/95	Mitsubishi Chemical Industries America, Inc.[1]	(S) Morpholine, 4-(1-oxo-2-propenyl)-
P–95–0170	10/31/94	01/29/95	CBI[1]	(S) A polymer of: carboxylic acids, di $C_{4–6}$; soybean oil, epoxidized

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P–95–0171	10/31/94	01/29/95	CBI[1]	(G) Divinylbenzene/methacrylic acid copolymer
P–95–0172	10/31/94	01/29/95	CBI[1]	(G) Divinylbenzene/methacrylic acid copolymer, sodium salt
P–95–0173	10/31/94	01/29/95	CBI[1]	(G) Divinylbenzene/methacrylic acid copolymer, potassium salt
P–95–0174	10/31/94	01/29/95	CBI[1]	(G) Ethanol, [[[[disubstituted heteropolycycle]azo]methylphenyl]alkylamino]-, acetate (ester)
P–95–0175	11/02/94	01/31/95	CBI[1]	(G) Substituted purine, metal salt
P–95–0176	11/02/94	01/31/95	CBI[1]	(G) Modified acrylate ester polymer
P–95–0177	11/01/94	01/30/95	CBI[1]	(G) Hydrogenated fatty acid, amide with 1,3 dioxolan-2-one alkoxylated
P–95–0178	11/02/94	01/31/95	Eastman Kodak[1]	(S) A polymer of: terephthalic acid; 2,6-naphthalene dicarboxylic acid; 1,4-hydroquinone diacetate; *P*-acetoxybenzoic acid
P–95–0179	11/02/94	01/31/95	Eastman Kodak[1]	(S) A polymer of: terephthalic acid; 2,6-naphthalene dicarboxylic acid; 1,4-hydroquinone; *P*-hydroxybenzoic acid; acetic anhydride
P–95–0180	11/02/94	01/31/95	BASF Wyandotte Corporation[1]	(G) Isocyanate polymer
P–95–0181	11/02/94	01/31/95	CBI[1]	(G) Crosslinked unsaturated polyester-styrene resin
P–95–0182	11/02/94	01/31/95	CBI[1]	(G) Crosslinked unsaturated polyester-styrene resin
P–95–0183	11/02/94	01/31/95	CBI[1]	(G) Crosslinked unsaturated polyester-styrene resin
P–95–0184	11/02/94	01/31/95	CBI[1]	(G) Crosslinked unsaturated polyester-styrene resin
P–95–0185	11/03/94	02/01/95		(G) Saturated polyester resin
P–95–0186	11/03/94	02/01/95	CBI[1]	(G) Siloxanes and silicones, di-me, polyether modified
P–95–0187	11/04/94	02/02/95	CBI[1]	(G) Polyurethane
P–95–0188	11/04/94	02/02/95	CBI[1]	(G) Polyaryl and alkyl substituted 1,3-dioxane
P–95–0189	11/04/94	02/02/95	Sachem, Inc.[1]	(S) A polymer of: tetrabutylammonium sulfate
P–95–0190	11/07/94	02/05/95	Avery International[1]	(G) Non-volatile acrylic polymer
P–95–0191	11/08/94	02/06/95	CBI[1]	(G) Epoxy isocyanate adduct
P–95–0192	11/08/94	02/06/95	3M [1]	(G) Perfluoropolyether diacetate
P–95–0193	11/08/94	02/06/95	3M[1]	(G) Perfluoropolyether dimethylester
P–95–0194	11/08/94	02/06/95	3M[1]	(G) Perfluoropolyether diol
P–95–0195	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0196	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0197	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0198	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0199	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0200	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0201	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0202	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0203	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0204	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0205	11/09/94	02/07/95	CBI[1]	(G) Acrylic copolymer salt
P–95–0206	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin maleic anhydride, substituted phenol, paraformaldehyde, trigliceride
P–95–0207	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenol, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0208	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenol, paraformaldehyde reaction product, fatty acid, triglyceride coester
P–95–0209	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenol, paraformaldehyde reaction product, triglyceride coester
P–95–0210	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenol, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0211	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenol, paraformaldehyde reaction product, fatty acid, triglyceride coester

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P–95–0212	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, triglyceride coester
P–95–0213	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0214	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, triglyceride coester
P–95–0215	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, triglyceride coester
P–95–0216	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0217	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reacion product, fatty acid, triglyceride coester
P–95–0218	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, triglyceride coester
P–95–0219	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0220	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, triglyceride coester
P–95–0221	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, triglyceride coester
P–95–0222	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, fatty acid, pentaerythritol ester
P–95–0223	11/09/94	02/07/95	Akzo Nobel Chemicals Inc.[1]	(G) Rosin, maleic anhydride, substituted phenols, parformaldehyde reaction product, fatty acid, triglyceride coester
P–95–0224	11/09/94	02/07/95	International Specialty Products[1]	(S) 2-Propenoic acid, 2-methyl, 2-(dimethylamino) ethyl ester, polymer w/1-ethenylhexahydro-2*H*-azepin-2-one and vinylpyrrolidone
P–95–0225	11/09/94	02/07/95	CBI[1]	(G) Aqueous polyurethane dispersion
P–95–0226	11/09/94	02/07/95	Hoechst Celanese[1]	(G) Hydroxyl groups containing acrylic copolymer
P–95–0227	11/09/94	02/07/95	Huls America Inc.[1]	(G) Thiocyanatodisiloxane
P–95–0228	11/10/94	02/08/95	CBI[1]	(G) Depleted metal oxide
P–95–0229	11/10/94	02/08/95	CBI[1]	(G) Hydroxy-functional rubber
P–95–0230	11/10/94	02/08/95	Ciba-Geigy Corporation[1]	(G) Diketo-pyrrolpyrrol
P–95–0231	11/10/94	02/08/95	Reichhold Chemicals, Inc.[1]	(G) Polyester resin
P–95–0232	11/10/94	02/08/95	CBI[1]	(G) Alkyl substituted indole
P–95–0233	11/10/94	02/08/95	CBI[1]	(G) Trialkyl substituted indole
P–95–0234	11/10/94	02/08/95	CBI[1]	(G) Bis indole substituted alkene
P–95–0235	11/10/94	02/08/95	CBI[1]	(G) Substituted benzoyl benzoic acid
P–95–0236	11/10/94	02/08/95	CBI[1]	(G) Substituted isobenzofuranone
P–95–0237	11/10/94	02/08/95	Ciba-Geigy Corporation[1]	(G) Carboxylic acid derivative
P–95–0238	11/10/94	02/08/95	Ciba-Geigy Corporation[1]	(G) Carboxylic acid derivative
P–95–0239	11/14/94	02/12/95	OM Group, Inc.[1]	(S) Bismuth naphthenate
P–95–0240	11/14/94	02/12/95	CBI[1]	(G) Azochromium complex dyestuff preparation
P–95–0241	11/15/94	02/13/95	CBI[1]	(G) Perfluoroalkylethyl acrylate copolymer
P–95–0242	11/15/94	02/13/95	CBI[1]	(G) Modified acrylonitrile-styrene resin
P–95–0243	11/16/94	02/14/95	Enzymol International, Inc.[1]	(G) Poly alkylphenol
P–95–0244	11/16/94	02/14/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Sodium group IVA metal hydroxyalkanoate
P–95–0245	11/16/94	02/14/95	CBI[1]	(G) Polyester resin
P–95–0246	11/16/94	02/14/95	CBI[1]	(G) Silicon-modified polyester resin
P–95–0247	11/16/94	02/14/95	CBI[1]	(G) Polyester resin
P–95–0248	11/17/94	02/15/95	Wacker Silicones Corporation[1]	(G) Aminofunctional siliconate

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P–95–0249	11/17/94	02/15/95	Wacker Silicones Corporation[1]	(G) Aminofunctional polydimethylsiloxane
P–95–0250	11/17/94	02/15/95	Henkel Corporation[1]	(G) Fatty alcohol ester
P–95–0251	11/17/94	02/15/95	Henkel Corporation[1]	(G) Fatty alcohol ester
P–95–0252	11/17/94	02/15/95	Henkel Corporation[1]	(G) Poly alkyl ester vinyl polymer
P–95–0253	11/17/94	02/15/95	Henkel Corporation[1]	(G) Poly alkyl ester vinyl polymer
P–95–0254	11/17/94	02/15/95	Henkel Corporation[1]	(G) Poly alkyl ester vinyl polymer
P–95–0255	11/18/94	02/16/95	CBI[1]	(G) Aliphatic polyisocyanate
P–95–0256	11/18/94	02/16/95	CBI[1]	(G) Tung phenolic varnish
P–95–0257	11/21/94	02/19/95	CBI[1]	(G) Compounded polymeric solution
P–95–0258	11/21/94	02/19/95	Dow Chemical U.S.A.[1]	(G) Ziegler catalyst alkoxide premix II
P–95–0259	11/21/94	02/19/95	Biesterfield U.S., Incorporated[1]	(S) A polymer of: dichlorosilane; ammonia
P–95–0260	11/21/94	02/19/95	Hercules-Sanyo Incorporated[1]	(G) Styrene-acrylic resin
P–95–0261	11/21/94	02/19/95	Hercules-Sanyo Incorporated[1]	(G) Polyester resin
P–95–0262	11/21/94	02/19/95	Hercules-Sanyo Incorporated[1]	(G) Polyester resin
P–95–0263	11/21/94	02/19/95	Hercules-Sanyo Incorporated[1]	(G) Polyester resin
P–95–0264	11/21/94	02/19/95	Hercules-Sanyo Incorporated[1]	(G) Polyester resin
P–95–0265	11/21/94	02/19/95	CBI[1]	(S) A polymer of: linoleic acid; benzoic acid; glycerol; pentaerythritol; phthalic anhydride
P–95–0266	11/21/94	02/19/95	Great Lakes Chemical Corporation[1]	(S) Furan, 2-[(hexyloxy)methyl]tetrahydro-
P–95–0267	11/21/94	02/19/95	Phillips Petroleum Company[1]	(G) Alkyl substituted heterocycle
P–95–0268	11/21/94	02/19/95	Phillips Petroleum Company[1]	(G) Olefin catalyst
P–95–0269	11/22/94	02/20/95	Inolex Chemical Company[1]	(S) Fatty acids, tall-oil, compounds with *N*-[3-(dimethylamino)propyl] tall-oil amides
P–95–0270	11/22/94	02/20/95	Spies Hecker, Inc[1]	(S) A polymer of: 2-propenoic acid; 2-methyl-2-propenoic acid *N*-butyl ester; 2-propenoic acid ethylhexyl ester; styrene; 2-methyl-2-propenoic acid methyl ester; 2-methyl-2-propenoic acid hydroxypropyl ester; 1,3-isobenzofurandione; di-tert.-butylperoxide
P–95–0271	11/22/94	02/20/95	Spies Hecker, Inc[1]	(S) A polymer of: glycidyl neodecanoate; 2-propenoic acid; 2-methylpropenoic acid isobutyl ester; 2-propenoic acid isobutyl ester; 2-methylpropenoic acid 2-ethyl hexyl ester; 2-methylpropenoic acid 2-hydroxyethyl ester; 2-methylpropenoic acid hydroxypropyl ester; styrene; di-tert-butylperoxide
P–95–0272	11/22/94	02/20/95	Spies Hecker, Inc.[1]	(S) A polymer of: 2-methyl-2-propenoic acid 2-ethylhexyl ester; ethenylbenzene; 2-propenoic acid 4-hydroxybutylester; 2-methyl-2-propenoic acid oxiranylmethyl ester; 2-ethylhexaneperoxoic acid 1,1-dimethylethyl ester
P–95–0273	11/22/94	02/20/95	Spies Hecker, Inc.[1]	(S) A polymer of: 1,6-hexanediol; 2-ethyl-2(hydroxymethyl)-1,3-propanediol; 1,4-cyclohexane dicarboxylic acid; isophorone diisocyanate; hexahydrophthalic acid; 2-oxepanone
P–95–0274	11/22/94	02/20/95	CBI[1]	(G) Phenylenebis[imino (chlorotriazinyl)imino (substituted naphthyl)azo(substituted phenyl)azo, sodium salt
P–95–0275	11/22/94	02/20/95	CBI[1]	(G) Etherified urea phenolic resin
P–95–0276	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane
P–95–0277	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane
P–95–0278	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane
P–95–0279	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane
P–95–0280	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane

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P–95–0281	11/22/94	02/20/95	CBI[1]	(G) Unsaturated polyurethane
P–95–0282	11/22/94	02/20/95	CBI	(G) Perfluoroalkylethylacrylate copolymer
P–95–0283	11/22/94	02/20/95	CBI[1]	(G) Monosubstituted cycloaliphatic isocyanate, urethane with hydroxyalkyl substituted heterocycle
P–95–0284	11/23/94	02/21/95	CBI[1]	(G) Phosporic acid derivative
P–95–0285	11/23/94	02/21/95	CBI[1]	(G) Neutralized polymer of aliphatic and aromatic acrylates
P–95–0286	11/23/94	02/21/95	CBI[1]	(G) Neutralized polymer of aliphatic and aromatic acrylates
P–95–0287	11/23/94	02/21/95	CBI[1]	(G) Neutralized polymer of aliphatic and aromatic acrylates
P–95–0288	11/23/94	02/21/95	CBI[1]	(G) Neutralized polymer of aliphatic and aromatic acrylates
P–95–0289	11/23/94	02/21/95	CBI[1]	(G) Neutralized polymer of aliphatic and aromatic acrylates
P–95–0290	11/23/94	02/21/95	3M[1]	(S) Reaction products of: benzene, reaction products with chlorine and sulfur chloride (S2Cl2), chlorides; methanol, sodium salt; and phenol, 4,4′-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)bis
P–95–0291	11/25/94	02/23/95	CBI[1]	(G) Imidazole copolymer
P–95–0292	11/25/94	02/23/95	Ciba-Geigy Corporation[1]	(G) 4,4′-(1-methylethylidene)bis(2,6-dibromophenol), polymer with (chloromethyl)oxirane, ether
P–95–0293	11/25/94	02/23/95	UOP[1]	(S) Cyclohexanamine, 4,4′-methylenebis [*N* (1-methylpropyl)-
P–95–0294	11/25/94	02/23/95	UOP[1]	(S) Cyclohexanamine, 4,4′-methylenebis [2-methyl-*N*-(1-methylpropyl)-
P–95–0295	11/29/94	02/27/95	CBI[1]	(G) Inorganic metal complex
P–95–0296	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0297	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0298	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0299	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0300	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0301	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0302	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0303	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0304	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0305	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0306	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0307	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0308	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0309	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0310	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0311	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0312	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0313	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0314	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0315	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0316	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0317	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0318	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0319	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0320	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0321	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0322	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0323	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0324	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0325	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt

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P–95–0326	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0327	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0328	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0329	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0330	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0331	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0332	11/29/94	02/27/95	CBI[1]	(G) Substituted benzene metal halide salt
P–95–0333	11/29/94	02/27/95	Jowat Corporation[1]	(G) Moisture curing polyurethane
P–95–0334	11/29/94	02/27/95	Jowat Corporation[1]	(G) Moisture curing polyurethane
P–95–0335	11/29/94	02/27/95	Jowat Corporation[1].	(G) Moisture curing polyurethane
P–95–0336	11/29/94	02/27/95	Jowat Corporation[1].	(G) Moisture curing polyurethane
P–95–0337	11/29/94	02/27/95	Jowat Corporation[1].	(G) Moisture curing polyurethane
P–95–0338	11/29/94	02/27/95	CBI[1]	(G) Acetylenic alcohol
P–95–0339	11/29/94	02/27/95	CBI[1]	(G) Polyacrylate/methacrylate
P–95–0340	11/30/94	02/28/95	Dic Trading (USA) Inc.[1]	(S) Perchloric acid, lithium salt, trihydrate
P–95–0341	12/01/94	03/01/95	Henkel Corporation[1]	(G) Difunctional aliphatic acrylourethane oligomer
P–95–0342	12/02/94	03/02/95	CBI[1]	(G) Modified amidoamine
P–95–0343	12/02/94	03/02/95	CBI[1]	(G) Diethanolamine salt of a phosphated polycaprolactone
P–95–0344	12/05/94	03/05/95	Dow Corning[1]	(S) Trisiloxane, 1,1,1,3,5,5,5-heptamethyl-3-stearyl-
P–95–0345	12/06/94	03/06/95	OSI Specialties, Inc.[1]	(S) Siloxanes and silicones, di-me, reaction products with silicic acid trimethylsilyl ester and [(trimethylsilyl)oxy]-modified silica
P–95–0346	12/06/94	03/06/95	Cytec Industries[1]	(G) Polyurea prepolymer
P–95–0347	12/06/94	03/06/95	CBI[1]	(G) Phenoic resin salt
P–95–0348	12/06/94	03/06/95	Dow Chemical U.S.A.[1]	(G) Halogenated pyridine salt
P–95–0349	12/06/94	03/06/95	CBI[1]	(G) Polyester isocyanate prepolymer
P–95–0350	12/06/94	03/06/95	CBI[1]	(G) Bisphenol a alkyd with alkyd alkyldienoic acid
P–95–0351	12/06/94	03/06/95	CBI[1]	(G) Alkyd polyether polyurethane
P–95–0352	12/06/94	03/06/95	CBI[1]	(G) An azo monochloro triazine reactive dye
P–95–0353	12/06/94	03/06/95	CBI[1]	(G) An azo monochloro triazine reactive dye
P–95–0354	12/07/94	03/07/95	CBI[1]	(G) Triethylenetetramine formalin condensate
P–95–0355	12/07/94	03/07/95	Henkel Corporation[1]	(S) Poly (oxy-1,2 ethanediyl), alpha-[4-(1,1-dimethyl ethyl)phenyl] ether (ethoxylated 4-tertbutyl phenol)
P–95–0356	12/07/94	03/07/95	CBI[1]	(G) Cashew elastomer hexa mineral-filled resin
P–95–0357	12/07/94	03/07/95	CBI[1]	(G) Isophorone diisocyanate, polyester type polyurethane
P–95–0358	12/07/94	03/07/95	CBI[1]	(G) Cyclohexyl alkyl ether propionate
P–95–0359	12/12/94	03/12/95	CBI[1]	(G) Polymerized trimethyl-1,2-dihydroquinoline reaction product
P–95–0360	12/12/94	03/12/95	CBI[1]	(G) Mixed sodium/lithium salt of a substituted naphthalene disulfonic acid
P–95–0361	12/12/94	03/12/95	CBI[1]	(G) Polyol ester
P–95–0362	12/12/94	03/12/95	Shell Oil Company[1]	(S) Dicyclopentadiene-1,3-pentadiene reaction product
P–95–0363	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0364	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0365	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0366	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0367	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0368	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0369	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0370	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0371	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin

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P–95–0372	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0373	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0374	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0375	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0376	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0377	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0378	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0379	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0380	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0381	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0382	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0383	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0384	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0385	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0386	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0387	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0388	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0389	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0390	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0391	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0392	12/12/94	03/12/95	CBI[1]	(G) Acid functional polymeric resin
P–95–0393	12/12/94	03/12/95	CBI[1]	(G) Polyester polyether isocyanate
P–95–0394	12/12/94	03/12/95	CBI[1]	(G) Polyester polyether isocyanate
P–95–0395	12/12/94	03/12/95	CBI[1]	(G) Polyester polyether isocyanate
P–95–0396	12/12/94	03/12/95	CBI[1]	(G) Polyester polyether isocyanate
P–95–0397	12/12/94	03/12/95	Hoechst Celanese[1]	(G) Heterocycle substituted ethanol
P–95–0398	12/12/94	03/12/95	CBI[1]	(G) Alkyl silicates
P–95–0399	12/12/94	03/12/95	Gelest, Inc.[1]	(G) Monomethacrylate functional polydimethylsiloxane
P–95–0400	12/12/94	03/12/95	CBI[1]	(G) Alkyl ether alcohol
P–95–0401	12/13/94	03/13/95	Atlantic Richfield Company	(S) Alcohols, C_{11}–C_{14}-ISO-, C_{13} rich, propoxylated
P–95–0402	12/13/94	03/13/95	CBI[1]	(G) Toluene diisocyanate terminated polyether polyol
P–95–0403	12/13/94	03/13/95	CBI[1]	(G) Complex reaction product of t-butyl, dihydroxycarbopolycycle and bis(dimethylaminosubstituted)carbomonocycle
P–95–0404	12/13/94	03/13/95	3M[1]	(S) 2,2,3,3,5,5,6,6,-octafluoro-4-(pentafluoroethyl)-morpholine
P–95–0405	12/13/94	03/13/95	CBI[1]	(G) Reaction product of benzene,1,1′, methylenebis [isocyanato-], with glyceryl tri-ester of hydroxyoleic acid
P–95–0406	12/14/94	03/14/95	Hoechst Celanese[1]	(G) 2-anilino-5-cyano-3-(2-(substituted)-6-(substituted)-4-methylpyridine
P–95–0407	12/14/94	03/14/95	Hoechst Celanese[1]	(G) 2-anilino-5-cyano-3-(2-(substituted)-6-(substituted)-4-methylpyridine
P–95–0408	12/15/94	03/15/95	CBI[1]	(G) An azo monochloro triazine metal complex
P–95–0409	12/16/94	03/16/95	Coates Brothers Inks (USA), Inc.[1]	(G) Epoxy acrylate
P–95–0410	12/20/94	03/20/95	CBI[1]	(G) Allyl ester oligomer
P–95–0411	12/20/94	03/20/95	Elf Atochem North America, Inc.[1]	(S) Neodecaneperoxoic acid, 3-hydroxy-1, 1-dimethyl butyl ester
P–95–0412	12/20/94	03/20/95	Dow Corning[1]	(G) Aryl polyurea
P–95–0413	12/20/94	03/20/95	CBI[1]	(G) Pentaerythritol esters of linear and branched fatty acids
P–95–0414	12/20/94	03/20/95	CBI[1]	(G) Pentaerythritol esters of linear and branched fatty acids
P–95–0415	12/16/94	03/16/95	CBI[1]	(G) Mixed alkyl borate esters

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0416	12/16/94	03/16/95	Finetex, Inc.[1]	(S) Docosanyl benzoate (behenyl benzoate)
P–95–0417	12/19/94	03/19/95	CBI[1]	(G) Polycarbonate polyurethane
P–95–0418	12/20/94	03/20/95	Hoechst Celanese[1]	(G) Polymethine dye
P–95–0419	12/16/94	03/16/95	Genencor, Inc.[1]	(S) Escherichia coli K-12 modified to contain the naphthalene dioxygenade cluster from pseudomonas putida
P–95–0420	12/19/94	03/19/95	Dow Chemical U.S.A.[1]	(S) 4-Ethylcyclohexanone
P–95–0421	12/19/94	03/19/95	Dow Chemical U.S.A.[1]	(S) Cyclohexanone, 2,6-bis[(4-azidophenyl)methylene]-4-ethyl-
P–95–0422	12/20/94	03/20/95	Dow Chemical U.S.A.[1]	(G) Substituted cyclopentadienyl metal complex
P–95–0423	12/20/94	03/20/95	Cardolite Corporation[1]	(G) Amine epoxy curing agent
P–95–0424	12/20/94	03/20/95	Cardolite Corporation[1]	(G) Amine functional epoxy curing agent
P–95–0425	12/20/94	03/20/95	Cardolite Corporation[1]	(G) Epoxy amine functional curing agent
P–95–0426	12/20/94	03/20/95	Bedoukian Research, Inc.[1]	(S) 2-decen-1-al, (E)-
P–95–0427	12/20/94	03/20/95	CBI[1]	(G) Carboxylic acid copolymer
P–95–0428	12/22/94	03/22/95	CBI[1]	(G) High solids polyester resin
P–95–0429	12/22/94	03/22/95	CBI[1]	(G) Polyurethane polymer
P–95–0430	12/22/94	03/22/95	CBI[1]	(G) Polyurethane polymer
P–95–0431	12/22/94	03/22/95	CBI[1]	(G) Polyurethane polymer
P–95–0432	12/22/94	03/22/95	CBI[1]	(G) Polyurethane polymer
P–95–0433	12/22/94	03/22/95	CBI[1]	(G) Polyurethane polymer
P–95–0434	12/22/94	03/22/95	3M[1]	(G) 2-propenoic acid, isooctyl ester copolymer
P–95–0435	12/23/94	03/23/95	Dow Chemical Company[1]	(G) Substituted quinoline
P–95–0436	12/23/94	03/23/95	CBI[1]	(G) Ionic polyurethane with partially blocked isocyanates
P–95–0437	12/27/94	03/27/95	CBI[1]	(S) 3-(1,1-dimethylethyl)cyclohexanol, acetate-
P–95–0438	12/27/94	03/27/95	CBI	(G) Fatty acids, reaction products with alkyl polyamine quaternized with dialkyl sulfate
P–95–0439	12/27/94	03/27/95	CBI	(G) Fatty acids, reaction products with alkyl polyamine quaternized with dialkyl sulfate
P–95–0440	12/27/94	03/27/95	CBI	(G) Fatty acids, reaction products with alkyl polyamine quaternized with dialkyl sulfate
P–95–0441	12/27/94	03/27/95	CBI	(G) Fatty acids, reaction products with alkyl polyamine quaternized with dialkyl sulfate
P–95–0442	12/27/94	03/27/95	CBI	(G) Fatty acids, reaction products with alkyl polyamine quaternized with dialkyl sulfate
P–95–0443	12/27/94	03/27/95	CBI[1]	(G) Polymeric quaternary ammonium compound
P–95–0444	12/27/94	03/27/95	EMS American Grilon Inc.	(S) Polyester of terephtalic acid, isophthalic acid, adipic acid and 1,4 - butane diol
P–95–0445	12/28/94	03/28/95	NOF America Corporation	(G) Compatibility agent
P–95–0446	12/28/94	03/28/95	Cardolite Corporation	(G) Amime epoxy curing agent
P–95–0447	12/28/94	03/28/95	EMS American Grilon Inc.	(S) Copolyamide (nylon-copolymer), polycondensated from adipic acid, sebacic with hexamethylene diamine and meta-xylene-diamine
P–95–0448	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0449	12/28/94	03/28/95	CBI÷	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0450	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0451	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0452	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0453	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0454	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0455	12/28/94	03/28/95	CBI[1]	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0456	12/28/94	03/28/95	Amfine Chemical Corporation[1]	(G) Hexanedioic acid, polymer with diols and a monohydric alcohol

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P–95–0457	12/28/94	03/28/95	CBI[1]	(G) Starch, 2-carboxy-2-substituted-ether
P–95–0458	12/28/94	03/28/95	CBI[1]	(G) Starch, 2-carboxy-2-substituted-ether
P–95–0459	12/29/94	03/29/95	International TLB Research Institute, Inc.[1]	(S) TLB microbial fertilizer
P–95–0460	12/29/94	03/29/95	CBI[1]	(G) Methyl ethyl ketoxime capped polyurethane prepolymer
P–95–0461	12/30/94	03/30/95	CBI[1]	(G) Reaction product of an epoxy resin and a phenol compound
P–95–0462	01/03/95	04/03/95	CBI[1]	(G) Benzoic acid derivative
P–95–0464	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0465	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0466	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0467	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0468	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0469	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0470	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0471	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0472	01/03/95	04/03/94	CBI[1]	(G) Urethane ethoxylate
P–95–0473	01/03/95	04/03/95	Ashland Chemical Company[1]	(G) Unsaturated polyester
P–95–0474	01/04/95	04/04/95	Dow Corning[1]	(G) Amino-functional cyclosiloxanes
P–95–0475	01/04/95	04/04/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) 1-methyl-4-substituted pyrazole-5-sulfonamide
P–95–0476	01/04/95	04/04/95	Dow Corning[1]	(G) Treated silica
P–95–0477	01/04/95	04/04/95	CBI[1]	(S) 9*H*-fluorene-9-carboxylic acid, 9-hydroxy
P–95–0478	01/04/95	04/04/95	CBI[1]	(G) Unsaturated polyester oligomer
P–95–0479	01/04/95	04/04/95	Master Builders, Inc.[1]	(G) 2-propenyl polyester urethane oxirane oligomer
P–95–0480	01/04/95	04/04/95	CBI[1]	(S) A polymer of: siloxanes and silicones, di-me, me hydrogen; benzene, (1-methylethenyl)-; 1-octene
P–95–0481	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0482	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0483	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0484	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0485	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0486	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0487	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0488	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0489	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0490	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0491	01/05/95	04/05/95	CBI[1]	(G) Condensation polyester of glycols and diacids
P–95–0492	01/06/95	04/06/95	Eastman Kodak Company[1]	(G) Heterocyclic substituted sulfonamido substituted naphthalene carboxamide
P–95–0507	01/09/95	04/09/95	Dow Corning[1]	(G) Aminoacrylate-functional silica
P–95–0508	01/09/95	04/09/95	Dow Corning[1]	(G) Aminoacrylate-functional silica
P–95–0509	01/06/95	04/06/95	Hoechst Celanese[1]	(G) Nuva FSN
P–95–0510	01/09/95	04/09/95	CBI[1]	(G) [(Disubstituted phenyl) azo]-dihydro-hydroxy-alkyl-oxo-alkyl-substituted pyridine
P–95–0511	01/09/95	04/09/95	CBI[1]	(G) Alkyl[(disubstituted phenyl) azo]-dihydro-hydroxy-alkyl-oxo-alkyl-substituted pyridine
P–95–0512	01/10/95	04/10/95	Ciba-Geigy Corporation[1]	(G) Aminofluoran derivative
P–95–0513	01/10/95	04/10/95	CBI[1]	(G) *N*-[2-[(Substituted dinitrophenyl)azo]-diallylamino-4-substituted phenyl]-acetamide
P–95–0514	01/10/95	04/10/95	CBI[1]	(G) Substituted diphenyl azo dye

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0515	01/10/95	04/10/95	CBI[1]	(G) Polyimidesulfone
P–95–0516	01/10/95	04/10/95	CBI[1]	(G) Rubber modified polyamide
P–95–0517	01/10/95	04/10/95	CBI[1]	(G) Polyester resin
P–95–0518	01/10/95	04/10/95	NA Industries, Inc.[1]	(G) Water soluble polymer containing oxazoline group
P–95–0519	01/10/95	04/10/95	Finetex, Inc.[1]	(S) 1-Methoxypropan-2-oxyethanoic acid, sodium salt
P–95–0520	01/10/95	04/10/95	Finetex, Inc.[1]	(S) (2-methoxymethylethoxy)propan-2-oxyethanoic acid sodium salt
P–95–0521	01/10/95	04/10/95	Finetex, Inc.[1]	(S) 1-(1-Methyl-2-propoxyethoxy)propan-2-oxyethanoic acid, sodium salt
P–95–0522	01/10/95	04/10/95	Aspect Minerals, Inc.[1]	(S) Chemically-modified muscovite mica or chemically-modified hydrated aluminum potassium silicate
P–95–0523	01/11/95	04/11/95	Hoechst Celanese [1]	(G) Epoxide amine modified cationic acrylic resin
P–95–0524	01/11/95	04/11/95	CBI[1]	(G) Polyurethane elastomer
P–95–0525	01/11/95	04/11/95	CBI	(G) Acrylic polymer
P–95–0526	01/11/95	04/11/95	CBI	(G) Polyester resin
P–95–0527	01/11/95	04/11/95	CBI	(G) Polyester/acrylic copolymer
P–95–0528	01/11/95	04/11/95	CBI[1]	(G) Polymer of mixed olefins grafted with vinyl heteromonocycle monomer
P–95–0529	01/11/95	04/11/95	Engelhard[1]	(S) Titanium silicate, hydrogen, sodium, potassium mixed salt
P–95–0530	01/13/95	04/13/95	Ausimont USA, Inc.[1]	(S) A polymer of: tetrafluoroethene; trifluoro(trifluoromethoxy)ethene; 1,1,1,2,2,3,3,-heptafluoro-3-[(trifluoroethenyl)oxy]-propane
P–95–0531	01/12/95	04/12/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Silane grafted ethylene based polymer
P–95–0532	01/13/95	04/13/95	Dic Trading (USA) Inc.[1]	(S) Poly(oxy-1,2-ethanediyl),.alpha., alpha. ′,.alpha.′′–1,2,3-propanetriyltris[.omega.-[(1-oxo-2-propenyl)oxy]-
P–95–0533	01/17/95	04/17/95	Hoechst Celanese[1]	(S) A polymer of: neodecanoic acid, oxiranyl methyl ester; styrene; methylmethacrylate; 2-hydroxypropyl methacrylate; acrylic acid; dimethylethanolamine
P–95–0534	01/17/95	04/17/95	Asahi Chemical Industry America Inc.[1]	(S) Bis(2-hydroxypropanoato)-manganese
P–95–0535	01/17/95	04/17/95	Champion International Corporation[1]	(G) Reaction products of formalin (37%) with amine C_{-12} [the fractional forecuts-diethylene glycol and ammonia]
P–95–0536	01/17/95	04/17/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Sodium group IVA metal hydroxyalkanoate
P–95–0537	01/18/95	04/18/95	Cardolite Corporation[1]	(G) Cashew elastomer hexa mineral-filled resin
P–95–0538	01/18/95	04/18/95	CBI[1]	(S) 2-Naphthalenol, 1-[(4-phenylazo)phenyl)azo-, ar-heptyl, ar′,ar′′-methyl derivatives
P–95–0539	01/18/95	04/18/95	CBI[1]	(G) Acrylate functional polyurethane resin
P–95–0540	01/19/95	04/19/95	E.I. Dupont de Nemours & Co., Inc.[1]	(G) Polyamide
P–95–0541	01/19/95	04/19/95	CBI[1]	(G) Aspartic ester
P–95–0542	01/18/95	04/18/95	CBI[1]	(G) Reaction products of substituted and disubstituted anilines with paraformaldehyde, lower aliphatic and hydrochloric acids, oxygen and a substituted quinone
P–95–0543	01/18/95	04/18/95	CBI	(G) Crosslinked alginate
P–95–0544	01/19/95	04/19/95	Marubeni America Corporation	(S) A polymer of: acrylonitrile; methyl methacrylate; methyl acrylate; pcg diacrylate; di-isopropyl peroxy dicarbonate; 2-hydroxypropyl methacrylate
P–95–0545	01/19/95	04/19/95	Marubeni America Corporation	(S) A polymer of: acrylonitrile; methacrylonitrile; iso-bornyl methacrylate; ethyleneglycol dimethacrylate; 2,2-azobisisobutylonitrile
P–95–0546	01/20/95	04/20/95	Spies Hecker, Inc.	(G) Polymer of methyl methacrtlate, 2-ethylacrylate, butylate acrylic acid and methyl (2-hydroxy ethyl) alkene derivative
P–95–0547	01/20/95	04/20/95	Hoechst Celanese[1]	(G) Disubstituted naphthalene sulfonic acid salt
P–95–0548	01/23/95	04/23/95	The C.P. Hall Company	(S) Dibutoxypropoxypropyl decanedioate
P–95–0549	01/23/95	04/23/95	The C.P. Hall Company [1]	(S) Dibutoxyproxypropyl adipate

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0550	01/23/95	04/23/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0551	01/23/95	04/23/95	CBI[1]	(G) Polyester isocyanate polymer
P–95–0552	01/23/95	04/23/95	CBI[1]	(G) Polyester isocyanate polymer
P–	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; diethanolamine
P–95–0793	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; 1-propanol, 2-dimethylamino-2-methyl
P–95–0794	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; 1,3-propanediol, 2-amino-2-(hydroxymethyl)
P–95–0795	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; diisopropanolamine
P–95–0796	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; triisopropanolamine
P–95–0797	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; amines, cocoalkyl
P–95–0798	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; dihexylamine, 2,2′-diethyl
P–95–0799	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; 9-octodecen-1-amine
P–95–0800	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid homopolymer; amines, cocoalkyl, ethoxylated
P–95–0801	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; potassium hydroxide
P–95–0802	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; sodium hydroxide
P–95–0803	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; ammonium hydroxide
P–95–0804	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; sodium hydroxymethyl glycinate
P–95–0805	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; ethanolamine
P–95–0806	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; 1-propanol, 2-amino-2-methyl
P–95–0807	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; triethylamine
P–95–0808	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; diethanolamine
P–95–0809	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; 1-propanol, 2-dimethylamino-2-methyl
P–95–0810	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; 1,3-propanediol, 2-amino-20(hydroxymethyl)
P–95–0811	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; diisopropanolamine
P–95–0812	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; triethanolamine
P–95–0813	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; 9-octadecen-1-amine
P–95–0814	03/06/95	06/04/95	CBI[1]	(S) A polymer of: 2-propenoic acid, 2-methyloctadecyl ester, polymer with 2-propenoic acid; amines, cocoalkyl, ethoxylated
P–95–0815	03/08/95	06/06/95	GE Plastics[1]	(S) Phenol, 2,6-dimethyl-, homopolymer, 2,4,6-trimethylphenyl-terminated
P–95–0816	03/09/95	06/07/95	Genesee Polymers[1]	(G) Amine functional silicone fluid
P–95–0817	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0818	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0819	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0820	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0821	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0822	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0823	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0824	03/08/95	06/06/95	S. C. Johnson & Son, Inc.[1]	(G) Amine functional silicone fluid
P–95–0825	03/08/95	06/06/95	Hoechst Celanese[1]	(S) A polymer of: sunflower fatty acid; trimethylolpropane; pentaerythritol; benzoic acid; phthalic acid anhydride; versatic acid glycidylester
P–95–0826	03/09/95	06/07/95	CBI[1]	(G) Substituted methyl ester of benzoic acid
P–95–0827	03/09/95	06/07/95	Ciba-Geigy Corporation[1]	(G) Sodium salt of substituted naphthalenesulfonic acid
P–95–0828	03/10/95	06/08/95	Garrison Industries Inc[1]	(S) Methanone (2,4-dihydroxyphenyl) (4-hydroxyphenyl)
P–95–0829	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0830	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0831	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0832	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0833	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0834	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0835	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0836	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0837	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0838	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0839	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0840	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0841	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0842	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0843	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0844	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0845	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0846	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0847	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0848	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0849	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0850	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0851	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0852	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0853	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0854	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0855	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0856	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0857	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0858	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0859	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0860	03/14/95	06/12/95	CBI[1]	(G) Polymeric colorant
P–95–0861	03/13/95	06/11/95	Conrad Industries, Inc.[1]	(S) Plastics, post-consumer easte, pyrolyzed, pyrolysis oil
P–95–0862	03/14/95	06/12/95	CBI[1]	(G) Salt of a substituted mineral acid
P–95–0863	03/14/95	06/12/95	CBI[1]	(G) Salt of a substituted mineral acid
P–95–0864	03/14/95	06/12/95	CBI[1]	(G) Polyhydroxyester of epoxidized soybean oil with alkyl-aryl sulphonic acids in mineral oil and rape oil
P–95–0865	03/14/95	06/12/95	Ashland Chemical Company[1]	(G) Copolymer of acrylic esters, methacrylic esters, and acrylamide
P–95–0866	03/14/95	06/12/95	Arizona Electric Power Cooperative Inc[1]	(S) Iron (III)-EDTA complex ((ethylenedinitrilo) tetraacetato) ferrate (1-)
P–95–0867	03/14/95	06/12/95	CBI[1]	(G) Modified araliphatic amine

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
P–95–0868	03/14/95	06/12/95	Rheox, Inc.[1]	(G) Diamide
P–95–0869	03/15/95	06/13/95	CBI[1]	(G) Polyester polyol, acetoacetate ester
P–95–0870	03/15/95	06/13/95	CBI[1]	(G) Organosilane ester
P–95–0871	03/16/95	06/14/95	Ciba-Geigy Corporation[1]	(G) Substituted phenyl azo substituted phenyl oxy alkyl amino ester
P–95–0872	03/15/95	06/13/95	Mitsui & Co., (U.S.A.) Inc.[1]	(S) 4-(3-(3,5-di-*t*-butyl-4-hydroxyphenyl)propionyloxy)-1-[2-[3,5-di-*t*-butyl-4-hydroxyphenyl)propionyloxy]ethyl]-2,2,6,6-tetramethyl-piperidine
P–95–0873	03/15/95	06/13/95	Carapace, Inc.[1]	(S) Benzene, 1,1′-methylene-bis [isocyanato]-polymer with poly (oxy-1, 2-ethanediyl), alpha-hydro-*W*-hydroxy and denatured ethanol
P–95–0874	03/15/95	06/13/95	CBI[1]	(G) Textile sulfur dye produced from substituted aniline
P–95–0875	03/17/95	06/05/95	CBI[1]	(G) Hydrogenated acid-isomerized alcohol
P–95–0876	03/14/95	06/12/95	3M[1]	(G) Polyurethane polymer of 1,1′-methylenebis(4-isocyanatobenzene) and polyols
P–95–0877	03/14/95	06/12/95	3M[1]	(G) Silicone polymer
P–95–0878	03/17/95	06/15/95	CBI[1]	(G) Organosilane ester
P–95–0879	03/17/95	06/15/95	CBI[1]	(G) Alkylamine salt of a substituted-heteropolycycle-alkyl-[[disubstituted heteropolycycle]]
P–95–0880	03/17/95	06/15/95	CBI[1]	(G) Salt of a substituted bis((disubstituted heteromonocycle))
P–95–0881	03/17/95	06/15/95	E.I. Dupont de Nemours & Co., Inc[1]	(G) Substituted aromatic acid salt
P–95–0882	03/20/95	06/18/95	CBI[1]	(G) Substituted alkylbenzene
P–95–0883	03/20/95	06/18/95	CBI[1]	(G) Organosilane ester
P–95–0884	03/20/95	06/18/95	CBI[1]	(G) Dioctylthiophosphorylpolysulfide
P–95–0885	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0886	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0887	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0888	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0889	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0890	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0891	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt
P–95–0892	03/02/95	05/31/95	Lilly Industrial Coatings, Inc.[1]	(G) Acrylic resin salt

/1/ Submissions where health and saftey data was received from the Manufacturer/Importer.

II. 79 Polymer Exemption Notices
Received From: 10/01/94 to 03/19/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
Y–95–0001	10/04/94	10/25/94	C. J. Osborn Chemicals, Inc.	(G) Silicone epoxy resin
Y–95–0002	10/07/94	10/28/94	CBI	(S) A polymer of: dimethyl terephthalate; 2- methyl-1, 3-propanediol; diethylene glycol; dibutylin oxide
Y–95–0003	10/18/94	11/08/94	Minolta Corporation	(G) Alpha-olefins, alkenylbenzene copolymer
Y–95–0004	10/18/94	11/08/94	CBI	(G) Acrylic polymer
Y–95–0005	10/18/94	11/08/94	CBI	(G) High solids polyester resin
Y–95–0006	10/19/94	11/09/94	CBI	(G) Aliphatic polyurethaneurea
Y–95–0007	10/20/94	11/10/94	McWhorter, Inc.	(G) Unsaturated polyester
Y–95–0008	10/26/94	11/16/94	Sicpa Company	(G) Intaglio ink varnish
Y–95–0009	10/26/94	11/16/94	Cardolite Corporation	(G) Cashew elastomer hexa mineral-filled resin

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
Y–95–0010	10/27/94	11/17/94	Rheox, Inc.	(G) Polyesteramide resin
Y–95–0011	10/28/94	11/18/94	Lilly Industrial Coatings, Inc.	(G) Modified hydrocarbon resin
Y–95–0012	11/03/94	11/24/94	CBI	(G) Polyester
Y–95–0013	11/10/94	12/01/94	CBI	(G) Seycofilm pe–100
Y–95–0014	11/10/94	12/01/94	CBI	(G) Bc-bind
Y–95–0015	11/09/94	11/30/94	Toyobo New York, Inc.	(S) 1,3-benzenedicarboxylic acid, polymer with decanedioic acid, 1,2,4-benzenetricarboxylic acid, 1,2-propanediol and 1,2-ethanediol
Y–95–0016	11/09/94	11/30/94	Toyobo New York, Inc.	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,2-propanediol, 1,2-ethanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol
Y–95–0017	11/09/94	11/30/94	Toyobo New York, Inc.	(S) 1,4-benzenedicarboxylic acid, polymer with 1,2-propanediol, 1,2-ethanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol
Y–95–0018	11/10/94	12/01/94	CBI	(S) A polymer of: tall oil fatty acids; 1,3 trimethylol propane; neo pentyl glycol; isophthalic acid; maleic anhydride; phthalic anhydride
Y–95–0019	11/21/94	12/12/94	Reichhold Chemicals, Inc.	(G) Polyester resin
Y–95–0020	11/22/94	12/13/94	CBI	(G) Acrylic modified alkyd copolymer
Y–95–0021	11/22/94	12/13/94	CBI	(G) Modified acrylic polymer
Y–95–0022	11/29/94	12/20/94	Akzo Nobel Chemicals Inc.	(G) Polyurethane polyol
Y–95–0023	11/30/94	12/21/94	GE Plastics	(S) Phenol, 2,6-dimethyl-, homopolymer, 2,4,6-trimethylphenyl-terminated
Y–95–0024	12/05/94	12/26/94	Specialty Polymers, Inc	(S) A polymer of: ethenyl benzene; methyl 2-methyl 2-propenoate; 2-ethylhexyl 2-propenoate; butyl 2-propenoate; 2-methyl-2-propenoic acid; ammonium persulfate
Y–95–0025	12/08/94	12/29/94	Carapace, Inc.	(S) Benzene, 1,1′-methylene-bis [isocyanato]-polymer with poly (oxy-1,2-ethanediyl), alpha-hydro-*W*-hydroxy and denatured ethanol
Y–95–0026	12/08/94	12/29/94	CBI	(G) Oil modified alkyd resin
Y–95–0027	12/19/94	01/09/95	CBI	(G) Copolymer of acrylic and methacrylic esters
Y–95–0029	12/29/94	01/19/95	Reichhold Chemicals, Inc.	(G) Acrylic copolymer
Y–95–0030	12/30/94	01/20/95	Reichhold Chemicals, Inc.	(G) Alkyd modified acrylics
Y–95–0031	01/13/95	02/03/95	CBI	(G) Aliphatic alcohol polymer
Y–95–0032	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0033	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0034	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0035	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0036	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0037	01/17/95	02/07/95	CBI	(G) Powder polyester polymer
Y–95–0038	01/18/95	02/08/95	CBI	(G) Alkali-swellable polyacrylate thickner
Y–95–0039	01/18/95	02/08/95	Air Products and Chemicals, Inc.	(G) Styrene/acrylic ester multipolymer
Y–95–0040	01/19/95	02/09/95	GE Plastics	(G) Sulphonated polystyrene amine complex
Y–95–0041	01/25/95	02/15/95	Eastman Kodak	(S) A polymer of: 1-hexene; and a catalyst containing; triethyl aluminum, titanium tetrachloride, supported on magnesium chloride, cyclohexylmethyldimethoxysilane
Y–95–0042	01/30/95	02/20/95	CBI	(G) Isophthalic acid polymer with cyclialcohol and alkyldiamine
Y–95–0043	01/30/95	02/20/95	CBI	(G) Alkyd resin
Y–95–0044	01/30/95	02/20/95	CBI	(G) Alkyd resin

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Chemical
Y–95–0045	02/02/95	02/23/95	CBI	(G) Unsaturated polyester
Y–95–0046	01/31/95	02/21/95	Toyobo New York, Inc.	(S) 1,1″-methylenebis(4-isocyanatobenzene), polymer with 1,3-benzenedicarboxylic acid, 1,2-benzenedicarboxylic acid, 2,2-dimethyl-1,3-propanediol,1,2-ethanediol, bis(hydroxymethyl) cyclohexane, and 5-sulfo-1, 3-benzenedicarboxylic acid monosodium salt
Y–95–0047	02/08/95	03/01/95	Gateway Additive Co.	(G) Pentaerythritol polymeric ester with fatty and succinic acids
Y–95–0048	02/17/95	03/10/95	CBI	(G) Organically modified polysiloxane
Y–95–0049	03/02/95	00/00/00	John C. Dolph Co.	(S) A polymer of: tall oil acids; tall oil; rosin, fortified; trimethylol propane; isophthalic acid
Y–95–0050	03/07/95	03/28/95	CBI	(G) Acrylic polymer
Y–95–0051	03/09/95	03/30/95	Reichhold Chemicals, Inc.	(G) Polyester resin
Y–95–0052	03/09/95	03/30/95	C. J. Osborn Chemicals, Inc.	(G) Silicone polyester
Y–95–0053	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0054	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0055	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0056	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0057	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0058	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0059	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0060	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0061	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0062	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0063	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0064	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0065	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0066	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0067	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0068	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0069	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0070	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0071	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0072	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0073	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0074	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0075	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0076	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0077	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0078	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0079	03/15/95	04/05/95	CBI	(G) Modified polyurethane
Y–95–0080	03/20/95	04/10/95	CBI	(G) Poly-ester urethane polyol dispersion

III. 9 Test Market Exemption Applications Received From: 10/01/94 to 03/19/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–95–0001	02/22/95	04/08/95	CBI	(G) UV Absorber	(G) *N,N′*,N′′ – triphenylmelamine derivative
T–95–0002	02/23/95	04/09/95	Lubricants Additives Research Co.	(S) Lubricant Additive	(G) Synthetic silver complex
T–95–0003	03/27/95	05/11/95	Reichhold Chemicals, Inc.	(S) Adhesive to adhere various materials	(G) Polyurethane adhesives
T–95–0004	03/29/95	05/13/95	Reichhold Chemicals, Inc.	(S) Adhesive to adhere paper to paper in the assembly o	(G) Polyurethane adhesive
T–95–0005	04/18/95	06/02/95	Westvaco	(G) Corrosion inhibitor, for destructive and contained	(S) Reaction products of maleated tall oil fatty acid ethylene glycol ester, potassium salts with reaction products of fatty acids, tall-oil with diethylenetriamine
T–95–0006	04/18/95	06/02/95	Westvaco	(G) Corrosion inhibitor, for destructive and contained	(S) Reaction products of maleated tall oil fatty acid ethylene glycol ester, ammonium salts with reaction products of fatty acids, tall-oil with diethylenetriamine
T–95–0007	04/18/95	06/02/95	Westvaco	(G) Corrosion inhibitor, for destructive and contained	(S) Reaction products of maleated tall oil fatty acid diethylene glycol ester, potassium salts with reaction products of fatty acids, tall-oil with diethylenetriamine
T–95–0008	04/18/95	06/02/95	Westvaco	(G) Corrosion inhibitor, for destructive and contained	(S) reaction products of maleated tall oil fatty acid diethylene glycol ester, ammonium salts with reaction products of Fatty acids, tall-oil with diethylenetriamine
T–95–0009	04/18/95	06/02/95	IPS Corporation	(G) Industrial adhesive	(S) Basic raw material in the formulation of an adhesiv(s) rg 600-polyester polyols

IV. 443 Notices of Commencement
Received From: 10/01/94 to 03/19/95.

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1414	09/30/94	08/31/94	(G) Fatty acid modified polyester
P–94–1648	09/30/94	08/31/94	(G) Neutralized fluorocarbon modified polyacrylate
P–91–1009	10/03/94	09/02/94	(G) Substituted alkyl alcohol
P–93–1073	10/03/94	09/01/94	(G) Acrylic copolymer
Y–94–0086	10/03/94	08/31/94	(G) Aliphatic diisocyanate polymer
P–94–1569	10/04/94	09/19/94	(G) Alkylbenzene sulfonic acid
Y–94–0163	10/04/94	09/14/94	(G) Saturated, oil-free polyester resin
Y–94–0113	10/04/94	09/21/94	(G) Acrylic copolymer
Y–94–0167	10/04/94	09/07/94	(G) Polyester glycol
P–94–1446	10/04/94	09/02/94	(G) Organo phosphorous halide
P–94–1549	10/04/94	09/16/94	(G) Polyether polyester polyurethane
P–94–1721	10/12/94	10/10/94	(G) Strontium aluminate
P–94–1726	10/18/94	10/06/94	(G) Phosphomolybdotungstic salt of 2-[[2-cyano-3-substituted)amino]phenyl]-1-oxo-propenyl]oxy
P–94–1578	10/04/94	09/15/94	(G) Aliphatic isocyanate terminated prepolymer
P–94–1001	10/05/94	09/27/94	(G) Guerbet alcohol ester
P–94–0134	10/05/94	09/09/94	(G) Copper hexacyanoferrate of the xanthene dye stuff
P–94–1475	10/06/94	08/22/94	(S) Aspergillus oryzae
P–94–1718	10/06/94	09/14/94	(G) Hydroxyalkyl amino-substituted heterocarbocycle-bis(amino-substituted carbocycle azosulfonylcarbopolycyclic) salt

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1792	10/06/94	09/29/94	(G) Bornyloxy substituted alkyl alkanol
P–94–1231	10/07/94	09/21/94	(S) A polymer of: chemically modified polyolefin; nylon 6,6 (poly[imino(1,6-dioxo-1,6-hexanediyl) imino-1,6-hexanediyl])
P–94–1232	10/07/94	09/21/94	(S) A Polymer of: chemically modified polyolefin; nylon 6 (polyhexahydro-2*H*-azepin-2-one)
P–94–1233	10/07/94	09/21/94	(S) A polymer of: chemically modified polyolefin; copolymer of nylon 6,6 and nylon 6 (hexanedioic acid, polymer with hexahydro-2*H*-azepin-2-one and 1,6-hexanediamine)
P–94–1471	10/07/94	09/14/94	(G) Rosin modified alkyd
P–94–1467	10/07/94	09/20/94	(G) Halobenzoic acid derivative
P–94–0611	10/07/94	09/29/94	(G) Acrylate functional polyurethane resin
P–94–1491	10/07/94	09/08/94	(G) Modified bismaleimide
P–94–1752	10/11/94	10/06/94	(G) Cuprate(6-), substituted 1,2-ethanediylbis(imino(6-halo-1,3,5-triazine-4,2-diyl)imino(hydroxy sulfophenylene)azo(pehylmethylene)azo)sulfobenzoate(10-)di-, sodium
P–94–0466	10/11/94	09/29/94	(G) Cresol novolac resin
P–94–0467	10/11/94	09/29/94	(G) Substituted benzophenone ester
P–94–0468	10/11/94	09/29/94	(G) Cresol novolac ester
P–93–0654	10/12/94	09/20/94	(G) Acrylic modified soya alkyd polymer
P–94–1543	10/12/94	09/23/94	(G) Alkoxy aluminum chelate complex
P–94–1745	10/12/94	09/29/94	(G) Polyester polyurethane
P–94–1443	10/12/94	10/03/94	(S) Zinc sulfide (zns) silver doped
P–93–0542	10/12/94	09/22/94	(G) Polyester
P–94–1742	10/13/94	10/06/94	(G) Eugenol modified polyalkyleneoxide, polydimethylsiloxane copolymer
P–93–1088	10/13/94	10/06/94	(G) Alkyltrichlorosilane
P–94–0263	10/17/94	09/01/94	(G) Stannane tributyl
P–94–0272	10/27/94	10/25/94	(S) A polymer of: 2,5-furandione, polymer with ethenyl benzene 1-methylethyl benzene, and bis (1-methyl-l-phenyl ethyl) peroxide, *N*-propyl ester; aqueous ammonia (28% ammonia)
P–94–0656	10/18/94	09/22/94	(G) Fatty acid, amino alcohol salt
P–94–1013	10/18/94	10/11/94	(G) Substituted amino-anthroquinone
P–94–1424	10/18/94	09/28/94	(G) Polymer of ethenyl benzene, diethenyl benzene, ethylethenyl benzene, chloromethylated and aminated with trialkylamine
P–94–0307	10/18/94	10/06/94	(G) Substituted aldehyde
P–94–1094	10/18/94	09/28/94	(S) A 2-methyl-1,3 propanediol, isophthalic acid, phthalic anhydride, 2-oxepanone (epsilon-caprolactone) extended polyester
P–94–1420	10/18/94	09/20/94	(G) Alkoxy polyol polymer
P–94–1442	10/20/94	09/07/94	(G) Isocyanate terminated urethane polymer
P–94–1673	10/20/94	10/02/94	(G) Modified diphenylmethan diisocyanate polymer
Y–94–0184	10/20/94	10/07/94	(G) Water dispersible polyester
P–94–1686	10/21/94	09/27/94	(G) Naphthalenedisulfonic acid, [[[[(substituted heterocycle)azo]bdenzamido]methoxyphenyl]azo]-, salt(s)
P–93–1132	10/24/94	10/07/94	(G) Substituted naphthalene sulfonic acid, alkali salt
P–94–0529	10/24/94	10/04/94	(G) Substituted pyridine polymer
P–94–1433	10/24/94	10/09/94	(G) Ethylene glycol recovery residues
P–94–1511	10/24/94	10/06/94	(G) Bis phenyl substituted urea
P–94–0305	10/25/94	10/12/94	(G) Thermoplastic polyurethane resin
P–94–0308	10/25/94	10/13/94	(G) Substituted hydroxyketone
P–94–0309	10/25/94	10/13/94	(G) Substituted ketone
P–94–1089	10/25/94	10/15/94	(G) Polyurethane adduct
P–94–1401	10/25/94	10/14/94	(G) Fiber reactive copper phthalocyanine dyestuff
P–94–1465	10/25/94	09/29/94	(G) Polymer of substituted alkoxysilane and aliphatic acrylates and methacrylates
P–94–1741	10/25/94	10/06/94	(G) Urethane prepolymer
Y–94–0141	10/26/94	10/11/94	(G) Polyester resin
P–94–0677	10/26/94	10/04/94	(G) Nitroaromatic halobenzamide

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P–94–1669	10/26/94	10/13/94	(G) Mono and di amine salt carboxylate
Y–93–0035	10/27/94	10/20/94	(G) Polyurethane polyol
P–94–0547	10/27/94	09/29/94	(G) Polyurethane
P–94–1724	10/28/94	10/20/94	(G) Mono and di-amine salt carboxylate
P–93–1167	10/28/94	10/21/94	(G) Meth-acrylate functional phosphate resin
P–94–1735	10/28/94	10/05/94	(G) Isocyanate terminated perfluoropolyoxyalkene
Y–93–0093	10/31/94	10/26/94	(G) Polyuethane polyol
P–94–0429	11/02/94	10/14/94	(G) Polyurethane/urea polymer dispersion
P–94–0935	11/02/94	10/05/94	(G) Styrenated acrylate methacrylate polymer
P–94–0949	11/02/94	10/14/94	(G) Substituted aromatic acid chloride
Y–94–0116	11/02/94	09/28/94	(G) Polyamide graft copolymer
Y–94–0179	11/02/94	10/24/94	(S) Polymer of styrene/maleic anhydride polymer; sulfur trioxide; ammonium hydroxide; hydrogen peroxide; dichloroethane; 5-chloro-2-methyl-4-isothiazolin-3-one; 2 methyl-4-isothiazolin-3-one; water; triethyl phosphate
P–94–0461	10/18/94	10/05/94	(G) Aliphatic amine
P–92–0623	10/12/94	09/15/94	(G) Decadiene crosslinked poly(maleic anhydrode - methyl vinyl ether
P–92–1283	10/12/94	09/26/94	(S) Polymer of para-tert-butylphenol; paraformaldehyde flake; merichem company low-mid xylenols; merichem company meta-para cresols
P–92–0721	10/18/94	09/23/94	(G) Potassium alcoholates
P–93–1314	10/18/94	09/13/94	(G) Substituted phenyl azo alkyl phenol
P–92–1027	10/25/94	10/06/94	(G) Hydroxy functional acrylic polymer
Y–92–0158	11/01/94	10/15/94	(G) Short oil alkyd resin
P–94–1798	11/07/94	11/01/94	(G) Naphthalenesulfonic acid, azo substituted naphthalene amino triazinyl aminophenyl azo substituted naphthalene amino substituted triazin
Y–94–0093	11/07/94	10/25/94	(G) Unsaturated polyester
P–93–0899	11/09/94	10/13/94	(G) Polyether functional acrylic polymer
P–94–0266	11/09/94	10/18/94	(G) Fluorinated acrylic copolymer
P–94–0636	11/09/94	10/18/94	(S) A polymer of: A1 dynacoll 7320; A2 dynacoll 7340; A3 dynacoll 7130; A4 dynacoll 7111; B mutranol–9121; C lupranate M1 (3 cas numbers)
P–94–0990	11/09/94	10/11/94	(G) Polyester polyurethane
P–94–1556	11/09/94	10/20/94	(S) Annatto extract
P–94–1640	11/09/94	10/10/94	(G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine polyalkyl sulfate salt
P–94–1663	11/09/94	10/27/94	(G) Alkyl amide
P–94–1740	11/09/94	11/03/94	(G) Polystyrene copolymer
Y–94–0169	11/09/94	10/24/94	(G) Polymer of acrylic and methacrylic esters
P–91–1094	10/12/94	09/21/94	(G) Halogenated substituted ethylene copolymer
P–91–1255	10/12/94	04/21/93	(G) Silicone polymer
P–93–0214	11/16/94	10/28/94	(S) Calcium, bis(2,4-pentandionato)-
P–93–1323	11/16/94	10/27/94	(G) Poly(carboxylic acid), mixed sodium, ammonium, monoethanolamine salt
P–94–0463	11/16/94	11/02/94	(G) Polyimine
P–94–0919	11/16/94	11/10/94	(G) Reaction product of an alkanol and boric acid
P–94–1096	11/16/94	11/06/94	(G) Rosin, maleated, polymer with an alkylphenol, carboxylic acids, formaldehyde and a polyol
P–94–1193	11/16/94	10/26/94	(S) A polymer of: maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; sodium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol
P–94–1197	11/16/94	10/26/94	(S) A polymer of: maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; triethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol
P–94–1455	11/16/94	10/24/94	(G) Haloalkylsulfonic salt
P–94–1914	11/16/94	11/04/94	(G) Disubstituted benzene sulfonic acid
P–93–1623	11/17/94	11/02/94	(G) Halogenated nitrile
P–94–1459	10/18/94	08/31/94	(G) Organic ammonium salt

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P–93–0148	10/20/94	08/20/94	(G) Novolac-resin from substituted phenols and formaldehyde
Y–93–0101	10/25/94	10/18/94	(S) Soya oil; 1,3-trimethylol propane; pentaerythritol; methyl methacrylate; isophthalic acid; tall oil fatty acids; trimellitic anhydride
P–94–1389	11/10/94	10/28/94	(G) Poly(vinyl alcohol)-co-(*N*-ethenylformamide)
P–94–1769	11/14/94	10/22/94	(G) Methacrylate copolymer
P–94–1770	11/14/94	10/23/94	(G) Methacrylate copolymer
P–94–1793	11/14/94	10/24/94	(G) Aryl substituted nitroalkane
P–94–0426	11/16/94	10/21/94	(S) 2-(4-dimethylcarbomoyl-pyridino)-ethane-1-sulfonate
P–94–0337	11/17/94	11/14/94	(G) Substituted azo metal complex dye
P–94–1501	11/17/94	10/25/94	(G) Fluoroalkene dimer
P–93–1047	11/18/94	10/14/94	(S) Trimethylhexamethylenediamine, reaction product with mono [($C_{10–16}$ alkyloxy) methyl] oxirane derivs. and paratoluenesulphonic acid
P–94–1133	11/18/94	09/14/94	(G) Oil modified urethane
P–94–1212	11/18/94	11/10/94	(G) Substituted anthraquinone
P–94–1429	11/18/94	10/24/94	(G) Halogenated aryl benzimidazole
P–94–1723	11/18/94	10/28/94	(G) Polyester resin
P–94–0075	11/20/94	10/26/94	(G) Alkyl ester
P–94–1888	11/21/94	10/19/94	(G) Carboxy terminated polymer of aliphatic diols, aromatic carboxylic acid/anhydride and tall oil fatty acid dimer
P–94–1889	11/21/94	10/19/94	(G) Ammonium salt of carboxyl terminated polyester of aliphatic diols and aromatic acid/anhydride and tall oil fatty acid dimer
P–94–1832	11/21/94	11/03/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1833	11/21/94	11/04/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1834	11/21/94	11/03/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1835	11/21/94	11/04/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1836	11/21/94	11/04/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1837	11/21/94	11/04/94	(G) Sulfonated acrylate/methylmethacrylate polymer
P–94–1734	11/21/94	10/25/94	(G) Sulfurized mixed fatty acid esters
Y–94–0176	11/21/94	11/08/94	(S) A polymer of: alkenes, $C_{14–16}$-alpha-; 2-butenedioic acid (*E*)-, bis (2-ethylhexyl) ester; di-tert-butyl peroxide
P–94–1373	11/22/94	10/25/94	(G) Synthetic and vegetable fatty acid modified poly (tri-methylol propane, pentaerythritol) phthalate
P–94–1739	11/22/94	11/08/94	(G) Copolyimide
P–94–1829	11/22/94	11/08/94	(G) Aromatic poly isocyanate
Y–94–0183	11/22/94	11/06/94	(S) A polymer: cellulose acetate; rimellitic anhydride
P–93–1235	11/22/94	11/11/94	(S) 2-propenoic acid, 3-(trimethoxysilyl)propyl ester (ca index name)
P–94–1092	11/23/94	10/24/94	(G) Polyglycolethermethacrylate telomer with carboxyllic and sulfonic acid sodium salts
P–93–1354	11/25/94	10/27/94	(G) Polyhydroxythioether disulfide
P–94–1789	11/28/94	11/18/94	(G) Polycarboxylic acid modified epoxy acrylate
P–93–1028	11/29/94	11/05/94	(G) Cycloaliphatic diamine
P–94–1797	11/29/94	10/29/94	(G) Poly asparitic ester
P–94–1863	11/29/94	10/31/94	(S) Stearyl stearoyl stearate
P–94–1746	11/29/94	11/21/94	(G) Polyurethane prepolymer
P–93–1395	11/29/94	11/11/94	(S) Acryloxyethyldimethylbenxyl ammonium chloride
P–94–0962	11/18/94	10/27/94	(G) Polycondensate of aliphatic dicarboxylic acid and alkaediol. polyurethane of aliphatic polyesters
P–94–0039	11/29/94	10/22/94	(S) Alpha,alpha,4,4-tetramethyl-2-(1-methylethyl)-*N*-(2-methyyl-propylidene)-2-oxazolidineethanamine
P–94–1441	11/29/94	11/09/94	(G) Phthalocyanine pigment
Y–94–0078	12/01/94	11/04/94	(G) Styrenated acrylic copolymer
P–92–1432	12/01/94	11/04/94	(G) Polyurethane, *N,N*-dimethylaminoethanol salt
P–94–1472	12/01/94	11/04/94	(G) Aqueous polyurethane dispersion

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P–93–1108	12/01/94	11/29/94	(G) Polyester polyether modified polyurethane with basic groups
P–94–2066	12/02/94	11/23/94	(S) 2-butyloctanedioic acid
P–94–2067	12/02/94	11/23/94	(S) 2,3-dibutanedioic acid
P–94–2068	12/02/94	11/23/94	(S) Dodecanedioic acid, ammonium salt
P–94–2069	12/02/94	11/23/94	(S) 2-butyloctanedioic acid, ammonium salt
P–94–2070	12/02/94	11/23/94	(S) 2,3-butylbutanedioic acid, ammonium salt
P–94–1943	12/05/94	11/18/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1944	12/05/94	11/16/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1945	12/05/94	11/07/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1948	12/05/94	11/07/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1949	12/05/94	11/07/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1950	12/05/94	11/07/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–1913	12/06/94	11/29/94	(G) Cationic polyurethane emulsion
P–94–1399	12/06/94	11/15/94	(S) Poly(oxy-1,2 ethanediyl),.alpha. 3-pentadecylphenol,.omega. hydroxy
P–94–0244	12/05/94	11/14/94	(G) Polyfluoroacyl chloride
P–94–0246	12/05/94	11/14/94	(G) Polyfluorocarboxylic acid
P–94–0251	12/05/94	11/04/94	(G) Polyfuluoro olefin
P–93–1309	12/05/94	11/11/94	(G) Quaternary ammonium iodide
P–94–1634	12/06/94	11/13/94	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsatd., branched and linear, butyl esters
P–94–1631	12/05/94	11/17/94	(G) Thiadiazole derivative
P–94–1704	12/06/94	11/07/94	(G) Polysubstituted vinyl polymer
P–94–1738	12/06/94	11/23/94	(G) Phthalocyanine copper complex dyestuff, aqueous preparation
P–94–1886	12/06/94	11/01/94	(G) Perfluoroalkylethyl acrylate copolymer
P–94–1887	12/06/94	11/01/94	(G) Aliphatic urethane
P–94–1849	12/05/94	11/10/94	(G) Chromophore substituted polyalkaline intermediate
P–94–1853	12/05/94	11/10/94	(G) Polymeric colorant
P–94–1824	12/07/94	11/13/94	(G) Polyurethane
P–94–1796	12/07/94	12/01/94	(G) Polyesteramide resin
P–94–1782	12/07/94	11/29/94	(G) Brominated epoxy resin
P–94–1786	12/06/94	11/15/94	(G) Perlfluoroalkylethyl ester
P–94–0495	12/13/94	12/11/94	(G) Aralkyl-nitrogen heterocycle
P–94–1646	12/13/94	11/09/94	(G) Esterfied styrene/maleic anhydride polymer
P–94–1649	12/13/94	11/16/94	(S) A polymer of: styrene; polyethylene
P–94–1895	12/13/94	12/01/94	(G) Hydrogenated nitrile terpolymer
P–94–2146	12/13/94	11/28/94	(G) Polyacrylic resin
P–94–2171	12/13/94	12/07/94	(G) Epoxy terminated polyoxyamino prepolymer
P–93–0718	12/15/94	12/08/94	(G) Substituted azo pyridinal benzoic acid ester
P–94–2106	12/15/94	11/18/94	(G) Polyalkylpolymethacrylate
P–94–1240	12/16/94	12/07/94	(S) Nitriles, C_{16}–C_{18} unsat'd.
Y–95–0003	12/09/94	11/11/94	(G) Alpha-olefins, alkenylbenzene copolymer
P–94–1942	12/09/94	11/14/94	(G) Modified methyl methacrylate / ethyl acrylate polymer
P–94–1844	12/09/94	11/26/94	(G) Polyurethane polymer of 1,1′-methylenebis(4-isocyanatobenzene) and polyols
P–94–1940	12/13/94	11/14/94	(G) Ethenyl unsaturated polyester
P–94–1983	12/13/94	11/17/94	(G) Phenolic modified drying oil polyester
P–94–2054	12/13/94	11/25/94	(G) Acrylate copolymer
P–93–1472	12/09/94	11/22/94	(G) Disubstituted dialkoxy silane
P–94–2059	12/09/94	11/17/94	(G) Phospho molybdo tungstic complex of 2-[[2-cyano-3-substituted)amino]phenyl]-1-oxo-propenyl]oxy & basic red I
P–93–1566	12/14/94	12/09/94	(S) A polymer of: 1,3-benzenedimethanamine; dimer acid

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P–93–1567	12/14/94	12/09/94	(S) A polymer of: 1.3-benzenedimethanamine; 2,2-((1-methylethylidene)bis(4,1-phenyleneoxymethylene)) bis(oxirane)
P–93–1568	12/14/94	12/09/94	(S) A polymer of: 1.3-benzenedimethanamine; versatic acid (C_9–C_{11}) glycidyl ester
P–93–1569	12/14/94	12/09/94	(S) A polymer of: *N,N*-bis(3-aminomethylbenzyl)-2-hydroxypropane-1,3-diamine; dimer acid
P–94–1993	12/12/94	12/02/94	(S) A polymer of: acrylic acid; 1-propane sulphonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt; 1-hydroxy-1-methylethyl phosphorous acid; sodium per sulphate; sodium hydroxide; sodium hypochlorite
P–91–1284	12/08/94	11/17/94	(G) Aromatic sulfonic acid, compound with amine
P–92–0885	11/22/94	11/08/94	(G) Bis-arene complex
P–92–0886	11/22/94	11/11/94	(G) Bis-arene organometallic complex
P–91–0839	10/12/94	10/03/94	(G) Substituted alkyl amide
P–91–0840	10/12/94	10/03/94	(G) Substituted alkyd amide
P–91–0841	10/12/94	10/03/94	(G) Substituted alkyd amide
P–91–0842	10/12/94	10/03/94	(G) Substituted alkyd amide
P–94–1127	10/04/94	08/30/94	(G) Water biorne polyurethane dispersions
Y–94–0143	12/16/94	12/15/94	(G) 1,3-benzenedicarboxylic acid polymer with diol and dione substituted benzoate 4-(1,1-dimethylethyl)
Y–94–0186	12/20/94	12/14/94	(G) Water reducible alkyd
Y–95–0007	12/20/94	12/01/94	(G) Unsaturated polyester
P–94–0462	12/20/94	12/06/94	(G) Polyimine
P–94–0609	12/20/94	12/06/94	(G) Reaction product of: petroleum by product, diethylene glycol, polyfunctional aliphatic alcohols, tall oil Fatty acids, pentaerythritol
P–94–0687	12/20/94	12/08/94	(G) Polyester urethane polymer
P–94–1656	12/20/94	11/30/94	(G) Methylphenylvinysiloxane
P–94–1998	12/20/94	11/30/94	(G) Acrylic acid, polymer with cationic monomer, sodium salt
P–94–2055	12/20/94	12/05/94	(G) Modified polyacrylamide
P–94–2073	12/19/94	11/17/94	(G) Organic compoumd containing transitional metal
P–94–2126	12/20/94	12/04/94	(G) Polyethermodified urea
P–94–2127	12/20/94	12/04/94	(G) Polyacrylate, salt
P–94–2172	12/20/94	12/09/94	(G) Acrylate acrylonitrile copolymer salt
P–94–0607	12/28/94	12/05/94	(G) Carpro, fatty acid, imine condensate
P–94–0047	12/29/94	12/12/94	(G) Polyurethane
P–94–1707	12/29/94	11/30/94	(G) Alkyl pyridinium salt
P–94–1708	12/29/94	11/30/94	(G) Alkyl pyridinium salt
P–94–1842	12/22/94	12/06/94	(G) Modified acrylic polymer
P–94–1862	12/20/94	12/09/94	(G) Paraffin/alkylamino carboxamine aqueous preparation
P–94–1902	12/28/94	12/07/94	(G) Polymer of ethylene; alkanoic acid, ethenyl ester; and acetic acid alkenyl ester
P–94–1947	12/28/94	12/05/94	(G) Modified epoxy resin modified aromatic epoxy resin
P–94–2050	12/27/94	12/01/94	(G) Aromatic sulfonic acid, salt
P–94–2122	01/03/95	11/30/94	(G) Perfluoroalkylethyl acrylate copolymer
P–94–2186	12/28/94	12/19/94	(G) Acrylic polymer
Y–94–0048	12/28/94	12/20/94	(G) Polyester
Y–94–0114	12/29/94	12/13/94	(G) Polyester
Y–94–0142	12/29/94	12/18/94	(G) Polyester resin
Y–94–0175	12/22/94	12/05/94	(G) Carboxylic acid copolymer
P–94–0957	01/04/95	12/21/94	(G) Polyester isocyanate polymer
P–94–1041	01/10/95	12/19/94	(G) Triethylaminium salt of polyurethane polymer
P–94–1073	01/06/95	12/09/94	(G) Mixed unsaturated aliphatic esters
P–94–1583	01/10/95	12/13/94	(G) Modified polymer of styrene and aliphatic maleate
P–94–2058	01/10/95	12/30/94	(G) Polymeric colorant

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–2123	01/10/95	12/26/94	(G) Substituted azo dyestuff
P–94–2153	01/05/95	12/06/94	(G) Multifunctional epoxy resin
P–94–2167	01/06/95	01/04/95	(G) Substituted naphthalenesulfonic acid azo substituted phenyl azo substituted naphtalenesulfonic acid amino substituted phenyl salt
P–94–2168	01/04/95	12/12/94	(G) Quarternary amine monomer
P–94–1213	01/10/95	12/15/94	(G) 2-propen-1-aminium-*N,N*-dimethyl-*N*-2-propenyl-, chloride, copolymer with cationic monomer
P–95–0001	01/10/95	01/04/95	(G) Polyester polyurethane
P–94–1840	01/10/95	12/20/94	(G) Styrene acrylic polymer ammonium salt
P–91–1199	01/09/95	01/06/95	(S) Poly anhydroaspartic acid
P–92–1255	01/12/95	12/22/94	(G) Carbamic acid ester
Y–95–0018	01/13/95	01/03/95	(S) A polymer of: tall oil fatty acids; 1,3 trimethylol propane; neo pentyl glycol; isophthalic acid; maleic anhydride; phthalic anhydride
P–93–1483	01/17/95	12/21/94	(G) 1-substituted-4-substituted benzene, sodium salt
P–94–1010	01/17/95	01/07/95	(G) Substituted amino-anthraquinone
P–94–1014	12/28/94	12/16/94	(G) Substituted amino-anthroquinone
P–94–1822	01/17/95	12/20/94	(G) Vinylimidazole copolymer
P–94–2207	01/17/95	12/16/94	(G) Styrene dimer
P–91–1429	01/18/95	01/03/95	(S) 2,2-dimethoxy ethanal
P–92–1467	01/18/95	01/05/95	(G) Mono substituted phenylazo-tetra substituted naphthalene
P–93–1694	01/18/95	01/06/95	(S) 3-(dichloroacetyl)-5-(2-furanyl)-2,2-dimethyloxazolidine
P–94–1080	01/18/95	01/03/95	(G) Alcohol alkoxylate
P–94–2241	01/18/95	12/29/94	(S) 1 (3*H*)-isobenzofuranone, 3-(4-[ethyl(4-methylphenyl)amino]-2-hydroxyphenyl]-3-[2-methoxy-4-methyl-5-(phenylamino)phenyl]-
P–94–1390	12/13/94	11/29/94	(G) Poly(vinyl alcohol)-co-(vinyl amine)
P–94–1391	12/13/94	12/06/94	(G) Vinyl alcohol - vinyl amine copolymer salt
P–91–1361	11/02/94	10/21/94	(S) 1,5-dioxaspiro [5.5] undecane-3,3-dicarboxylic acid, bis (1,2,2,6,6-pentamethyl-4-piperidinyl)ester
P–94–2185	01/19/95	01/08/95	(G) Metallic salt of *B*-hydroxy naphthoic acid
P–94–1422	01/23/95	12/27/94	(G) Rosin modified phenolic resin
P–94–1423	01/23/95	12/27/94	(G) Rosin modified phenolic resin
P–94–1698	01/23/95	12/27/94	(G) Rosin modified phenolic resin
P–91–0096	01/13/95	01/06/95	(S) 5-dodecen-1-ol, acetate, (*Z*)-
P–92–0864	01/23/95	01/12/95	(G) Substituted polyolefin
P–94–0579	01/18/95	12/31/94	(S) Bismuth naphthenate
P–94–1428	01/18/95	11/11/94	(S) Cyclododecaneethanol,.beta.-methyl-
P–93–1221	01/24/95	01/14/95	(G) Ethoxylated, propoxylated polyaryl phenol
P–93–1380	01/24/95	01/03/95	(S) Ethylene trimer
P–94–1440	01/24/95	01/10/95	(G) Alcohol alkoxylate
P–94–1565	01/27/95	01/22/95	(G) Polyoxy alkylene glycol
P–94–1660	01/27/95	01/10/95	(G) Fatty acid modified isophthalate polyester polymer
P–94–1816	01/24/95	01/05/95	(G) Modified polyurethane of a substituted alkane diole and a diisocyanate
P–94–1828	01/18/95	01/05/95	(S) Pyridinium, 1-(2-propenyl)-, chloride
P–94–1918	01/25/95	01/19/95	(G) Modified acylate polymer salts
P–94–1919	01/25/95	01/19/95	(G) Modified acylate polymer salts
P–94–1920	01/25/95	01/19/95	(G) Modified acylate polymer salts
P–95–0090	01/25/95	01/17/95	(S) Smine, cocoalkyl, ethoxylated compounds with cyclododecanol-cyclododecanone-nitric acid reaction product with boiling fraction and isonanoic acid
P–94–2128	01/24/95	01/03/95	(G) Acid terminated terephthalate/isophthalate polyester resin
P–94–2184	01/24/95	01/20/95	(G) Bis substituted, phenoxazin-5-ium, salt
P–94–2235	01/24/95	01/12/95	(G) Polyurethane

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–0002	01/24/95	01/03/95	(G) Thermoplastic polyimide
P–95–0070	01/24/95	01/12/95	(G) Phenolic novolak resin
P–95–0072	01/26/95	01/20/95	(G) Substituted aminophenylacetamide
Y–94–0177	01/24/95	12/27/94	(G) Polyethermodified polysiloxane
Y–95–0027	01/25/95	01/13/95	(G) Copolymer of acrylic and methacrylic esters
P–94–1921	01/25/95	01/19/95	(G) Modified acylate polymer salts
P–94–1922	01/25/95	01/19/95	(G) Modified acylate polymer salts
P–94–1923	01/25/95	01/19/95	(G) Modified acylate polymer salts
Y–95–0015	01/20/95	12/29/94	(S) 1,3-benzenedicarboxylic acid, polymer with decanedioic acid, 1,2,4-benzenetricarboxylic acid, 1,2-propanediol and 1,2-ethanediol
Y–95–0016	01/20/95	12/29/94	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,2-propanediol, 1,2-ethanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol
Y–95–0017	01/20/95	12/29/94	(S) 1,4-benzenedicarboxylic acid, polymer with 1,2-propanediol, 1,2-ethanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol
P–93–0588	01/27/95	12/08/94	(G) Epoxy amine adduct
P–94–1533	01/27/95	01/19/95	(S) Propanenitrile, 3-amino-, *N*-[3-($C_{8–10}$ alkyloxy)propyl]-
P–94–1532	01/27/95	01/19/95	(S) 1,3-propanediamine, *N*-[3-($C_{8–10}$ alkyloxy)propyl]-
P–94–1576	01/30/95	01/09/95	(G) Alkylalkoxysilane
P–94–1577	01/30/95	01/11/95	(G) Emulsifier stabilized alkylhydroxysilane emulsions
P–94–2181	01/31/95	01/24/95	(S) A polymer of: triallylcyanurate; didecanoylperoxide; 2,6-di-tert-butyl-4-methyl phenol
P–94–2244	02/02/95	01/16/95	(G) Acrylic polymer
P–94–2245	01/31/95	01/15/95	(G) Amino hydroxy ester
P–94–2246	01/31/95	01/15/95	(G) Polyester resin
P–95–0150	02/02/95	01/30/95	(G) Amine terminated epoxy polymer
Y–95–0026	01/30/95	01/05/95	(G) Oil modified alkyd resin
P–92–1320	01/30/95	11/17/94	(G) 1,3-propanediol,2,2′-[oxybis(methylene)bis[2-hydroxymethyl], hexasters with straight-chain and branched acids
P–94–1227	01/31/95	01/11/95	(G) Urea modified hydroxy acrylate copolymer
P–93–1347	02/02/95	01/12/95	(G) Cyclic urea amino epoxy adduct
P–94–1994	01/23/95	01/07/95	(S) A polymer of: 2-propenoic acid, 2-methyl, methyl ester; benzene, 1,3-bis(1-isocyanato-1-methylethyl)-; 1,6 hexanediol; hexanedioic acid; 1,3-benzenedicarboxylic acid; propenoic acid, 2-ethylhexyl ester; fatty acid, C_{18} unsated. dimers, hydrogenated; propenoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl; 2-propenoic acid, 2-methyl, 2,3-dihydroxypropylester; ethanol, 2,2′-iminobis; ethanol, 2-(dimethylamino); 1,4 butandiol; 2-proenamide, *N*-(1,1-dimethyl-3-oxo butyl)
P–91–1168	10/18/94	10/01/94	(S) Polymer of benzene, diethenyl (monomer); benzene, ethenylethyl(monomer); benzene, ethenyl(monomer); dibenzoyl peroxide(radical chain initiator); isoindoledione ether(aminomethylator); sulfur trioxide(catalyst for aminoethylation); sodium hydroxide(hydrolyzer); formaldehyde(introduces ‘‘CH2’’ to final product); phosphorous acid(attaches ‘‘CH2’’ to final product); sulfuric acid(catalyst for phosphomethylation)
P–94–2267	02/02/95	01/24/95	(S) Silsequioxanes, methyl, [3-(2-aminoethyl)amino]propyl and [3-octadecyldimethylammonium chloride]propyl, methoxy-terminated
P–94–1711	02/06/95	01/31/95	(G) Hydroxy functional styrene/acrylic polymer
P–92–0997	02/07/95	01/30/95	(G) Styrenated acrylic ester multi-polymer
P–91–0766	02/07/95	01/31/95	(G) Polyoxyalkylene polyester urethane block polymer
P–94–1419	02/07/95	01/30/95	(S) 1,1,2,4,4-pentamethyl-7-diethoxymethyl-1,2,3,4-tetrahydronaphthalene 1,1,2,4,4-pentamethyl-1,2,3,4-tetrahydronaphthalene carboxaldehyde
P–94–2165	02/07/95	01/26/95	(G) Acrylic/acrylonitrile polymer
P–94–2131	02/07/95	02/01/95	(G) Polyester isocyanate polymer
P–94–1955	02/07/95	01/25/95	(G) Ethylene copolymer
P–94–2180	02/07/95	01/27/95	(S) Benzoic acid, 4-[4-cyano-1,6-dihydro-2-hydroxy-1,4-dimethyl-6-oxo-3-pyridinyl)azo]-, 2-phenoxyethyl ester
P–95–0103	02/07/95	02/02/95	(S) A polymer of: 1,4-benzenedicarboxylic acid; 1,3-propanediol
P–94–1570	02/08/95	12/16/94	(G) Alkylbenzene sulfonic acid, calcium salt

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–2169	02/10/95	02/02/95	(G) Sulfonated naphthalamine reactive dye
P–94–1894	02/10/95	01/12/95	(S) A polymer of: butyl acrylate; butadiene; acrylonitrile; 1,3-butadiene, polymer with acrylonitrile and butyl acrylate; hydrogen; triphenylphosphine; tris(triphenylphosphine) rhodium chloride
P–93–1070	02/13/95	04/14/94	(G) Isocyanate reaction products with cyclic primary amines and alkylamines
P–93–1310	02/13/95	01/12/95	(G) Boronated, ethoxylated alcohol
P–94–1452	02/14/95	01/17/95	(G) Quinacridone derivative
P–94–1892	02/14/95	01/19/95	(G) Methacrylate adducted polyurethane
P–94–1996	02/14/95	01/23/95	(G) Aromatic epoxide derivative
P–94–2140	02/14/95	01/20/95	(G) Styrenated acrylic polymer
P–94–2155	02/14/95	02/03/95	(G) Tetraurea grease thickener prepared by the reaction of a diisocyanate with aliphatic amines
P–95–0134	02/14/95	01/26/95	(G) Amine functional polyester polyol
P–95–0073	02/16/95	01/17/95	(G) Amine functional epoxy resin salted with an organic acid
P–95–0075	02/16/95	01/19/95	(G) Amine functional epoxy resin salted with an organic acid
P–94–2236	02/16/95	02/06/95	(G) Thermoplastic polyimide
P–94–2151	02/16/95	01/26/95	(G) Tetraphenylphosphonium salt
P–94–1461	02/16/95	01/24/95	(S) Propenoic acid, ethyl ester, polymer with 3-trimethylsilylpropyl-1-(methacrylate)
P–93–0552	02/17/95	02/09/95	(S) *N,N′*-(2,2′-diethyl-6,6′-dimethyl-4,4′-methylenediphenylene) bismaleimide
P–91–0874	02/28/95	02/06/95	(G) Polyolfin aminoester
P–92–1447	02/28/95	01/25/95	(G) 2-propenoic acid, reaction product with 2-oxepanone and akyl triol
P–93–0466	02/27/95	02/03/95	(S) Benzenemethanamine, *N*-[[[[3-[[[[[bis(phenylmethyl) amino]oxy]carbonyl]amino]methyl]--3,5,5-trimethylcyclohexyl]amino]carbonyl]oxy]-*N*-(phenylmethyl)-
P–94–0144	02/22/95	02/01/95	(G) Fluorinated acrylic polymer
P–94–0628	02/23/95	02/13/95	(G) Metal resinate
P–94–0629	02/23/95	02/13/95	(G) Metal resinate
P–94–1011	02/27/95	02/17/95	(G) Substituted amino-anthroquinone
P–94–1790	02/21/95	01/30/95	(G) Novolac-resin from substituted phenols and formaldehyde
P–94–2173	02/27/95	01/26/95	(G) Fluorinated acrylic resin
P–94–2177	02/27/95	02/06/95	(S) 3,6-Naphthalenedisulfonic acid, [8-[(4,6-dichloro-1,3,5-triazin-2-yl)amino]-; 1-hydroxy-2-(naphthalenyl-1-sulfato)azo]-, trisodium salt, reacted with 1,2-diaminopropane and 5-cyano-2,4,6-trichloropyrimidine
P–94–2195	02/21/95	01/30/95	(G) Disubstituted benzene dimethanol
P–94–2193	02/21/95	01/25/95	(G) Disubstituted bis (chloromethyl) benzene
P–95–0023	02/21/95	01/23/95	(G) Hydrofluorocarbon ethers
P–95–0159	02/22/95	02/02/95	(G) Carbamate acrylic polymer
P–95–0185	02/22/95	02/08/95	(G) Saturated polyester resin
P–95–0186	02/21/95	02/14/95	(G) Siloxanes and silicones, di-me, polyether modified
Y–95–0002	03/06/95	02/15/95	(S) A polymer of: dimethyl terephthalate; 2-methyl-1,3-propanediol; diethylene glycol; dibutylin oxide
Y–95–0042	03/02/95	02/22/95	(G) Isophthalic acid polymer with cyclialcohol and alkyldiamine
P–94–1575	03/07/95	02/06/95	(G) Hydroxy acrylic polymer
P–93–1577	03/06/95	12/09/94	(S) Polymer of: 1,3-benzenedimethanamine; formaldehyde; phenol
P–94–0212	02/22/95	02/01/95	(G) Chromophore substituted polyoxyalkylene tint
P–94–0486	02/28/95	01/28/95	(G) Acrylate/methacrylate copolymer
P–94–0500	03/09/95	03/06/95	(G) Chia plant
P–94–0928	03/07/95	02/27/95	(S) Dibenzo[B,K][1,4,7,10,13,16]hexaoxacyclooctadecin, 2,13(or 2,14)-bis(1,1-dimethylethyl)eicosahydro-
P–94–0929	03/07/95	02/14/95	(S) Dibenzo[B,K][1,4,7,10,13,16]hexaoxacyclooctadecin, 2,13(or 2,14)-bis(1,1-dimethylethyl)-6,7,9,10,17,18,20,21-octahydro-
P–94–1753	03/06/95	02/10/95	(G) Aromatic amidosubstituted naphthalenecarboxamide
P–94–1931	03/07/95	02/20/95	(G) Substituted phthaloperine
P–94–1932	03/07/95	02/14/95	(G) Substituted phthaloperine

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–2006	02/28/95	02/08/95	(G) Acrylonitrile-styrene-acrylate copolymer
P–94–2029	03/07/95	02/06/95	(S) A Polymer of: vinylidene fluorine; 2,2-dichloro-1,1,1-trifluoro ethane; di-*T*-butyl peroxide
P–94–2163	02/28/95	02/06/95	(S) Tripropylene glycol, trimellitic anhydride, 1,4 cyclohexane dimethanol, fumaric acid polymer
P–94–2213	02/28/95	01/31/95	(G) Polymer of 1,6-hexanediol and polyfunctional carboxylic anhydride
P–94–2214	02/28/95	02/01/95	(G) Acrylated polymer of 1,6-hexanediol and polyfunctional carboxylic anhydrides
P–94–2239	03/09/95	02/20/95	(S) *L*-aspartic acid, homopolymer
P–95–0071	03/06/95	02/02/95	(S) A polymer of: triethylene glycol dimercaptan; 2,4,6-tris[(dimethylamino)methyl]phenol; epoxy phenolic novolac resin; bisphenol A epoxy resin
P–95–0098	03/01/95	02/21/95	(G) High solids acrylic modified alkyd
P–95–0102	02/28/95	02/06/95	(G) Carboxfunctional polymethylsiloxane
P–95–0125	02/28/95	02/13/95	(S) 3-Cyanopropyl (diisopropyl)dimethyl amino silane
P–95–0130	03/06/95	02/02/95	(G) Saturated polyester resin
P–95–0180	02/28/95	02/14/95	(G) Isocyanate polymer
P–95–0230	03/07/95	02/27/95	(G) Diketo-pyrrolpyrrol
P–95–0275	03/01/95	02/23/95	(G) Etherified urea phenolic resin
P–95–0233	03/09/95	02/13/95	(G) Trialkyl substituted indole
P–95–0234	03/09/95	02/18/95	(G) Bis indole substituted alkene
P–95–0236	03/09/95	02/21/95	(G) Substituted isobenzofuranone
P–94–1070	10/21/94	10/12/94	(S) Polyester of hexanedioic acid, 1,6 hexanediol and 1,3 benzenedicarboxylic acid, 5 sulfo, monosodium salt
P–95–0170	03/15/95	02/28/95	(S) A polymer of: carboxylic acids, di C_{4-6}; soybean oil, epoxidized
P–94–2240	03/15/95	02/17/95	(G) Polyamino acid salt
P–95–0121	03/15/95	02/27/95	(S) 2-Propenoic acid, polymer with butyl-2-propenoate, methyl 2-methyl-2-propenoate, and 3-oxo-, 2-((2-methyl-1-oxo-2-propenyl)oxy) ethyl butanoate reaction product with ammonia
P–94–1846	03/15/95	03/01/95	(G) Fluoroaliphatic polymer
P–94–1815	03/15/95	02/22/95	(G) Modified polyurethane of a substituted alkane diole and a diisocyanate
P–92–0770	03/17/95	02/17/95	(G) Aromatic polyimide
P–95–0354	03/20/95	03/13/95	(G) Triethylenetetramine formalin condensate
P–95–0177	03/20/95	02/11/95	(G) Hydrogenated Fatty acids, amides with 1,3 dioxolan-2-one, alkoxylated
P–94–0696	03/20/95	03/03/95	(G) Organo silicon copolymer
P–94–0452	03/21/95	02/22/95	(S) Reaction product of silica, dibutylmagnesium, tetraethylorthosilicate and titanium tetrachloride
P–94–0453	03/21/95	02/22/95	(S) Reaction product of silica, dibutylmagnesium, tetrabutylorthosilicate and titanium tetrachloride
P–94–1444	03/21/95	03/01/95	(S) (1,3-dihydroxypropyl-2′ methylpropenate) monoester of maleic anhydride adducted polybutadiene (hydroxypropyl methacrylate)
P–95–0077	03/21/95	02/24/95	(G) Methyl 2-(aminosulfonyl)-6-substituted-3-pyrinecarboxylate
P–95–0067	03/21/95	03/14/95	(G) Polyester isocyanate polymer
P–94–1484	03/21/95	02/17/95	(G) Formaldehyde copolymer, potassium salt
P–94–0494	03/21/95	03/10/95	(G) Substituted pyridine
P–94–0661	03/21/95	03/02/95	(G) Poly(oxy-1,2-alkanediyl),alpha,w-dialkyl
P–95–0182	03/22/95	02/23/95	(G) Crosslinked unsaturated polyester-styrene resin
P–94–2178	03/23/95	02/28/95	(G) Acrylic siloxane polymer
P–94–2179	03/23/95	03/03/95	(G) Acrylic siloxane polymer
P–94–2003	03/23/95	03/09/95	(G) Acrylonitrile-styrene-acrylate copolymer
P–94–1992	03/23/95	02/22/95	(G) Polymer of alkanediols; monocyclic dicarboxylic acid, dimethyl ester; monocyclic monosulfonated dicarboxylic acid, dimethyl ester, monosodium salt; and hydroxy alkoxyaldanesulfonic acid, sodium salt
P–92–1415	03/23/95	03/03/95	(G) Heterocyclic perylene pigment
P–95–0290	03/24/95	03/08/95	(S) Reaction products of: benzene, reaction products with chlorine and sulfur chloride (S2CL2), chlorides; methanol, sodium salt; and phenol, 4,4′-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)bis
P–94–1450	03/24/95	03/04/95	(G) Modified polyvinyl alcohol
P–95–0126	03/27/95	03/07/95	(G) Oil modified polyester or alkyd resin

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1885	03/27/95	03/15/95	(S) A polymer of: 2,2 dimethyl-1,3-propanediol; terephthalic acid; glycerol; maleic anhydride
P–94–1771	03/27/95	03/10/95	(S) 1-methoxy-2-propyl propionate
P–94–2158	03/07/95	02/23/95	(G) 2 Carboxamide-3 hydroxy-*N* phenyl-naphthanyl 4-(2′ methyl substituted phenyl azo
P–93–1616	03/28/95	03/18/95	(S) Polymer of: diethylene glycol; maleic anhydride; adipic acid; toluene diisocyanate; ethanol
P–95–0131	03/28/95	03/13/95	(G) Dicarboxylic acid ester
P–95–0141	03/28/95	03/01/95	(G) Polyhalomethyl substituted triazine derivative
P–95–0295	03/28/95	03/13/95	(G) Inorganic metal complex
P–95–0417	03/28/95	03/22/95	(G) Polycarbonate polyurethane
P–94–1845	03/29/95	03/13/95	(G) Fatty acid salt of alkyl diamine
P–94–2203	03/30/95	03/01/95	(G) Di-substituted bis[aminobenzene] derivative
P–93–0597	03/31/95	03/16/95	(G) Aliphatic amine-blocked polycycloaliphatic isocyanate
P–94–1751	03/31/95	03/12/95	(S) 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester; siloxanes and silicones, di-me 3-mercaptopropyl; propanenitrile, 2,2′-azobis[2-methyl-
P–94–1729	04/03/95	03/14/95	(G) Polyester polyol intermediate
Y–94–0038	04/03/95	03/28/95	(S) A polymer of: safflower oil; 1,2,3 propanetriol; 2,5- furandione; 4,7-methandiso benzofuran-1,3-dione, 4,5,6,7,8,8-hexachloro-3a,4,7,=7a-tetrahydro; stannane, dibutloxo
Y–93–0135	04/03/95	02/25/95	(G) Polyolefinic copolymer
P–91–0964	04/05/95	03/18/95	(G) Acrylic urethane modified epoxy ester polymer
Y–95–0046	03/20/95	02/28/95	(S) 1,1′′-methylenebis(4-isocyanatobenzene), polymer with 1,3-benzenedicarboxylic acid, 1,2-benzenedicarboxylic acid, 2,2-dimethyl-1,3-propanediol,1,2-ethanediol, bis(hydroxymethyl) cyclohexane, and 5-sulfo-1, 3-benzenedicarboxylic acid monosodium salt
P–94–1542	03/27/95	03/15/95	(S) A polymer of: isophorone diisocyanate; 2-ethyl-(2-hydroxymethyl) 1,3 propane diol; hydroxypropyl acrylate
P–94–1553	03/31/95	03/27/95	(G) Polyalkyl substituted diphosphonate
P–95–0087	04/03/95	03/09/95	(G) Hydroxyl funcitonal polycarbonyl (polyalkylene oxide) polyurea oligomer
P–94–0254	04/04/95	03/27/95	(S) 2-propenoic acid, 2-methyl-, cyclohexyl ester, polymer with 2-(diethylamino)ethyl 2-methyl-2-propenoate and 2-methylpropyl 2-methyl-2-propenoate
P–95–0343	04/04/95	03/15/95	(G) Diethanolamine salt of a phosphated polycaprolactone
P–95–0196	04/04/95	03/02/95	(G) Acrylic copolymer salt
P–95–0195	04/04/95	03/02/95	(G) Acrylic copolymer salt
P–94–1899	04/04/95	03/07/95	(G) Alkoxy-functional polydimethylsiloxane
P–94–1900	04/04/95	03/08/95	(G) Alkoxy-functional polydimethylsiloxane
P–95–0127	04/05/95	03/28/95	(G) Difunctonal ketoximino silane
P–93–1381	04/05/95	03/06/95	(G) Aliphatic ether
P–93–0686	04/06/95	03/03/95	(S) Carbamic acid, (3-isocyanato-4-methylphenyl)-2-ethylhexyl ester
P–95–0265	04/05/95	03/05/95	(S) A polymer of: linoleic acid; benzoic acid; glycerol; pentaerythritol; phthalic anhydride

List of Subjects

Environmental protection, Premanufacture notices, Polymer exemptions, and Test marketing exemption applications.

Dated: June 26, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

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Federal Register

Monday
July 17, 1995

Part IX

Federal Retirement Thrift Investment Board

5 CFR Part 1601

Participant Choices of Investment Funds; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final rules on participants' choices of Thrift Savings Plan (TSP) investment funds. The final rules include amendments to the existing revised interim rules found at subparts A and C of 5 CFR Part 1601. The amendments reflect changes in the methods by which TSP participants may request interfund transfers, including use of an automated voice response system to make, change, or cancel interfund transfer requests. The amendments also increase the number of interfund transfers permitted per year from four (4) to twelve (12). No amendments have been made to subpart B.

EFFECTIVE DATE: These final rules are effective August 16, 1995.

ADDRESSES: Questions concerning these regulations may be addressed to David L. Hutner, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1661.

SUPPLEMENTARY INFORMATION: Interim rules governing participants' choices of investment funds were originally published in the **Federal Register** on March 29, 1990 (55 FR 11880) as an amendment to title 5 of the Code of Federal Regulations, adding Part 1601, Participants' Choice of Investment Funds. Revised interim rules were published in the **Federal Register** on January 7, 1991 (56 FR 592) primarily to implement section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), which removed investment restrictions that had been in place prior to the effective date of the TSPTAA. On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796) setting forth changes in the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The Board did not receive any comments on the proposed regulations. On May 26, 1995, the December 28, 1994, proposed amendments to the interim rules were withdrawn and replaced by new proposed amendments (60 FR 27908). No comments on the proposed amendments have been received. However, the proposal to remove investment restrictions from the accounts of participants who are receiving equal payments has been deleted from the final rule because the technical changes necessary to accomplish that have not been completed. When those technical changes are completed, it is the Board's intention to amend the regulations to eliminate the investment restrictions.

Thus, the final rule amends the interim rule by making changes to the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The primary change in the procedures involves the availability of the automated voice response system, known as the ''ThriftLine,'' for participants to make interfund transfer requests over the telephone. The ThriftLine provides services to participants in addition to enabling them to make interfund transfer requests, but those other functions are not addressed in these regulations. The final rule also addresses a policy change which has been adopted by the Board and which was reflected in the May 26, 1995, proposal. It amends the interim rule by increasing the number of interfund transfers permitted per year from four (4) to twelve (12).

Section by Section Analysis

Subpart A

The final rule amends § 1601.1, which contains the definitions applicable to Part 1601, by revising one definition and adding three new ones.

The definition of ''Interfund transfer request'' has been amended to reflect that properly completing and submitting to the TSP recordkeeper an Interfund Transfer Request (Form TSP–30) is no longer the exclusive method to request an interfund transfer. A request may also be made by proper entry of the transaction on the automated ThriftLine.

Definitions of ''Board'' (the Federal Retirement Thrift Investment Board), ''Acknowledgment of Risk,'' and ''ThriftLine'' have been added. Under 5 U.S.C. 8439(d), all participants who invest in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund) must sign an acknowledgment that the investment is made at the participant's own risk and that the participant is not protected against losses on the investment or guaranteed a return on the investment. Under § 1601.5 of the final rule, the procedures for satisfying the requirements of 5 U.S.C. 8439(d) have been changed.

Instructions for use of the ThriftLine to make interfund transfer requests on the telephone are widely available to all TSP participants.

Subpart B

Supart B is unchanged by the final rule.

Subpart C

Section 1601.5 sets forth the methods by which interfund transfer requests can be made. Section 1601.5(a) contains the general rule that interfund transfer requests may now be made either by submission or a properly completed Form TSP–30 or by entry of the transaction on the ThriftLine. Section 1601.5(a) also states explicitly that Form TSP–30 generated prior to October 1990 cannot be used to make interfund transfer requests. Such forms can be readily identified because they were preprinted with participants' names and addresses, described restrictions on the amounts that could be invested in the C Funds and F Fund, and specified a particular effective date for the interfund transfer. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, cannot be used to make interfund requests.

Section 1601.5(b) retains the rule that interfund transfer requests must include designations of percentages to be invested in each of the TSP investment funds in multiples of 5 percent that total 100 percent. This requirement applies regardless of whether the interfund transfer request is entered on the ThriftLine or is submitted on Form TSP–30. Section 1601.5 also retains from the interim rule the admonition that an interfund transfer request does not affect future contributions made by a participant. If a participant wishes to change the allocation of future contributions among the investment funds, that can only be accomplished by submission of his or her employing agency of a properly completed Election Form (TSP–1) during a TSP Open Season. The rules for submission of Election Forms are set forth in Subpart B, which is unchanged by the final rule.

Section 1601.5(c) retains the interim rule that percentages elected by the participant are applied to the account balance as of the effective date of the interfund transfer, which is established as provided in § 1601.6. The percentages are applied to the account in the same manner, whether submitted on Form TSP–30 or entered on the ThriftLine.

Section 1601.5(d) contains significant changes to the procedures governing the acknowledgment of risk required by 5 U.S.C. 8439(d). Under the interim rule, all participants requesting an interfund

transfer were required to sign the acknowledgment of risk section on Form TSP–30 each time the form was submitted, unless the request was for investment of 100% of the account balance in the Government Securities Investment Fund (G Fund). The final rule is premised on a determination that each participant should only be required to acknowledge investment risk once. To date, participants who have invested any portion of their accounts in the C Fund or the F Fund at any time must have already signed an acknowledgment of risk, either on Form TSP–1 or on Form TSP–30, since those are the only two methods by which money could have been invested in the C Fund or F Fund. Accordingly, all participants whose account records indicate that they have invested in the C Fund or F Fund (regardless of whether they currently have money in those funds) are deemed to have satisfied the requirements of 5 U.S.C. 8439(d), and are permitted to use the ThriftLine to request interfund transfers without further acknowledgment of investment risk. Participants who have never invested in the C Fund or F Fund, and therefore have never been required to sign an acknowledgment of risk, will not be permitted to make interfund transfers on the ThriftLine until the TSP recordkeeper receives a signed acknowledgment of risk form from them. An Acknowledgment of Risk For ThriftLine Interfund Transfers (Form TSP–32) has been created for this purpose. The final rule treats participants who may continue to make their interfund transfer requests on paper, using Form TSP–30, consistently with those who use the ThriftLine. Since it is only necessary to acknowledge investment risk once, participants who use Form TSP–30 and fail to sign the acknowledgment of risk section will no longer have their forms rejected if they have previously invested any portion of their TSP account in the C Fund or F Fund, or if the TSP recordkeeper has received a properly completed Form TSP–32. Form TSP–30 has been amended to delete the statement that all forms requesting investment in the C Fund or F Fund will be rejected if the acknowledgment of risk section of the form is not signed. The final rule retains the requirement that the form itself (as opposed to the acknowledgment of risk section) must be signed and dated in all cases.

It is anticipated that some participants may continue to sign the acknowledgment of risk section even though they have already invested in the C Fund and/or F Fund and therefore do not need to sign again. This is not an area of concern to the Board, however, because the superfluous signature does not impose significant burden on participants. Any participant who submits Form TSP–30 requesting investment in the C Fund or F Fund and is uncertain as to whether he or she has ever invested in those funds should sign the acknowledgment or risk section of the form to eliminate the possibility that the form will be rejected for lack of an acknowledgment of risk. For purposes of determining whether participants' interfund transfer requests should be processed, the TSP recordkeeping system will identify whether a participant has ever invested in the C Fund or F Fund, even if the participant subsequently transferred his or her entire account to the G Fund.

Section 1601.5(e) of the final rule, which addresses only use of Form TSP–30, remains virtually unchanged in substance from the interim rule, except that paragraph (2) has been amended to reflect the rules set forth in § 1601.5(d). The other change to this section are designed to consolidate the language for ease of reading rather than to make substantive changes to the procedures for processing interfund transfer requests. In particular, the language ''or otherwise is not properly completed in accordance with the instructions on the form'' in § 1601.5(e)(1) is a substitute for several of the specific bases for rejection of forms that were included in the interim rule. Since the instructions on Form TSP–30 include requirements that had been reflected in separate paragraphs of the previous rule, those paragraphs have been eliminated to avoid redundancy.

Section 1601.5(f) has not been changed in substance.

Section 1601.6 of the final rule governs the timing and effective dates of interfund transfers. The final rule sets forth the order of precedence with respect to multiple transfer requests and cancellations using the ThriftLine and/or Form TSP–30. Although the final rule permits interaction between entry of transactions on the ThriftLine and on paper (i.e., by Form TSP–30 or written cancellations), the Board notes that the rules governing the interaction are, in some cases, complex; therefore, participants are encouraged to avoid, if possible, mixing the two methods. The ThriftLine provides the most expeditious and certain method of entering all transactions, because it eliminates any delays caused by mail delivery and processing of documents.

Section 1601.6(a) of the final rule allows participants to make up to twelve interfund transfers per calendar year rather than the four interfund transfers per calendar year that were previously allowed. Thus, under the final rule, participants may make one interfund transfer per month.

Section 1601.6(b) contains the general rule governing the date on which an interfund transfer will be made effective, based on the date of receipt of the interfund transfer request. In the case of a request made on the Thrift-Line, the date of receipt is the date the transaction is entered on the ThriftLine. In the case of a request made by Form TSP–30, the date of receipt is the date the form is delivered to the TSP recordkeeper. Apart from the fact that interfund transfer requests may now be received by two methods, the general rule adopted by this rule is identical to the interim rule: Requests received on or before the 15th of a month (or next business day if the 15th is not a business day) are effective as of the end of the month of receipt; requests received after the 15th of a month are effective as of the end of the month following receipt.

Section 1601.6(c) sets forth the rules governing receipt of more than one interfund transfer request during the same one-month period after the 15th of one month (or next business day) and on or before the 15th of the next month. The basic rule, set forth in § 1601.6(c)(1), is that the request with the latest date of signature (if Form TSP–30 is used) or entry (if the ThriftLine is used) controls. Thus, if a properly completed Form TSP–30 was dated June 17 and received by NFC on June 25, and another interfund transfer request was entered on the ThriftLine on June 23, the ThriftLine transaction would supersede the request on Form TSP–30, because the June 23 ThriftLine transaction was later than the June 17 signature on the Form TSP–30.

The rules are based on the presumption that, when a participant enters a new transfer on the ThriftLine, he or she intends to supersede a form that was mailed on an earlier date. The rules also presume that a participant intends a later ThriftLine entry to supersede an earlier one. Similarly, where a Form TSP–30 is dated one day and another Form TSP–30 is dated on a subsequent day, it is presumed that the participant intends to override the earlier dated form, regardless of the order in which the forms may be received by the TSP recordkeeper, because that order can be affected by the uncertainties of mail delivery.

Therefore, under the final rule, the date of receipt of Form TSP–30 determines only the effective date for the interfund transfer that is requested.

A Form TSP–30 dated June 8 and received by the TSP recordkeeper on June 12 cannot be superseded by a subsequent form dated June 13 but not received by the recordkeeper until June 17. The former will be processed as of the end of June; the latter as of the end of July. If participants using Form TSP–30 wish to control the month end for which a transfer is to be made effective, it is their responsibility to ensure that the form is actually delivered to NFC during the proper one-month period. This can be accomplished in most cases by allowing sufficient time to accommodate potential mail delays or by using overnight mail (or other guaranteed forms of delivery). Participants can also control the effective date of their interfund transfers by using the ThriftLine rather than Form TSP–30, because the ThriftLine provides immediate acceptance of properly entered interfund transfer requests.

Section 1601.6(c)(2) of the final rule provides more detailed rules governing receipt of multiple interfund transfer requests having the same date. Section 1601.6(c)(2)(i) provides that, as between a ThriftLine request and a Form TSP–30 dated the same day, the ThriftLine entry will be made effective. Thus, the ThriftLine entry will supersede a Form TSP–30 dated the same day.

Section 1601.6(c)(2)(ii) provides that as between two transactions entered the same day on the ThriftLine, the one entered later in the day supersedes the earlier request.

Finally, § 1601.6(c)(2)(iii) provides that if more than one Form TSP–30 has the same date signed, then all shall be rejected, unless they contain an identical percentage allocation among the investment funds, in which case that allocation will be accepted. Unlike interfund transfer requests entered on the ThriftLine, where Forms TSP–30 bear the same date but different allocation elections, the Board has no way to determine which form represents the participant's latest request.

Section 1601.6(c)(3) sets forth the rules for determining the date of an interfund transfer request. Under § 1601.6(c)(3)(i), if made on the ThriftLine, the date of the interfund transfer request is the date of the telephone entry of the transaction. Under § 1601.6(c)(3)(ii), if the interfund transfer request is made on Form TSP–30, the date of the request is the signature date entered on the form by the participant. As previously discussed, the date of receipt of the form is not the date of the request; the receipt date controls only the effective date for which the form is deemed to be a request.

Finally, under § 1601.(c)(3)(iii), the date on which a transaction is entered on the ThriftLine is determined by application of Central Time. For example, a transaction entered at 12:15 a.m. Eastern Time on the 16th of a month will be considered a transaction entered on the 15th, because it was 11:15 p.m. Central Time when the transaction occurred. Conversely, a transaction entered at 11:15 p.m. Pacific Time on the 15th, is entered at 1:15 a.m. Central Time and will therefore be considered a transaction entered on the 16th. The determination of the date on which a ThrfitLine transaction was requested may be important for two purposes: (1) To determine whether the request was made by the applicable 15th of the month cutoff date, and (2) to determine whether the request supersedes or cancels another request.

Section 1601.6(d) of the final rule governs cancellation of interfund transfer requests. Under § 1601.6(d)(1), a signed and dated cancellation letter containing the required information must be received by the same cutoff date (15th of the month or next business day if the 15th is not a business day) that applies to receipt of an interfund transfer request that is to be effective as of the end of the month for which the transfer to be canceled is pending. For example, a letter to cancel a pending interfund transfer that is to be made effective as of the end of June must be received by June 15 (or next business day). A cancellation letter will not cancel a transfer request with a date after the date of the cancellation letter. If a cancellation letter does not state unambiguously the specific interfund transfer request to be canceled, it will cancel any earlier-dated interfund transfer request that is pending for the applicable effective date. If the letter does state unambiguously the interfund transfer request to be canceled, then only that request will be canceled by the letter.

The TSP recordkeeper will compare multiple interfund transfer requests to determine which is the controlling request prior to determining the effect of a written cancellation. For example, assume there are two interfund transfer requests received prior to June 15, one dated June 3 and one dated June 5. The June 5 request supersedes the June 3 request. If there is a cancellation letter dated June 10 (and received by June 15) specifying cancellation of the June 5 request, then no interfund transfer would be processed, because the June 3 request would be superseded and the June 5 request would be canceled. On the other hand, if the June 10 letter specified cancellation of the June 3 request, then the June 5 request would be processed, because it would not be superseded by the earlier June 3 request nor would it be canceled by the June 10 cancellation letter that specified cancellation of the June 3 request.

The last sentence of § 1601.6(d)(1) governs the situation where the written cancellation bears the same date as an interfund transfer request. A different rule applies depending upon whether the interfund transfer request was submitted on Form TSP–30 or entered on the ThriftLine. In the former case, it is presumed that the cancellation letter was intended to cancel a Form TSP–30 dated the same day. In the latter case, with one exception, the ThriftLine entry is presumed to superseded the cancellation letter, which may have been an attempt to cancel another Form TSP–30 that was received for a prior effective date or that has not yet been received or entered into the TSP system. The only exception is where the written cancellation specifically states that it is intended to cancel the ThriftLine entry of the same date; in that situation, the cancellation letter will be effective to cancel the ThriftLine request of the same date.

Under § 1601.6(d)(2), a cancellation entered on the ThriftLine before the relevant 15th of the month cutoff date will cancel a pending interfund transfer request that had been entered previously on the ThriftLine. An interfund transfer request made using Form TSP–30 can be canceled using the ThriftLine only if it has been entered into the TSP recordkeeping system and is, therefore, at the time the cancellation is entered on the ThriftLine, a pending transfer. In that regard, participants are cautioned that in many cases Forms TSP–30 are not entered into the TSP recordkeeping system until after the 15th cutoff, even if they are received before that cutoff. If that is the case, then the participant cannot use the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30. For that reason, participants who prefer to make interfund transfer requests by use of Form TSP–30 are encouraged to cancel only in writing. The Board will not be responsible for a participant's inability to cancel a Form TSP–30 by use of the ThriftLine. Participants are encouraged to use, in any one interfund transfer period, only one method to make, change, or cancel interfund transfer requests.

Section 1601.7 is unchanged by the final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

Accordingly, the revised interim rule revising 5 CFR Part 1601 which was published at 56 FR 592 on January 7, 1991, is adopted as a final rule with the following changes:

PART 1601—PARTICIPANT CHOICE OF INVESTMENT FUNDS

1. The authority citation for Part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

2. Section 1601.1 is amended by revising the definition ''Interfund Transfer Request'' and adding in alphabetical order definitions of ''Acknowledgment of risk'', ''Board'', and ''ThriftLine'', to read as follows:

§ 1601.1 Definitions.

* * * * *

Acknowledgment of risk means an acknowledgment that any investment in the C Fund or the F Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

* * * * *

Board means the Federal Retirement Thrift Investment Board.

* * * * *

Interfund Transfer Request means submission of a properly completed Interfund Transfer Request (Form TSP–30) or proper entry of an interfund transfer through use of the ThriftLine.

* * * * *

ThriftLine means the automated voice response system by which TSP participants may, among other things, make interfund transfer requests by telephone.

* * * * *

3. Section 1601.5 is revised to read as follows:

§ 1601.5 Methods of requesting an interfund transfer.

(a) To make an interfund transfer, participants may either submit to the TSP recordkeeper a properly completed Interfund Transfer Request (Form TSP–30), or may enter the interfund transfer request over the telephone by using the ThriftLine. Forms TSP–30 generated prior to October 1990, which were preprinted with a participant's name and address, described restrictions on the amounts which could be invested in the C Fund and the F Fund, and specified an effective date for the interfund transfer, are obsolete forms. They will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, are obsolete forms which will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request.

(b) To make an interfund transfer request, a participant must designate the percentages of his or her account balance that are to be invested in the C Fund, the F Fund, and/or the G Fund. The percentages selected by the participant must be in multiples of 5 percent and must total 100 percent. An interfund transfer request has no effect on contributions made by a participant after the effective date of the interfund transfer (as determined in accordance with § 1601.6); such subsequent contributions will continue to be allocated among the investment funds in accordance with the participant's election under subpart B of this part.

(c) The percentages elected by the participant will be applied to the participant's account balance attributable to each source of contributions as of the effective date of the interfund transfer, as determined in accordance with § 1601.6.

(d) Participants who have at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are eligible to make interfund transfer requests using the ThriftLine since they must, at some previous time, have submitted an Acknowledgment of Risk; such participants need not, if using Form TSP–30 to make a written interfund transfer request, complete the section of the form that contains the acknowledgment of risk. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are not eligible to make interfund transfers using the ThriftLine until a properly completed Acknowledgment of Risk for ThriftLine Interfund Transfer (Form TSP–32) has been received by the TSP recordkeeper. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund must complete the Acknowledgment of Risk section of Form TSP–30 if they make a written interfund transfer request, unless a properly completed Form TSP–32 has been received by the TSP recordkeeper.

(e) An Interfund Transfer Request (Form TSP–30) that has been submitted to the TSP recordkeeper will not be processed and will have no effect, if:

(1) It is not signed and dated, or otherwise is not properly completed in accordance with the instructions on the form; or

(2) In the case of a participant who has not previously invested any portion of his or her TSP account in the C Fund or the F Fund and for whom a properly completed Form TSP–32 has not been received by the TSP recordkeeper, the acknowledgment of risk section of the Form TSP–30 is not signed; or

(3) The participant is not otherwise eligible to make an interfund transfer (e.g., because he or she is scheduled for a withdrawal of the entire account balance).

(f) If a Form TSP–30 is rejected, the form will have no effect. The participant will be provided with a brief written statement of the reason the form was rejected.

4. Section § 1601.6 is revised to read as follows:

§ 1601.6 Timing and effective dates of interfund transfers.

(a) *Annual limit.* A participant may have no more than twelve interfund transfers made effective during any calendar year, one in each calendar month.

(b) *Effective dates.* Interfund transfer requests received by the TSP recordkeeper (whether by Form TSP–30 or on the ThriftLine) on or before the 15th day of a month (or, if the 15th day is not a business day, by the next business day) shall be effective as of the end of the month during which the interfund transfer request was received. Interfund transfer requests received by the TSP recordkeeper after the 15th day of a month (or, if applicable, by the next business day) will be effective as of the end of the month following the month during which the interfund transfer request was received. Account balances that are real-located among the investment funds effective as of the end of any month will reflect the effects of all other account activity posted to the account effective during or as of the end of that month.

(c) *Multiple interfund transfer requests.* (1) If two or more properly completed interfund transfer requests with different dates (as determined by paragraph (c)(3) of this section) are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the interfund transfer request with the latest date (as determined by paragraph (c)(3) of this section) will be made effective and the earlier interfund transfer request(s) will be superseded.

(2) If two or more properly completed interfund transfer requests with the same dates are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the following rules shall apply:

(i) If one or more of the interfund transfer requests was submitted using the ThriftLine and one or more was made on Form TSP–30, the request(s) made on the ThriftLine will supersede the request(s) made on Form TSP–30;

(ii) If more than one of the interfund transfer requests were made on the ThriftLine, the request entered at the latest time of day will supersede the earlier request(s); and

(iii) If more than one of the interfund transfer requests were submitted using Form TSP–30, all such forms will be rejected, unless they all contain identical percentage allocations among the TSP investment funds, in which case one will be accepted.

(3) For purposes of determining the date of an interfund transfer request:

(i) The date of an interfund transfer request made on the ThriftLine is the date of its telephone entry;

(ii) The date of an interfund transfer request made on Form TSP–30 is the signature date set forth on the form by the participant; and

(iii) Central time will be used for determining the date on which a transaction is entered on the ThriftLine.

(d) *Cancellation of interfund transfer requests.* Interfund transfer requests may be canceled either in writing or by entering the cancellation of the ThriftLine.

(1) *Cancellation by letter.* A participant may cancel an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the 15th day of the month as of the end of which the interfund transfer is to be effective (or, if applicable, by the next business day). Unless the letter states unambiguously the specific interfund transfer request it seeks to cancel, the written cancellation will apply to any interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of an interfund transfer request and the request was made on Form TSP–30, the Form TSP–30 will be canceled; if the request was made on the ThriftLine it will only be canceled if the written cancellation specifies the date of the ThriftLine request to be canceled.

(2) *Cancellation on the ThriftLine.* (i) An interfund transfer request may also be canceled by entering the cancellation on the ThriftLine on or before the 15th day of the month (or, if applicable, the next business day) as of the end of which the interfund transfer is to be effective. A cancellation entered on the ThriftLine will apply to a pending interfund transfer request entered on the ThriftLine before the entry of the cancellation. A cancellation entered on the ThriftLine can only apply to interfund transfer requests submitted on Forms TSP–30 that were:

(A) Dated on or before the date of the cancellation; and

(B) Received and entered into the TSP recordkeeping system before the cancellation is attempted on the ThriftLine.

(ii) The Board cannot guarantee that the TSP recordkeeper will enter Forms TSP–30 into the TSP recordkeeping system before the 15th day of the month, regardless of the date the Form TSP–30 may have been received. Thus, participants cannot rely on the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30, and participants are discouraged from attempting to do so. The Board is not responsible for any consequences of a participant's inability to cancel on the ThriftLine an interfund transfer request submitted on Form TSP–30.

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7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–026–00014–0)	21.00	Jan. 1, 1995
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
1120–1199	(869–026–00019–1)	12.00	Jan. 1, 1995
1200–1499	(869–026–00020–4)	32.00	Jan. 1, 1995
1500–1899	(869–026–00021–2)	35.00	Jan. 1, 1995
1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
16 Parts:			
0–149	(869–026–00050–6)	7.00	Jan. 1, 1995
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–022–00054–3)	20.00	Apr. 1, 1994
200–239	(869–022–00055–1)	23.00	Apr. 1, 1994
240–End	(869–022–00056–0)	30.00	Apr. 1, 1994
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	April 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–022–00064–1)	34.00	Apr. 1, 1994
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
*1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–022–00067–5)	21.00	Apr. 1, 1994
170–199	(869–026–00068–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–022–00071–3)	16.00	Apr. 1, 1994
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–022–00077–2)	21.00	Apr. 1, 1994
24 Parts:			
0–199	(869–022–00078–1)	36.00	Apr. 1, 1994
200–499	(869–022–00079–9)	38.00	Apr. 1, 1994
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–022–00081–1)	39.00	Apr. 1, 1994
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–022–00086–1)	24.00	Apr. 1, 1994
*§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–022–00088–8)	30.00	Apr. 1, 1994
§§ 1.441-1.500	(869-022-00089-6)	22.00	Apr. 1, 1994
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–022–00092–6)	26.00	Apr. 1, 1994
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–022–00098–4)	14.00	Apr. 1, 1994
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–022–00100–1)	24.00	Apr. 1, 1994

Title	Stock Number	Price	Revision Date
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–022–00102–7)	8.00	Apr. 1, 1994
27 Parts:			
1–199	(869–022–00103–5)	36.00	Apr. 1, 1994
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869–022–00105–1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–022–00124–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–022–00133–7)	12.00	July 1, 1994
36 Parts:			
1–199	(869–022–00134–5)	15.00	July 1, 1994
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.