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Monday
April 6, 1998

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230A]

RIN 1904–AA68

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to a final rule for the clothes washer test procedures published on Wednesday, August 27, 1997 (62 FR 45484). It corrects the introductory note to the new clothes washer test procedure which will be used to analyze, and will apply to, anticipated revisions to the existing clothes washer energy conservation standards.

EFFECTIVE DATE: This rule is effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT:
Bryan Berringer, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@HQ.DOE.GOV
Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507, E-mail: Edward.Levy@HQ.DOE.GOV

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections, Appendix J1 of Subpart B to 10 CFR Part 430, sets forth a new test procedure for clothes washers. Department of Energy promulgated this new test procedure for use in considering revision of the current clothes washer energy conservation standards, and for use, upon the effective date of such revision, in determining compliance with such standards and in making representations concerning clothes washer efficiency.

Need for Correction

As published, the introductory language in Appendix J1 may create confusion as to how the new test procedure is to be employed, and does not clearly reflect the intent in promulgating the test procedure.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Accordingly, 10 CFR part 430 is corrected by making the following correcting amendment:

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix J1 to Subpart B of Part 430 [Corrected]

2. The ''Note'' immediately following the heading for Appendix J1 to Subpart B of Part 430 is revised to read as follows:

Note: Appendix J1 to Subpart B of part 430 is informational. It will not be used for determining compliance with standards, or as a basis for representations, until amended energy conservation standards for clothes washers at 10 CFR 430.32(g) become effective.

Issued in Washington, DC, on April 1, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–8951 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0992]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The update addresses increased rates for open-end plans triggered by events such as late payments or exceeding credit limits. It provides guidance on deferred payment transactions in open-end plans. It also addresses how creditors may determine whether credit is an open-end plan or a closed-end transaction. In addition, the update discusses issues such as the treatment of annuity costs in reverse mortgage transactions and transaction fees imposed on checking accounts with overdraft protection.

DATES: This rule is effective March 31, 1998. Compliance is optional until October 1, 1998.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane E. Ahrens, Senior Attorney, or Obrea O. Poindexter, Staff Attorney; for Subparts A, C, and E (closed-end credit and reverse mortgages), Ms. Ahrens or James A. Michaels, Senior Attorney, or Michael E. Hentrel, Staff Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in

comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December, the Board published proposed amendments to the commentary to Regulation Z (62 FR 64769, December 9, 1997). The Board received about 110 comments. Most of the comments were from financial institutions, retail merchant associations, and other creditors. About a dozen comments were received from state attorneys general or other agencies, and consumer representatives. Overall, commenters generally supported the proposed amendments. Views were mixed on a few comments, and there was broad industry opposition to the comment addressing the definition of open-end credit.

Except as discussed below, the commentary is being adopted as proposed; some technical suggestions or concerns raised by commenters are addressed. Compliance is optional until October 1, 1998, the effective date for mandatory compliance.

II. Commentary Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

Comment 2(a)(2)–1 is adopted as proposed with minor revisions for clarification. The comment clarifies that communications promoting new credit transactions or open-end credit plans, such as promotions to switch from a regular to a premium bank card, are advertisements, including promotions by on-line messages such as on the Internet. Communications encouraging additional or different uses of an existing credit account are not advertisements.

2(a)(18) Downpayment

Under Regulation Z, the term ''downpayment'' refers to an amount paid to a seller to reduce the ''cash price'' in a credit sale transaction. Comment 2(a)(18)–3 gives guidance on how a creditor discloses the downpayment if a trade-in is involved in the sale and if the amount of an existing lien exceeds the value of the trade-in. The comment clarifies that creditors should disclose the downpayment as zero and not a negative amount. The comment addresses a credit sale and financed downpayment treated as a single transaction; it does not affect creditors' ability to disclose them as two transactions.

Some commenters asked for further clarification about how to reflect costs associated with a ''negative downpayment,'' illustrated in the comment by an automobile with an existing lien of $10,000 and a trade-in value of $8,000; guidance is provided in a revision to comment § 226.18(c)–2.

2(a)(20) Open-end Credit

The proposal addressed two standards for determining whether credit is properly characterized as an open-end plan or a closed-end transaction. Comment 2(a)(20)–3 listed a number of factors that creditors should consider when determining whether they ''reasonably contemplate repeated transactions,'' and comment 2(a)(20)–5 provided guidance on whether a credit line is ''reusable.''

The Board received a substantial number of comments regarding these proposed revisions. Most of the comments addressing the issue were from industry representatives, and they opposed the proposal. Many industry commenters acknowledged that some credit is improperly characterized as open-end; however, they opposed the proposal on procedural and substantive grounds. Procedurally, some recommended that the Board not address the issue in the commentary. Substantively, commenters expressed concern that the factors appeared to shift the focus from the creditor's plan as a whole to an analysis of individual transactions. Most commenters believed that, as stated, the proposed factors in comment 2(a)(20)–3 were not relevant to determining whether a creditor can reasonably contemplate repeated transactions. They expressed concern that the proposed interpretation could have had unintended consequences, because in attempting to address what can be viewed as a narrow problem, the proposed interpretation could apply to credit products that are legitimately and unquestionably open-end transactions.

The Board believes that the analysis of whether a creditor reasonably contemplates repeated transactions should be based on the creditor's plan as a whole; the proposal was not meant to shift that focus. While the application of the factors as proposed could be viewed as overly broad, factors such as those articulated in the proposal could bear directly, depending on the facts and circumstances, on a determination of whether credit can properly be characterized as open-end. Assume, for example, that a creditor establishes an open-end credit plan primarily for the financing of an infrequently purchased product or service, that the credit limits established for much of its customer base are close to the cost of that product or service, and that the creditor has little hard information of repeated transactions by much of its customer base. Read together, these assumed facts could have direct relevance on the issue of whether the plan comports with the Congress's intent that the Truth in Lending disclosures should show consumers the cost of the credit transaction for ''infrequently purchased products.''

The Board recognizes that credit granting practices have changed significantly since the TILA was enacted in 1968. There has been a gradual shift to open-end credit products. These products have become commonplace in large measure because of the operational convenience for creditors. They also offer advantages of flexibility to consumers, who can draw on funds incrementally or finance purchases as needed and can repay as their circumstances permit. At the same time, the Board believes that concerns about some transactions being mischaracterized as open-end plans are legitimate concerns. For example, the Board received from nonindustry commenters documentation of transactions being characterized as open-end plans that involved the financing of used automobiles and the door-to-door credit sales of satellite dishes, water treatment systems, and home improvement contracts.

In seeking to address the legitimate concerns expressed by industry about the proposed interpretation of Truth in Lending while dealing effectively with potential abuses, however, the Board has found it difficult to establish a clear rule that differentiates between spurious and legitimate open-end credit. The Board considered revising the proposal based on the comments received, to narrow the breadth of the factors articulated in the proposal. The Board ultimately determined, however, that to do so without the benefit of further public comment could unnecessarily raise uncertainties for legitimate open-end programs while not reaching the creditor abuses. Consequently, the Board has withdrawn the proposed

revisions to the commentary at this time, except with regard to an objective analysis which was addressed by proposed factor E.

Each creditor's credit product may differ based on the type of business, the nature or variety of products or services available for purchase, and the creditor's relationship with its customers. Even so, the determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Accordingly, comment 2(a)(20)–3 has been revised to clarify this interpretation by adding a direct reference to the need for an objective analysis in reaching a determination regarding repeated transactions. *2(a)(24) Residential Mortgage Transaction*

The comments are adopted as proposed. Comment 2(a)(24)–5 is revised from the existing comment for clarity, without substantive change. Comment 2(a)(24)–7 clarifies that the definition of a residential mortgage transaction includes a loan for financing the construction of a primary dwelling on land already owned by the consumer.

Section 226.4—Finance Charge

4(a) Definition

4(a)(2) Special Rule: Closing Agent Charges

Comment 4(a)(2)–2 is revised to address charges to conduct a closing for a real estate-secured transaction. The addition is intended to reflect the rule for excluding closing costs from the finance charge under § 226.4(c)(7); creditors may exclude from the finance charge a lump-sum settlement or closing fee that includes a charge for conducting or attending a closing if the lump-sum fee is primarily for services listed in § 226.4(c)(7). The entire lump-sum may be excluded from the finance charge even if it includes incidental costs for services that are otherwise considered finance charges. The comment clarifies that charges attributed to conducting or attending the closing are finance charges and may not be excluded from the finance charge unless the charge is incidental to the lump-sum closing fee.

4(b) Examples of Finance Charges

Paragraph 4(b)(2)

Comment 4(b)(2)–1, adopted as proposed with minor revisions, clarifies that a service charge on a checking or other transaction account with a credit feature is a finance charge only if the charge exceeds the charge for a similar account without a credit feature. In the proposal, a sentence in the existing commentary regarding participation fees was inadvertently deleted; the error has been corrected.

Commenters requested that the comment clarify that charges excludable under § 226.4(c)(3)—charges imposed on an account in cases where the institution has not agreed in writing to pay overdraft items—are not required to be included as finance charges under § 226.4(b)(2); clarifying language has been added.

4(d) Insurance

In response to commenters, comment 4(d)–1 has been revised to clarify that for purposes of § 226.4(d), references to insurance also include debt cancellation coverage unless the context indicates otherwise.

Comment 4(d)–11 has been adopted as proposed with minor revisions for clarity. Under § 226.4(d), amounts paid for insurance or debt-cancellation coverage may be excluded from the finance charge if the creditor discloses the fee or premium for the initial term of coverage, among other conditions. Comment 4(d)–11 clarifies that the initial term is based on the period that the insurer or creditor is initially obligated to provide coverage. Comment 4(d)–12 clarifies that where the fee or premium for the coverage is assessed periodically and the consumer is under no obligation to continue making the payments, creditors have the option of providing disclosures on the basis of one year of coverage. Creditors also have this option if the initial term of the insurance is not clear.

In response to requests for guidance, comments 4(d)–4 and 4(d)–12 have been revised to address disclosures for open-end plans where the amounts of coverage and periodic premiums are based on outstanding balances. Comment 4(d)–4 clarifies that creditors providing disclosures for open-end plans on a unit-cost basis must base the cost on the initial term of coverage, unless one of the options in comment 4(d)–12 is available. Comment 4(d)–12 provides that its alternatives apply to creditors offering credit insurance or debt cancellation coverage for open-end plans or closed-end transactions. In addition, the comment clarifies that creditors with open-end plans may base their cost disclosures on periods less than one year, in some cases.

Subpart B—Open-end Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Comment 5a(b)(1)–7 provides guidance on disclosing penalty rates—an increase in the rate upon a specific event such as the consumer's making a late payment or exceeding the credit limit. The proposal required card issuers to disclose the increased rate, along with the condition for increasing the rate. The comment is adopted with some modification. Commenters expressed concern that requiring penalty rates along with the condition for imposing such rates would increase the length of the disclosures required by § 226.5a. They believe the detail required by the proposal is inconsistent with the abbreviated information otherwise required to be disclosed for credit card applications and solicitations. Although information about penalty rates may add to the disclosure, the Board believes that the rate and the specified event or events that trigger a rate increase are important terms that assist consumers in comparing credit offers and deciding whether to apply for a credit card account. To address the concerns, however, the comment is modified to permit issuers using the tabular format to disclose the rate and the specified event or events that trigger an increased rate in the table, or to disclose the rate in the table along with an asterisk that refers to an explanation of the specified event or events disclosed outside the table.

Commenters also expressed concern that the comment would prevent a risk-based approach to increasing the initial rate. Creditors often increase rates to cover the expenses associated with accounts that become delinquent or otherwise do not perform in accord with the contract. Moreover, several commenters said it would be impossible to disclose the increased rate at the time of disclosure since a number of factors used to determine whether a rate will increase are based on consumer behavior, which may be reflected in a credit score.

Upon further analysis and after consideration of the comments received, a modified approach has been adopted. If the rate cannot be determined at the time of disclosure, issuers may include a description of the specified event or events that may result in an increased rate. Providing only a general description of the condition, such as stating that the rate will increase if the consumer ''fails to remain in good standing,'' is not an adequate description. In addition, a sentence has been added to clarify that the disclosure need not be as specific as that required in § 226.6(a)(2). Creditors may list some of the considerations described in the contract that are used to determine the rate without providing a detailed

explanation of all the factors that the creditor may take into consideration when increasing the rate.

5a(b)(9) Late-Payment Fee and 5a(b)(10) Over-the-Limit Fee

The proposal would have required that the late-payment and the over-the-limit disclosure, required under § 226.5a contain a reference to the APR disclosure required under § 226.5a(b)(1), where the APR will increase due to a late payment or exceeding the credit limit. Upon further analysis and given the tabular format requirements of § 226.5a, the link seems unnecessary. Accordingly, the proposed comments are withdrawn.

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge

6(a)(2) Annual Percentage Rate

Comment 6(a)(2)–11 clarifies that if the APR will increase upon a specific event or events (such as the consumer's making a late payment or exceeding the credit limit), the creditor must include the increased rate in the disclosures required under § 226.6(a)(2) with the condition that will trigger the increase. This comment is similar to the proposal; a few modifications have been made, in response to comments, along the same lines as the modifications to comment 5a(b)(1)–7.

Section 226.7—Periodic Statement

Creditors extending open-end credit offer a variety of payment plans that permit consumers to avoid finance charges if the purchase balance is paid by a certain date. For example, under some plans finance charges are only imposed if consumers do not pay the purchase balance in full by a specified date. In others, finance charges are imposed on the purchase balance, but consumers receive rebates of any finance charges attributable to the purchase if the purchase balance is paid in full by the specified date.

Comment 7–3 gives guidance on the type of deferred payment program illustrated in the first example. In response to comments, language is added to emphasize that the comment addresses only a particular type of deferred payment feature, and is not intended to preclude creditors from offering other types. To ease compliance, three cross-references to the comment are added to provisions of § 226.7 addressing balances to which periodic rates are applied, the amount of the finance charge, and free-ride periods; a similar cross-reference is added under § 226.5(b)(2), which addresses the timing of periodic statements for open-end plans offering free-ride periods.

In response to comments, language is added providing sample descriptions for balance and finance charge amounts during the deferral period, and additional examples of how creditors may comply with the timing requirements for periodic statements for open-end plans offering free-ride periods. The comment also addresses periodic rates that may be applied to the deferred payment purchase.

Section 226.14—Determination of Annual Percentage Rate 14(c) Annual

Percentage Rate for Periodic Statements

Comments 14(c)–5 and 14(c)–10 are adopted substantially as proposed. Comment 14(c)–5 addresses the calculation of the APRs for multifeatured plans that charge transaction fees in addition to periodic rates. In response to requests for guidance, the comment clarifies that creditors may separately consider each feature in calculating the denominator.

Multifeatured plans are defined to include plans with features such as purchases, cash advances, or overdraft checking, or plans with groups of transactions with different pricing structures. Some creditors offer cash advances with fees that vary if the cash advance is obtained by check, at a proprietary ATM, or at a foreign financial institution. They treat each fee structure as a ''feature.'' (See comment 7–1.) Creditors may disclose APRs separately for each feature or may state a composite APR for the whole plan. Appendix F gives instructions for calculating the APR when the finance charge includes interest and transaction fees. Appendix F requires creditors to include in the denominator: (1) the balance subject to a transaction fee, plus (2) the balance subject to periodic rates, less the amount of the balance subject to a transaction charge (but not less than zero). The appendix is silent on calculating the denominator when separate features are involved.

Comment 14(c)–5 clarifies that separate features may be considered in calculating the denominator. Comments were mixed on whether ''feature'' should be defined with more precision. The comment does not attempt to define ''feature'' for purposes of the APR calculation, so long as the creditor has a reasonable basis for creating the distinction. There is no evidence at this time that further limitations on operational or pricing considerations are necessary to guard against distinctions among account services that artificially lower the APR on a consumer's periodic statement.

A commenter requested that Appendix F be amended to include an example of the guidance provided in comment 14(c)–5. Such an amendment will be considered in a future rulemaking amending Regulation Z or its appendices.

The proposal requested comment on whether a creditor should separately disclose the balances related to each feature under § 226.7(e), if features are treated separately for purposes of calculating the denominator in the APR computation. The commentary is silent on additional separate balance disclosure requirements under 7(e). Nearly all commenters addressing the issue were opposed to an additional requirement; they said it would be costly for creditors to reconfigure their periodic statements and confusing for consumers to receive periodic statements showing several balances. No separate balance requirements under § 226.7(e) relating to multifeatured plans have been added.

Comment 14(c)–10 addresses the treatment of fees imposed on transactions that occur late in a billing cycle and are impracticable to post until the following billing cycle. The comment is revised to provide broader guidance for calculating the APR when finance charges posted in the billing cycle include charges relating to activity in prior cycles, such as adjustments relating to error resolution. It is intended to provide uniformity and simplify compliance for the variety of circumstances under which adjustments may occur.

The comment differs from the proposal in two respects. Comment 14(c)–10 does not contain the proposed requirement to disclose an APR equal to the largest periodic rate that may be imposed on the account when adjustments from prior cycles would produce a negative APR in the current cycle. Commenters expressed concern that the requirement, which currently applies to creditors imposing transaction fees in addition to periodic rate finance charges, would create costly programming changes for creditors that impose finance charges solely due to periodic rates and are not required to make that calculation. Creditors must disclose on each periodic statement any periodic rate that may be applied during the billing cycle and the corresponding APR. The corresponding APR adequately informs consumers about the cost of credit under the plan in the occasional billing cycle that a consumer may receive a negative APR due to a finance charge adjustment.

The comment includes an alternative disclosure when a finance charge debited to the account in the current billing cycle relates to activity for which a finance charge was debited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons). In response to concerns by commenters, as an alternative to the general interpretation set forth in the comment, the comment permits creditors to disclose the finance charge adjustment on the periodic statement. Creditors identifying the adjustment on the periodic statement would not include the finance charge adjustment in the numerator or in balances associated with the finance charge adjustment in the denominator when calculating the annual percentage rate for the current billing cycle .

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Comment 18(c)–2 is revised in response to requests for guidance by creditors offering credit sales when downpayments involve a trade-in and an existing lien that exceeds the value of the trade-in. (See comment 2(a)(18)–3, where a consumer owes $10,000 on an existing automobile loan and the trade-in value of the automobile is $8,000, leaving a $2,000 deficit.)

The amount by which the lien exceeds the trade-in value would be reflected in the amount financed. (See § 226.18(b).) Assuming the cash price for the new car was $20,000, the amount financed would be $22,000 ($20,000 representing the cash price plus $2,000 representing the excess of the lien over the trade-in value financed by the creditor).

The regulation provides great flexibility for disclosing the itemization of amount financed. Comment 18(c)–2.iii. (numbered to comply with **Federal Register** publication rules) is revised to clarify that any amounts financed by the creditor and representing the excess of the lien over the trade-in value ($2,000 in this example) must appear in the itemization of the amount financed. However, creditors may also add other categories to explain, in this example, the consumer's trade-in value of $8,000, the creditor's payoff of the existing lien of $10,000, and the resulting amount of $2,000 included in the amount financed.

18(g) Payment Schedule

Section 226.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. Creditors also have the option of specifying the ''period of payments'' scheduled to repay the obligation. Comment 18(g)–4 clarifies the requirements for creditors choosing this option.

As a general rule, creditors that do not disclose all of the payment due dates must disclose the payment intervals, such as ''monthly'' or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

Some commenters viewed the inclusion of a beginning-payment date as a new requirement that is more appropriate for a regulatory revision than an interpretation in the commentary. The Board believes that the new comment merely interprets and clarifies the existing requirement in § 226.18(g). The staff is aware that creditors could reasonably have interpreted the statutory requirement for specifying the ''period of payments'' in different ways. Because of confusion in this area, comment 18(g)–4 has been added to explain creditors' disclosure responsibilities.

Several commenters provided examples of transactions where the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of home repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. These commenters believe that a narrative explanation of the events that will trigger the first payment due date would be more helpful to consumers than an estimated calendar date.

Comment 18(g)–4 has been revised to address these concerns. In such cases, the creditor may use an estimated beginning-payment date and label the disclosure as an estimate pursuant to § 226.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. See Comment 17(a)(1)–5(iii).

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

32(a)(1)(ii)

Creditors must follow the rules in § 226.32 if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to adjust the $400 amount each year. The adjusted amounts for 1997 ($424), published on December 12, 1996 (61 FR 65317), and 1998 ($435), published on February 9, 1998 (63 FR 6474), are added to comment 32(a)(1)(ii)–2.

Section 226.33—Requirements for Reverse Mortgages

33(c) Projected Total Cost of Credit

33(c)(1) Costs to Consumer

Under 226.33, the disclosed cost of a reverse mortgage transaction must contain all costs and charges paid by the consumer, including the cost of any annuity, whether the annuity purchase is mandatory or voluntary or whether it is made through the creditor or a third party. Comment 33(c)(1)–2 provides guidance for determining when an annuity is purchased as part of a reverse mortgage transaction. Some commenters requested that the Board narrow the standard for including annuity costs in the total annual loan cost rate to annuities purchased ''by or through'' the creditor, expressing their concern about accurately disclosing the impact of any annuity consumers may purchase.

The Board believes that the Congress intended a broad application of the terms ''costs and charges'' when applied to annuities. (60 FR 15468, March 24, 1995.) Thus, the comment is adopted as proposed. Creditors may rely on information provided by the consumer concerning their intent to purchase an annuity as a part of the transaction.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction*, the following amendments are made:

a. Under *Paragraph 2(a)(2) Advertisement.*, paragraph 1. is revised;

b. Under *Paragraph 2(a)(18) Downpayment.*, a new paragraph 3. is added;

c. Under *Paragraph 2(a)(20) Open-end credit.*, paragraph 3. is revised; and

d. Under *Paragraph (2)(a)(24) Residential mortgage transaction.*, paragraph 5. is revised and a new paragraph 7. is added.

The additions and revisions read as follows:

SUPPLEMENT I—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

(a)(2) Advertisement.

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. On-line messages, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point-of-sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does *not* include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest rate and loan term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).

* * * * *

2(a)(18) Downpayment.

* * * * *

3. *Effect of existing liens.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not –$2,000.

* * * * *

2(a)(20) Open-end credit.

* * * * *

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example:

i. It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member than for a seller of aluminum siding to make the same assumption about its customers.

ii. It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

* * * * *

2(a)(24) Residential mortgage transaction.

* * * * *

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) or § 226.19(a) (assumability policies and early disclosures for residential mortgage transactions). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).

* * * * *

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

* * * * *

3. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, the following amendments are made:

a. Under *Paragraph 4(a)(2).*, paragraph 2. is revised;

b. Under *Paragraph 4(b)(2).*, paragraph 1. is revised; and

c. Under *Paragraph 4(d) Insurance and debt cancellation coverage.*, paragraphs 1., 4., and 11. are revised; paragraph 12. is redesignated as paragraph 13.; and a new paragraph 12. is added.

The revisions and additions read as follows:

* * * * *

Section 226.4—Finance Charge

4(a) Definition.

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4(a)(2) Special rule: closing agent charges.

* * * * *

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum closing fee excluded under § 226.4(c)(7).

* * * * *

4(b) Examples of finance charges.

* * * * *

Paragraph 4(b)(2).

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

* * * * *

4(d) Insurance and debt cancellation coverage.

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt-cancellation charges to be excluded from the finance charge. The required disclosures must be made in writing. The rules on location of insurance and debt-cancellation disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation coverage unless the context indicates otherwise.

* * * * *

4. *Unit-cost disclosures.* i. *Open-end credit.* The premium or fee for insurance or debt cancellation for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance cost disclosures on the $4,000 loan on a unit-cost basis.

* * * * *

11. *Initial term.* i. The initial term of the insurance or debt cancellation coverage determines the period for which a premium amount or fee must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.* i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear; or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage after making the initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosures on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years even though premiums are paid monthly and the consumer is not required to continue the coverage after making the initial payment. The creditor has the option of making disclosures on the basis of coverage for one-year.

* * * * *

4. In Supplement I to Part 226, under *Section 226.5—General Disclosure Requirements,* under *Paragraph 5(b)(2)(ii)* a new paragraph 4 is added as follows:

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.5—General Disclosure Requirements

* * * * *

5(b) Time of disclosures.

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Paragraph 5(b)(2)(ii).

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4. *Deferred payment transactions.* See comment 7–3(iv).

* * * * *

5. In Supplement I to Part 226, under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* under *Paragraph 5a(b)(1) Annual Percentage Rate,* a new paragraph 7 is added to read as follows:

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(b) Required Disclosures.

5a(b)(1) Annual Percentage Rate.

* * * * *

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin. The issuer must also disclose the specific event or events that may result in imposing the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). Alternatively, for issuers using a tabular format, the specific event or events may be located outside of the table if the conditions are noted with an asterisk or other means that direct the consumer to the explanation. At its option, the issuer may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

6. In Supplement I to Part 226, under *Section 226.6—Initial Disclosure Statement,* under *Paragraph 6(a)(2),* a new paragraph 11 is added to read as follows:

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(a) Finance charge.

* * * * *

Paragraph 6(a)(2).

* * * * *

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

7. In Supplement I to Part 226, under *Section 226.7—Periodic Statement*, the following amendments are made:

a. Under introductory text, a new paragraph 3 is added;

b. Under *Paragraph 7(d) Periodic rates*, a new paragraph 7 is added;

c. Under *Paragraph 7(e) Balance on which finance charge computed*, a new paragraph 10 is added;

d. Under *Paragraph 7(f) Amount of finance charge*, a new paragraph 9 is added; and

e. Under *Paragraph 7(j) Free-ride period*, a new paragraph 2 is added.

The additions read as follows:

* * * * *

Section 226.7—Periodic Statement

* * * * *

3. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid finance charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred payment plan where, for example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Periodic rates.* Under § 226.7(d), creditors must disclose each periodic rate that may be used to compute the finance charge. Under some plans with a deferred payment feature, if the deferred payment balance is not paid by the payment due date, finance charges attributable to periodic rates applicable to the billing cycles between the date of purchase and the payment due date (January through March in this example) may be imposed. Periodic rates that may apply to the deferred payment balance ($500 in this example) if the balance is not paid in full by the payment due date must appear on periodic statements for the billing cycles between the date of purchase and the payment due date. However, if the consumer does not pay the deferred payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the finance charge for the deferred payment balance, periodic rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

ii. *Balances subject to periodic rates.* Under § 226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment due date. Periodic statements sent for those billing cycles should not include the deferred payment balance in the balance disclosed under § 226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(e) (such as ''deferred payment balance''). During any billing cycle in which a periodic rate finance charge on the deferred payment balance is debited to the account, the balance disclosed under § 226.7(e) should include the deferred payment balance for that billing cycle.

iii. *Amount of finance charge.* Under § 226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some deferred payment purchases, the creditor may impose a finance charge from the date of purchase if the deferred payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose finance charges for billing cycles between the date of purchase and the payment due date. Periodic statements for billing cycles preceding the payment due date should not include in the finance charge disclosed under § 226.7(f) the amounts a consumer may owe if the deferred payment balance is not paid in full by the payment due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''finance charge'' (such as ''contingent finance charge'' or ''deferred finance charge''). The finance charge on a deferred payment balance should be reflected on the periodic statement under § 226.7(f) for the billing cycle in which the finance charge is debited to the account.

iv. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment due date for the $500 purchase. (The creditor could also identify March 31 as the payment due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred payment period (January, February, and March in this example).

D. If the due date for the deferred payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.

* * * * *

7*(d) Periodic rates.*

* * * * *

7. *Deferred payment transactions.* See comment 7–3(i).

7*(e) Balance on which finance charge computed.*

* * * * *

10. *Deferred payment transactions.* See comment 7–3(ii).

7*(f) Amount of finance charge.*

* * * * *

9. *Deferred payment transactions.* See comment 7–3(iii).

* * * * *

7*(j) Free-ride period.*

* * * * *

2. *Deferred payment transactions.* See comment 7–3(iv).

* * * * *

8. In Supplement I to Part 226, under *Section 226.14—Determination of Annual Percentage Rate,* under *Paragraph 14(c) Annual percentage rate for periodic statements.*, paragraph 5. and paragraph 10. are revised to read as follows:

* * * * *

Section 226.14—Determination of Annual Percentage Rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

5. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3% of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable

basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F.

* * * * *

10. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)10.11.B.

B. If a finance charge debited to the account relates to activity for which a finance charge was debited to the account in a previous billing cycle, for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons, the creditor shall at its option:

1. Calculate the annual percentage rate in accord with comment 14(c)10.11.A, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

* * * * *

9. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, the following amendments are made:

a. Under *Paragraph 18(c) Itemization of amount financed.*, paragraph 2. is revised; and

b. Under *Paragraph 18(g) Payment schedule.*, the 18(g) heading is revised, and a new paragraph 4. is added.

The revisions and addition read as follows:

* * * * *

Supbart C–Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(c) Itemization of amount financed.

* * * * *

2. *Additional information.* Section 226.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.18(c) and shown in model form H–3, although no changes are required. The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, escrow items and certain insurance premiums may be included, as discussed in the commentary to § 226.18(g).

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the trade-in amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed.

iv. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

v. Label categories with different language from that shown in § 226.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as ''your auto loan with us.''

vi. Delete, leave blank, mark ''N/A'' or otherwise not inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

* * * * *

18(g) Payment schedule.

* * * * *

4. *Timing of payments.* i. *General rule.* Section 226.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the ''period of payments'' scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as ''monthly''or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of home repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 226.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. See Comment 17(a)(1)–5(iii).

* * * * *

10. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(ii)*, paragraph 2. is revised to read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

* * * * *

2. *Annual adjustment of $400 amount.* A mortgage loan is covered by § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The $400 figure is adjusted annually by the Board; the adjusted figure becomes effective on January 1 of the following year. The Board will publish adjustments after the June figures become available each year. The adjustment for the upcoming year will be included in any proposed commentary published in the fall, and incorporated into the commentary the following spring. The adjusted figures are:

i. For 1996, $412, reflecting a 3.00 percent increase in the CPI–U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, $424, reflecting a 2.9 percent increase in the CPI–U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, $435, reflecting a 2.5 percent increase in the CPI–U from June 1996 to June 1997, rounded to the nearest whole dollar.

* * * * *

11. In Supplement I to Part 226, under *Section 226.33—Requirements for Reverse Mortgages*, under *Paragraph 33(c)(1) Costs to consumer*, in paragraph 2., a new sentence is added at the end of the paragraph to read as follows:

* * * * *

Section 226.33—Requirements for Reverse Mortgages

* * * * *

33(c) Projected total cost of credit.

Paragraph 33(c)(1) Costs to consumer.

* * * * *

2. *Annuity costs.* * * For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 31, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–8829 Filed 4–3–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–119–AD; Amendment 39–10438; AD 98–07–18]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires replacing certain propeller de-icing controllers with ones that are not susceptible to electromagnetic interference (EMI). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent improper operation of the propeller de-icing controller caused by EMI, which could result in ice build-up on the propeller with possible airplane controllability problems.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 22, 1998 (63 FR 3276). The NPRM proposed to require replacing certain propeller de-icing controllers with ones that are not susceptible to electromagnetic interference (EMI). Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. 30–002, dated August 19, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

While the condition described in this AD is unsafe while the airplane is in operation, it is not a direct result of airplane operation. For example, the unsafe condition exists or could develop on an airplane with 500 hours time-in-service (TIS) the same as one with 10 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 53 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this replacement, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer free of charge. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6,360, or $120 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–18 Pilatus Aircraft LTD: Amendment 39–10438; Docket No. 97–CE–119–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers MSN 101 through MSN 153, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper operation of the propeller de-icing controller caused by electromagnetic interference (EMI), which could result in ice build-up on the propeller with possible airplane controllability problems, accomplish the following:

(a) Within the next 9 calendar months after the effective date of this AD, accomplish the following in accordance with the instructions in Pilatus Service Bulletin No. 30–002, dated August 19, 1996:

(1) Identify the serial number of the affected propeller de-icing controller, part number (P/N) 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number);

(2) For those airplanes with a propeller de-icing controller, P/N 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number), with a serial number of U999 or lower that does not have ''SB30–1'' marked on it, replace it with a P/N 500.50.12.109 (BFG SB4E3163–1–30–1) (or FAA-approved equivalent part number) propeller de-icing controller.

Note 2: The airplanes affected by this AD could have propeller de-icing controllers installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in this AD, the phrase ''or FAA-approved equivalent part number'' means that this AD applies to airplanes with PMA by equivalency propeller de-icing controllers installed.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a propeller de-icing controller, P/N 968.29.13.223 (BFG 4E3163–1) (or FAA-approved equivalent part number), with a serial number of U999 or lower that does not have ''SB30–1'' marked on it.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 30–002, dated August 19, 1996, should be directed to Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The identification and replacement required by this AD shall be done in accordance with Pilatus Service Bulletin No. 30–002, dated August 19, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 25, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8580 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–69–AD; Amendment 39–10437; AD 98–07–17]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 94–04–17, which currently requires the following on Twin Commander Aircraft Corporation (Twin Commander) 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes: inspecting (one-time) the flap system for cables with broken wires or pulleys with worn cable clips, replacing any damaged parts, and replacing the master pulley and cable with new parts of improved design. This AD requires inspecting all flap system cable grooves for the correct width, inspecting all flap system pulleys for rubbing on the support brackets, inspecting all flap pulley cable assemblies for frayed wires, and reworking or replacing any parts with discrepancies. This AD results from several reports of worn and frayed flap system cables attributed to flap pulley grooves that are too narrow. The actions specified by this AD are intended to prevent failure of a flap system cable caused by fatigue, which could result in loss of control of the airplane.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223–7832. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–69–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Morfitt, Aerospace Engineer, FAA, Northwest Mountain Region, 1601

Lind Avenue S.W., Renton, Washington 98055–4056; telephone: (425) 227–2595; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply all models of Twin Commander 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 31, 1997 (62 FR 58925). The NPRM proposed to supersede AD 94–04–17 with a new AD that requires inspecting all flap system cable grooves for the correct width, inspecting all flap system pulleys for rubbing on the support brackets, inspecting all flap pulley cable assemblies for frayed wires, and reworking or replacing any parts with discrepancies. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Twin Commander Mandatory Service Bulletin No. 226, dated April 14, 1997 (Revision No. 1 Release Date: July 15, 1997).

The NPRM was the result of several reports of worn and frayed flap system cables attributed to flap pulley grooves that are too narrow.

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

Comment Disposition

The commenter expresses concern over the availability of the parts necessary to comply with the proposed AD. The commenter states that, if the proposed AD would become a final rule with the proposed compliance time of ''within the next 100 hours time-in-service (TIS) after the effective date of the AD'', then the commenter's fleet of the affected airplanes would be grounded because of parts unavailability. The commenter requests that the FAA re-examine the compliance time of the proposed AD before issuing a final rule.

The FAA has re-examined the compliance time, checked with the manufacturer about the availability of parts, and has determined that a more realistic compliance time would be ''within the next 300 hours TIS after the effective date of this AD''. The final rule reflects this change.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the compliance time change discussed above and minor editorial corrections. The FAA has determined that this change and these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,230 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 22 workhours per airplane to accomplish the inspection required by this AD, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,623,600, or $1,320 per airplane. These figures only take into account the inspection costs of this AD and do not reflect the costs of any repairs or replacements that may be required if discrepancies are found during the inspection. The FAA has no way of determining how many parts will need to be repaired or replaced after accomplishing the inspection.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 94–04–17, Amendment 39–8837, and by adding a new AD to read as follows:

98–07–17 Twin Commander Aircraft Corporation: Amendment 39–10437; Docket No. 97–CE–69–AD. Supersedes AD 94–04–17, Amendment 39–8837.

Applicability: The following airplane models (all serial numbers), certificated in any category:

500	5500–A	5500–B	5500–S	5500–U
520	5560	5560–A	5560–E	5560–F
680	680–E	680–F	680FL	680FL(P)
680FP	680T	680V	680W	681
685	690	690A	690B	690C
690D	695	695A	695B	720

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of a flap system cable caused by fatigue, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 300 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, perform the following in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander Aircraft Corporation (Twin Commander) Mandatory Service Bulletin No. 226, dated April 14, 1997 (Revision No. 1 Release Date: July 15, 1997):

(1) Inspect all flap system cable grooves for the correct width;

(2) Inspect all flap system pulleys for rubbing on the support brackets;

(3) Inspect all flap pulley cable assemblies for frayed wires; and

(4) Mark pulleys that have been inspected and have the correct groove radius with two parallel lines as specified in the service bulletin.

Note 2: Revision No. 1 Release Date: July 15, 1997, of Twin Commander Mandatory Service Bulletin No. 226, specifies changes in the workhours necessary to accomplish this action and makes reference to a gauge that is available from the manufacturer for use in accomplishing the inspection.

(b) If any of the above discrepancies are found, prior to further flight after the inspections required by paragraph (a), including all subparagraphs, of this AD, rework or replace the affected part in accordance with Twin Commander Mandatory Service Bulletin No. 226, dated April 14, 1997 (Revision No. 1 Release Date: July 15, 1997).

(c) As of the effective date of this AD, no person may install a pulley that does not have the criteria presented in either paragraph (c)(1), (c)(2), or (c)(3) of this AD:

(1) A pulley that has been inspected, found acceptable, and marked with two parallel lines in accordance with paragraph (a), including all subparagraphs, of this AD;

(2) A pulley that has been reworked in accordance with an FAA-approved procedure and is marked ''SB 226''; or

(3) A new pulley that is marked ''SB 226–NEW''.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), Northwest Mountain Region, FAA, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–04–17 (superseded by this AD) are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) The inspections and replacements required by this AD shall be done in accordance with Twin Commander Mandatory Service Bulletin No. 226, dated April 14, 1997 (Revision No. 1 Release Date: July 15, 1997). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223–7832. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment supersedes AD 94–04–17, Amendment 39–8837.

(h) This amendment becomes effective on May 29, 1998.

Issued in Kansas City, Missouri, on March 24, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8579 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–95–AD; Amendment 39–10448; AD 98–07–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a detailed visual inspection(s) for damage or chafing of certain electrical wire bundles and for clearance between the wire bundles and adjacent forward galley air chiller; and follow-on corrective actions. This amendment is prompted by a report indicating that damaged wires caused the tripping of electrical circuit breakers and the display of caution messages by the engine indication and crew alerting system. The actions specified in this AD are intended to prevent failure of essential electrical systems and a potential fire hazard for passengers and crewmembers, due to damage or chafing of the wire bundles that resulted in arcing between exposed conductors and burning of the adjacent electrical bundles.

DATES: Effective April 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 5, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, soon after takeoff on a Boeing Model 767 series airplane, the engine indication and crew alerting system (EICAS) displayed several caution messages and several circuit breakers tripped. After landing, the cabin crew reported smoke coming from the forward galley air chiller, located below the forward galley door under the floor.

The smoke was produced by burning electrical wires. Investigation revealed that approximately 30 wires were damaged in bundles W272, W656, W782, and W254, forward of the P37 panel, adjacent to the AE0218 disconnect panel, and above the aft side of the forward galley air chiller. Further investigation revealed that the wire bundles do not have protective taping or sleeves and that adequate clearance does not exist between the wire bundles and the adjacent chiller. As a result, during the removal or reinstallation of the forward galley air chiller, the wire bundles may become damaged or

chafed. When the insulation of the wire bundles is damaged or chafed, additional elements such as moisture, vibration, or conductive debris can result in arcing of the conductors.

These conditions, if not corrected, could result in burning of the damaged wires and the adjacent electrical wire bundles and consequent fire hazard for passengers and crewmembers, and failure of essential electrical systems.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Message Number M–7200–98–00140, dated January 11, 1998, which describes procedures for a detailed visual inspection(s) for damage or chafing of the electrical wire bundles located in the right-hand outboard electronics equipment bay and for adequate clearance between the wire bundles and adjacent forward galley air chiller; and follow-on corrective actions. Boeing Message Number M–7200–98–00140, dated January 11, 1998, also references Boeing Standard Wiring Practices Manual (SWPM) D6–54446, as an additional source of service information.

Explanation of the Requirement of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent arcing between exposed conductors, which could result in burning of the damaged wires and adjacent electrical bundles and consequent fire hazard for passengers and crewmembers, and failure of essential electrical systems. This AD requires accomplishment of the actions specified in the Boeing message described previously, except as discussed below.

Differences Between Rule and Service Bulletin

While the Boeing Message Number M–7200–98–00140 does not describe procedures for repetitive inspections, this AD requires repetitive inspections for certain inspection results. For these certain inspection results, the FAA is not proposing to mandate the installation of protective tape or a sleeve over the wire bundles for several reasons:

1. Accessing the wire bundles located forward of the P37 panel is easily accomplished.

2. The subject damage or chafing is easily detectable by means of a detailed visual inspection.

3. The failure of the wire bundles may adversely affect essential electrical systems; however, the detailed visual inspection will detect any damage or chafing of the wire bundles before they result in a hazardous condition.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–95–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–26 Boeing: Amendment 39–10448. Docket 98–NM–95–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 683 inclusive, equipped with forward galley air chillers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of

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

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing between exposed conductors, which could result in burning of the adjacent electrical bundles, failure of essential electrical systems, and consequent fire hazard for passengers and crewmembers, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection for damage or chafing of the electrical wiring bundles located forward of the P37 panel adjacent to the AE0218 disconnect panel, and for adequate clearance between the wire bundles and adjacent forward galley air chiller, in accordance with Boeing Message Number M–7200–98–00140, dated January 11, 1998.

Note 2: Boeing Message Number M–7200–98–00140, dated January 11, 1998, also references Boeing Standard Wiring Practices Manual D6–54446, as an additional source of service information.

(1) If no damage or chafing is detected and adequate clearance exists, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the visual inspection required by paragraph (a) of this AD, thereafter, each time the forward galley air chiller is removed and reinstalled. Or

(ii) Prior to further flight, install protective tape or sleeve over the wire bundles, in accordance with Section 20–00–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFX–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

(2) If no damage or chafing is detected and inadequate clearance exists, prior to further flight, modify the routing of the wire bundles in accordance with the Boeing message, and install protective tape or sleeve over the wire bundles in accordance with Section 20–00–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFX–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

(3) If damage or chafing is detected and adequate clearance exists, prior to further flight, repair the wire bundles in accordance with Boeing message, and accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Repeat the visual inspection required by paragraph (a) of this AD, thereafter, each time the forward galley chiller is removed and reinstalled. Or

(ii) Prior to further flight, install protective tape or sleeve over the wire bundles in accordance with Section 20–00–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFX–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

(4) If damage or chafing is detected and inadequate clearance exists, prior to further flight, repair and modify the routing of the wire bundles in accordance with the Boeing message, and install protective tape or sleeve over the wire bundles in accordance with Section 20–00–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFX–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(d) The inspections and modification shall be done in accordance with Boeing Message Number M–7200–98–00140, dated January 11, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 21, 1998.

Issued in Renton, Washington, on March 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8705 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 118

[T.D. 98–29]

RIN 1515–AC07

Centralized Examination Stations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the establishment and scope of operation of Centralized Examination Stations (CESs). To reflect Customs interest in maximizing compliance with export control laws and regulations without unduly impeding the movement of outbound merchandise, the definition of a CES is expanded to allow merchandise intended to be exported as well as imported merchandise to be handled by a CES. The amendment allows outbound cargo to be inspected at CESs at ports other than the shipment's designated port of exit. Further, to make the CES application procedure more amenable to local conditions, this amendment provides CES applicants with more flexibility regarding the time frame to conform a facility to meet Customs security or other physical or equipment requirements. Lastly, this amendment removes one of the criteria on the application to operate a CES because Customs believes it is too subjective. These changes are made in order to keep the CES program responsive to both Customs and the trade community's demands for the facilitated examinations of trade merchandise.

DATES: Effective: May 6, 1998.

FOR FURTHER INFORMATION CONTACT:

For Policy Inquiries: Steven T. Soggin, Office of Field Operations, (202) 927–0765;

For Legal Inquiries: Jerry Laderberg, Office of Regulations and Rulings, Entry Procedures and Carriers Branch, (202) 927–2269.

SUPPLEMENTARY INFORMATION:

Background

In 1993, Customs amended the Customs Regulations to provide for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Because merchandise intended to be *exported* is subject to examination, Customs wanted CESs to be authorized to provide inspectional facilities for this merchandise as well. Accordingly, on August 19, 1997, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (62 FR 44102) that proposed to amend the Customs Regulations regarding the establishment and scope of operation of CESs.

In order to reflect Customs' interest in maximizing compliance with export control laws and regulations without unduly impeding the movement of outbound merchandise, the Notice proposed to expand the definition of a

CES to allow merchandise intended to be exported as well as imported merchandise to be handled by a CES. Further, the document proposed to allow for the inspection of outbound cargo at CESs at ports other than the shipments' designated ports of exit. To make the CES application procedure more amenable to local conditions, the document proposed more flexibility regarding the time frame for an applicant to conform a facility to meet Customs security or other physical or equipment requirements. Lastly, Customs proposed to amend one of the criteria on the application to operate a CES because of Customs' belief that it is too subjective. These changes were proposed in order to keep the CES program responsive to both Customs' and the trade community's demands for the facilitated examinations of trade merchandise. These proposed changes to the regulations affected §§ 118.0, 118.22, and 118.23 of the Customs Regulations (19 CFR 118.0, 118.22, and 118.23). The document solicited comments concerning these changes.

The comment period closed on October 20, 1996. Six comments were received. The comments and Customs responses to them follow.

Discussion of Comments

The comments received were from a major manufacturing corporation involved with importing/exporting its products; a trade association representing 1,000 member firms engaged in all aspects of international trade; an exporter of merchandise; a manufacturer that exports its product; a CES operator; and an association representing insurance and surety companies.

Comment: Four commenters opposed the use of CESs for outbound inspections because they stated that expansion of the CES program to exports will mean that the burdens (needless delays and cost overruns) routinely experienced on the import side with CESs will also occur with examination of exports. These commenters argue that similar processing delays could result in missing the time for lading the merchandise to be exported, which may result in the loss of export sales, leading to a negative impact on the country's balance of trade.

Customs response: Customs disagrees. Inspection time involved with export examinations is considerably less than the inspection time involved with import examinations due to less paperwork being required. Further, the proposed amendments were designed to keep CESs responsive to the trade community's demands for facilitating examinations. Since the number of export shipments is expected to increase 6% per year, reaching a total value of $1.2 trillion by the year 2003, Customs believes that centralizing outbound examinations will facilitate inspections. As Customs will be able to conduct the outbound examination before merchandise is loaded for transport to a port of exit, unnecessary delays of shipments will be prevented by sparing exporters the expense and delay involved in unloading shipments at dispersed ports of exit for inspection.

Comment: One commenter stated that the proposed amendment to the Customs custodial bond provision of § 118.4(g) is unnecessary. The commenter stated that the obligation envisioned by the new language, that CES operators will accept and keep safe all merchandise delivered to the CES for examination, currently exists and that unless the amendment serves some significant, but unstated, need, it should be deleted from the final rule.

Customs response: Customs disagrees with the proposition that the proposed amendment is not necessary because it speaks to an existing obligation. The proposed amendment to § 118.4(g) clarifies Customs policy that a CES operator will accept all merchandise delivered to the CES for examination, thus, eliminating any assumption that CES operators have discretion whether to accept merchandise delivered to the facility for Customs examination. Accordingly, Customs believes that the proposed amendment to § 118.4(g) is necessary.

Conclusion

After analysis and review of the comments and further consideration by Customs, Customs has determined to adopt the final rule as it was proposed.

Regulatory Flexibility Act

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities, because the amendments would operate to confer new benefits on potential CES operations, by allowing them to perform more services. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as defined in E.O. 12866.

List of Subjects in 19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Exports, Imports, Licensing, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, part 118, Customs Regulations (19 CFR part 118), is amended as set forth below:

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 is revised to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

2. In § 118.1, the first sentence is amended by removing the word ''imported'', and a new sentence is added at the end to read as follows:

§ 118.1 Definition.

* * * To present outbound cargo for inspection at a CES at a port other than the shipment's designated port of exit, either proof of the shipper's consent to the inspection must be furnished or a complete set of transportation documents must accompany the shipment to evidence that exportation of the goods is imminent and that the goods are committed to export, thereby, making them subject to Customs examination.

3. In § 118.4, paragraph (g) is amended by adding a new second sentence to read as follows:

§ 118.4 Responsibilities of a CES operator.

* * * * *

(g) * * * The CES operator will accept and keep safe all merchandise delivered to the CES for examination. * * *

* * * * *

§ 118.11 [Amended]

4. In § 118.11, the second sentence in paragraph (b) is amended by removing the words '', and the port director may allow, up to an additional 30 calendar days after tentative selection to conform the facility to such requirements, but in such a case the agreement referred to in § 118.3 of this part shall not be executed until those requirements are met'' and adding, in their place, the words ''time to conform the facility to such requirements. The agreement referred to in § 118.3 of this part shall not be executed, in any event, until the facility is conformed to meet the requirements''; and paragraph (g) is amended by removing the words '', or a commitment to acquire that knowledge''.

Approved: March 13, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–8940 Filed 4–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, 640, and 1270

Foods and Drugs; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct certain errors that have become incorporated into the biologics regulations. This action is being taken to improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa M. Helmanis, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain errors have become incorporated into the agency's codified regulations on biologics. FDA is correcting these errors. These corrections are nonsubstantive.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

Lists of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 1270

Communicable diseases, HIV/AIDS, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 606, 610, 640, and 1270 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

§ 606.121 [Amended]

2. Section 606.121 *Container label* is amended in paragraph (e)(1)(ii) by removing ''expressd'' and adding in its place ''expressed''.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.30 [Amended]

4. Section 610.30 *Test for Mycoplasma*, lines 12, 13, 31, and 33 are amended by removing the period after the capital ''C'' each time it occurs.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

5. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.2 [Amended]

6. Section 640.2 *General requirements* is amended in paragraph (e)(3) by removing the period after the capital ''C''.

§ 640.17 [Amended]

7. Section 640.17 *Modifications for specific products* is amended by removing the period after the capital ''C''.

§ 640.24 [Amended]

8. Section 640.24 *Processing* is amended in the first sentence in paragraph (b) by removing the phrase ''between 20 to 24 °C'' and adding in its place ''between 20 and 24 °C''.

§ 640.64 [Amended]

9. Section 640.64 *Collection of blood for Source Plasma* is amended in paragraph (c)(2) by adding a subscript ''7'' after the first ''O'' in ''Citric acid''.

§ 640.69 [Amended]

10. Section 640.69 *General requirements* is amended in paragraph (b) by removing the period after the capital ''C''.

§ 640.70 [Amended]

11. Section 640.70 *Labeling* is amended in paragraph (a)(3) by removing the period after the capital ''C''.

§ 640.74 [Amended]

12. Section 640.74 *Modification of Source Plasma* is amended in paragraph (b)(2) by removing the period after the capital ''C''.

§ 640.101 [Amended]

13. Section 640.101 *General requirements* is amended in paragraph (a) by removing the period after the capital ''C''.

§ 640.102 [Amended]

14. Section 640.102 *Manufacture of Immune Globulin (Human)* is amended in the second and third sentences in paragraph (c) and in the second sentence in paragraph (e) by removing the period after the capital ''C'' each time it occurs.

§ 640.104 [Amended]

15. Section 640.104 *Potency* is amended in paragraph (a) by removing the period after the capital ''C''.

PART 1270—HUMAN TISSUE INTENDED FOR TRANSPLANTATION

16. The authority citation for 21 CFR part 1270 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1270.33 [Amended]

17. Section 1270.33 *Records, general requirements* is amended in paragraph (b)(1) by removing ''or'' and adding in its place ''and''.

Dated: March 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–8971 Filed 4–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 2785]

Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended; Failure to Comply With INA

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: The Department is removing the regulation that implemented section 212(o) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(o)). Congress allowed INA 212(o) to sunset as of September 30, 1997. This section, which prohibits the issuance of an immigrant visa to an alien within ninety days following an alien's departure from the U.S. if the alien was not in lawful nonimmigrant status at the time of departure, was intended to encourage adjustment of status applications under INA 245(i).

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, 202–663–1203.

SUPPLEMENTARY INFORMATION: On October 11, 1994, the Department published an interim rule [59 FR 51367] to implement section 506(b) of Pub. L. 103–317. This section amended INA 245 to permit qualified immigrants to acquire permanent residence through adjustment of status in the United States even though they entered the United States without inspection or violated their nonimmigrant status after entry. The Act further amended INA 212 by adding subsection ''(o)'', which encouraged eligible aliens to take advantage of the broadened INA 245 adjustment of status provisions by discouraging them from seeking immigrant visa issuance from a U.S. consular post abroad. To induce such aliens to seek adjustment of status rather than visas, Congress imposed a requirement that an immigrant visa applicant be physically absent from the United States for ninety days before an immigrant visa could be issued. Under that amendment, an alien who did depart from the United States would not be eligible to receive an immigrant visa before the 91st day following the departure. The Department finalized this rule in a publication on March 8, 1996 [61 FR 9325].

Final Rule

This final rule removes the Department's regulation at § 40.204 (formerly § 40.104). It is being promulgated as a final rule without public notice and comment based on the exception found at 5 U.S.C. 553(B) since the Department hereby determines that public notice is unnecessary and contrary to the public interest because the regulation eliminated no longer has a statutory basis.

The Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule and it has been determined, and the Assistant Secretary for Consular Affairs hereby certifies, that it will not have a significant economic impact on a substantial number of small entities. The rule has no economic effect independent of the statutory requirements already in effect, which it implements.

5 U.S.C. Chapter 8

As required by 5 U.S. C. chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

This rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required by E.O. 12988 and determined to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

List of Subjects in 22 CFR Part 40 Aliens, Immigration, Passports and Visas

PART 40—[AMENDED]

1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 40.204 [Removed and Reserved]

2 Remove and reserve § 40.204.

Dated: March 26, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–8921 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 93

[Public Notice 2780]

Service on Foreign State

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: The Bureau of Consular Affairs is amending its regulations regarding Service on a Foreign State under the Foreign Sovereign Immunities Act. The amendments are technical in nature and deal with a nomenclature change. The amendments reflect changes to individual and organizational titles made since the regulation was originally drafted.

DATES: This rule is effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Edward A. Betancourt or Michael Meszaros, Overseas Citizens Services, Department of State, 2201 C Street, NW, Room 4811, Washington D.C. 20520, 202–647–3666 or 202–647–1982.

SUPPLEMENTARY INFORMATION: This final rule makes corrections to nomenclature in the rules for service on a foreign state pursuant to the Foreign Sovereign Immunities Act (28 U.S.C. 1608 et seq.). Since the implementing legislation was passed in 1976, the name of the office which is charged with completing service through the diplomatic channel has been changed. The title of the official who heads the office has also changed. This amendment reflects these changes.

These regulations are not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, they will not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Nor do these final rules have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. These final rules have been reviewed as required by E.O. 12778 and certified to be in compliance therewith. These rules are not exempt from review under E.O. 12866 but have been reviewed and found to be consistent with the objectives thereof. This action is being taken as a final rule, pursuant to the ''interpretative rules, general statements of policy'' provision of 5 U.S.C. section 553 (b)(A); notice and comment are therefore not necessary.

List of Subjects in 22 CFR Part 93

Foreign relations.

PART 93—SERVICE ON FOREIGN STATE

1. The authority citation for Part 93 is revised to read as follows:

Authority: 22 U.S.C. 2658; 28 U.S.C. 1608(a).

§ 93.1 [Amended]

2. In § 93.1, remove the words ''Director of Special Consular Services'' and add, in their place, the words ''Managing Director for Overseas Citizen Service'' in the following places:

a. § 93.1(a)
b. § 93.1(b)
c. § 93.1(c)
d. § 93.1(e).

3. In § 93.1(a), remove the reference to the ''Bureau of Security and Consular Affairs'' and add, in its place, the words ''Bureau of Consular Affairs.''

Dated: March 25, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–8865 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–97–008]

RIN 2115–AE46

Special Local Regulations; U.S. National Waterski Racing Championship

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard amends the table of events by adding the US National Waterski Racing Championship conducted in the waters of Mission Bay in San Diego, California, from Government Island south to Ski Beach on the following dates: annually, commencing on the first Friday of October every year, and, including the first Friday of October, lasting a total of three days. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

The Coast Guard also makes a technical amendment to reflect a change of address for the Eleventh Coast Guard District staff element responsible for the Local Notice to Mariners.

EFFECTIVE DATE: October 3, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike A. Arguelles, Coast Guard Marine Safety Office; telephone number (619) 683–6484.

SUPPLEMENTARY INFORMATION: .

Regulatory History

On November 25, 1997, the Coast Guard published a notice of proposed rulemaking (NPRM) for this regulation in the **Federal Register** (62 FR 62733). The comment period ended January 09, 1998. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The U.S. National Waterski Race will consist of various waterski racing events. The races will take place, annually, over a three day period beginning on the first Friday of October, and ending on Sunday. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

The race zone encompasses the waters of Mission Bay in San Diego, California, from government Island south to Ski beach in Mission Bay. The race course will be marked by buoys to alert non-participants. Each year, the race zone will be in use by vessels competing in the event from and including the first Friday of October, for a total of three days, during the hours of 8 a.m. until 6 p.m. (PDT). During these times the waters of Mission Bay from Government Island to Ski Beach will be closed to all traffic with the exception of emergency vessels, official patrol vessels, and participant vessels. No vessels other than emergency, participant, or official patrol vessels will be allowed to enter this zone unless specifically cleared by or through an official patrol vessel.

Pursuant to 33 CFR 100.1101(b)(3), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the zone is established, authorization to remain within the zone is subject to termination by the Patrol Commander at any time. The Patrol Commander may impose other restrictions within this zone if circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct the race.

A technical amendment to paragraph (a) of 33 CFR 100.1101 is necessary because the Eleventh Coast Guard District staff element responsible for the Local Notice to Mariners has moved from Long Beach, California, to Alameda, California. The correct address of the Eleventh Coast Guard District staff element responsible for Local Notice to Mariners now reads: Commander (Pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost 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 regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are not dominant in their fields and (2) governmental jurisdictions with populations less than 50,000. Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a substantial impact on a significant 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 under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and environmental analysis checklist will be available for inspection and copying in the docket to be maintained by the local Coast Guard Marine Safety Office.

List of Subjects in 33 CFR Part 100

Regattas and Marine parades.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100, as follows:

PART 100 [AMENDED]

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. In § 100.1101, paragraph (a) is revised, and Table 1 is amended by adding an entry for the U.S. National Waterski Racing Championship immediately following the last entry, to read as follows:

§ 100.1101 Southern California annual marine events.

(a) Special local regulations will be established for the events listed in Table 1. Further information on exact dates, times, details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list contact: Commander (Pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.

* * * * *

Table 1

US National Waterski Racing Championship

Sponsor: U.S. National Waterski Racing Association

Date: First Friday of October every year, lasting a total of 3 days (including the first Friday of October).

Location: Mission Bay, San Diego, California, from Government Island south to Ski Beach.

Dated: March 20, 1998.

J. C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–8958 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–98–002]

RIN 2115–AE46

Special Local Regulations; Parker Enduro

AGENCY: Coast Guard, DOT.

ACTION: Implementation of rule.

SUMMARY: This document implements 33 CFR 100.1102, ''Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona),'' for the Parker Enduro hydroplane racing boat event. This event consists of hydroplane racing using high-speed powerboats with a length of 16 to 23 feet. These regulations will be effective on that portion of Lake Moovalya, Parker, Arizona, between miles 179 and 185 of the Colorado River (between the Roadrunner Resort and Headgate Dam). Implementation of 33 CFR 100.1102 is necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

Pursuant to 33 CFR 100.1102(c)(3), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

DATES: This section is effective from 8 a.m. PDT, until 6 p.m. PDT, on May 2, 1998, and from 8 a.m. PDT, until 6 p.m. PDT, on May 3, 1998.

FOR FURTHER INFORMATION CONTACT: OMC Michael C. Claeys, U.S. Coast Guard Activities San Diego, California; Tel: (619) 683–6309.

Discussion of Implementation

The Packer Enduro, sponsored by the Parker Area Chamber of Commerce, is scheduled to occur on May 2–3, 1998. This annual event, usually scheduled to occur in early March, is expected to again be held in March in subsequent years. These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1102, no persons or vessels shall block, anchor, or loiter in the regulated area; nor shall any person or vessel transit through the regulated area, or otherwise impede the transit of participant or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel acting on behalf of the Patrol Commander.

Dated: March 20, 1998.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–8957 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–97–007]

RIN 2115–AA98

Anchorage Regulations: San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby establishes several special anchorages in San Diego Bay, California. A ''special anchorage'' is an area on the water where vessels less than 20 meters (approximately 65 feet) in length are allowed to anchor without displaying navigation lights which are otherwise required for anchored vessels under Rule 30 of the Inland Navigational Rules, codified at 33 U.S.C. 2030. The intended effect of these special anchorages is to reduce the risk of vessel collisions within San Diego Bay by specifying more special anchorage areas which will provide designated sites for vessels less than 20 meters in length.

DATES: This rule becomes effective May 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Arguelles, Marine Safety Office, San Diego, (619) 683–6484, or Mike Van Houten, USCG, Pacific Aids to Navigation and Waterways Management Branch, Eleventh Coast Guard District, (510) 437–2984.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 25, 1997, the Coast Guard published a notice of proposed rulemaking (NPRM) for this regulation in the **Federal Register** [62 FR 62734]. The comment period ended January 26, 1998. The Coast Guard received no comments. A public hearing was not requested and no hearing was held.

Background and Purpose

A *special anchorage* is an area on the water in which vessels less than 20 meters (approximately 65 feet) in length are allowed to anchor without displaying navigation lights. Such lights are otherwise required for anchored vessels under Rule 30 of the Inland Navigational Rules, codified at 33 U.S.C. 2030. This rule establishes 7 new special anchorage areas, and modifies 4 special anchorage areas already in existence, in San Diego Harbor, San Diego, California.

Discussion of Regulation

The Coast Guard establishes 7 new special anchorage areas (A–1a, A–1b, A–1c, A–4, A–6, A–8, & A–9), and modifies the 4 special anchorge areas already in existence (A–1, A–2, A–3, & A–5), in San Diego Harbor, San Diego, California, as follows:

(A–1, A–1a, A–1b, A–1c) Shelter Island Moorings, North San Diego Bay, approximately 75 yards off shore and along Shelter Island (for A–1, minor corrections to some of the coordinates describing the corner points of the special anchorage area),

(A–2 America's Cup Harbor, North San Diego Bay, in the area known as Commercial Basin (minor corrections to some of the coordinates describing the corner points of the special anchorage area),

(A–3) Laurel Street Roadstead Moorings, North San Diego Bay, east of the Coast Guard Activities installation (minor corrections to some of the coordinates describing the corner points of the special anchorage area),

(A–4) Bay Bridge Roadstead Moorings, Central San Diego Bay, at the northwest end of the Coronado Bridge,

(A–5) Glorietta Bay Anchorage, Central San Diego Bay, across the bay from Naval Amphibious Base (minor corrections to some of the coordinates describing the corner points of the special anchorage area),

(A–6) Fiddlers Cove, South San Diego Bay, just south of the Naval Amphibious Base,

(A–8) Sweetwater Anchorage, South San Diego Bay, west of 24th Street, Marine Terminal, and

(A–9) Cruiser Anchorage, North San Diego Bay, west of the Coast Guard Activities installation.

The primary users of these anchorages are recreational vessels, with the majority of them being long term users. Some of the anchorages are depicted on local charts, while all of them use buoys to delineate their boundaries. By establishing these areas as special anchorages, the requirement of displaying anchor lights and day shapes will be removed for vessels less than 20 meters in length.

Discussion of Comments

No comments were received.

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.

I 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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will impose no cost on vessel operators, it will have minimal impact on vessel traffic, and will provide more options to vessels desiring to anchor in San Diego Bay.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, 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 field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this rule is expected to be minimal, the Coast Guard certifies that 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule imposes no collection of information requirements under the Paperwork Reduction Act.

Federalism

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

Environment

This rule has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the local Coast Guard Marine Safety Office.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

In consideration of the foregoing, the Coast Guard amends part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

1. Section 110.90 is revised to read as follows:

§ 110.90 San Diego Harbor, California.

(a) *Area A–1.* In North San Diego Bay, the Shelter Island Yacht Basin Anchorage, the water area enclosed by a line beginning at latitude 32°42′56.7″ N., longitude 117°13′47.1″ W.; thence southwesterly to latitude 32°42′53.6″ N., longitude 117°13′51.3″ W.; thence northwesterly to latitude 32°43′01.3″ N., longitude 117°13′59.1″ W.; thence northeasterly to latitude 32°43′02.6″ N., longitude 117°13′55.5″ W.; thence southeasterly to latitude 32°42′59.8″ N., longitude 117°13′50.4″ W.; thence southeasterly to the point of beginning.

(b) *Area A–1a.* In North San Diego Bay, the Shelter Island Roadstead Anchorage east of Shelter Island, the water area 55 feet either side of a line beginning at latitude 32°42′33.6″ N., longitude 117°13′48.3″ W.; thence

northeasterly to latitude 32°42′36.0″ N., longitude 117°13′45.1″ W.

(c) *Area A–1b.* The water area off Shelter Island's eastern shore, 210 feet shoreward of a line beginning at latitude 32°42′43.9″ N., longitude 117°13′34.3″ W.; thence northeasterly to latitude 32°42′52.8″ N., longitude 117°13′22.4″ W.

(d) *Area A–1c.* The water area off Shelter Island's eastern shore, 210 feet shoreward of a line beginning at latitude 32°42′55.0″ N., longitude 117°13′19.4″ W.; thence northeasterly to latitude 32°43′03.5″ N., longitude 117°13′07.6″ W.

(e) *Area A–2.* In North San Diego Bay, the America's Cup Harbor Anchorage, the water area enclosed by a line beginning at latitude 32°43′13.7″ N, longitude 117°13′23.8″ W; thence northeasterly to latitude 32°43′16.7″ N., longitude 117°13′16.4″ W.; thence northwesterly to latitude 32°43′22.6″ N., longitude 117°13′25.8″ W.; thence westerly to latitude 32°43′22.5″ N., longitude 117°13′29.6″ W.; thence southwesterly to latitude 32°43′19.0″ N., longitude 117°13′32.6″ W.; thence southeasterly to the point of beginning.

(f) *Area A–3.* In North San Diego Bay, the Laurel Street Roadstead Anchorage, the water area enclosed by a line beginning at latitude 32°43′30.5″ N., longitude 117°10′28.5″ W.; thence southwesterly to latitude 32°43′29.8″ N., longitude 117°10′34.2″ W.; thence southwesterly to latitude 32°43′25.8″ N., longitude 117°10′36.1″ W.; thence southerly to latitude 32°43′20.2″ N., longitude 117°10′36.1″ W.; thence westerly to latitude 32°43′20.2″ N., longitude 117°10′52.9″ W.; thence northeasterly to 32°43′29.8″ N., longitude 117°10′48.0″ W., thence northeasterly following a line parallel to, and 200 feet bayward of, the shoreline of San Diego Bay adjoining Harbor Drive to the point of beginning.

(g) *Area A–4.* In Central San Diego Bay, the Bay Bridge Roadstead Anchorage, the water area enclosed by a line beginning at latitude 32°41′32.1″ N., longitude 117°09′43.1″ W.; thence southwesterly to latitude 32°41′19.1″ N., longitude 117°09′46.1″ W.; thence southeasterly to latitude 32°41′17.8″ N., longitude 117°09′44.3″ W.; thence southeasterly to latitude 32°41′14.9″ N., longitude 117°09′37.9″ W.; thence northeasterly to latitude 32°41′26.9″ N., longitude 117°09′35.1″ W., thence southwesterly to the point of beginning.

(h) *Area A–5.* In Central San Diego Bay, the Glorietta Bay Anchorage, the water area enclosed by a line beginning at latitude 32°40′42.2″ N., longitude 117°10′03.1″ W.; thence southwesterly to latitude 32°40′41.2″ N., longitude 117°10′06.6″ W.; thence northwesterly to latitude 32°40′46.2″ N., longitude 117°10′15.6″ W.; thence northeasterly to latitude 32°40′46.7″ N., longitude 117°10′14.1″ W.; thence southeasterly to the point of beginning.

(i) *Area A–6.* In Fiddler's Cove, the water enclosed by a line beginning at latitude 32°39′10.4″ N., longitude 117°08′49.4″ W.; thence northwesterly to latitude 32°39′14.9″ N., longitude 117°08′51.8″ W.; thence northeasterly to latitude 32°39′17.6″ N., longitude 117°08′47.5″ W.; thence northwesterly to latitude 32°39′19.8″ N., longitude 117°08′48.8″ W.; thence northeasterly to latitude 32°39′24.4″ N., longitude 117°08′41.4″ W.; thence southeasterly to latitude 32°39′15.7″N., longitude 117°08′36.0″ W.; thence southwesterly to the point of beginning.

Note: This area is located on Federal property owned by the United States Navy, and it is reserved for active duty military, their dependents, retirees, and DOD employees only.

(j) *Area A–8.* In South San Diego Bay, the Sweetwater Anchorage, the water enclosed by a line beginning at latitude 32°39′12.2″ N., longitude 117°07′45.1″ W.; thence easterly to latitude 32°39′12.2″ N., longitude 117°07′30.1″ W.; thence southerly to latitude 32°38′45.2″ N., longitude 117°07′30.1″ W.; thence westerly to latitude 32°38′45.2″ N., longitude 117°07′45.1″ W.; thence northerly to the point of beginning.

(k) *Area A–9.* In North San Diego Bay, the Cruiser Anchorage, the water enclosed by a line beginning at latitude 32°43′35.9″ N., longitude 117°11′06.2″ W.; thence southwesterly to latitude 32°43′31.5″ N., longitude 117°11′13.2″ W.; thence southeasterly to latitude 32°43′28.9″ N., longitude 117°11′11.0″ W.; thence southeasterly to latitude 32°43′25.9″ N., longitude 117°11′07.7″ W.; thence northeasterly to latitude 32°43′34.8″ N., longitude 117°11′03.2″ W., thence northwesterly to the point of beginning. All coordinates in this section use Datum: NAD 83.

Note: Mariners anchoring in these anchorages, excluding Anchorage A–6, should consult applicable local ordinances of the San Diego Unified Port District. Temporary floats or buoys for marking anchors are allowed. Fixed moorings, piles or stakes are prohibited. All moorings shall be positioned so that no vessel, when anchored, shall at any time extend beyond the limits of the area. See Captain of the Port Notice 6–97, a copy of which can be obtained by calling (619) 683–6495.

Dated: March 20, 1998.

J.C. Card,

Vice Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 98–8959 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300639; FRL–5784–4]

RIN 2070–AB78

Rimsulfuron (N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time limited tolerance for residues of rimsulfuroron in or on tomatoes. E.I.duPont de Nemours and Company, Inc. requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–70).

DATES: This regulation is effective April 6, 1998. Objections and requests for hearings must be received by EPA on or before June 5, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300639], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300639], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by

sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300639]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division [7505C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 20, 1998 (63 FR 8635–8644)(FRL–5768–9), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 6F4706 for tolerance by E.I. duPont de Nemours and Company, Inc. This notice included a summary of the petition prepared by E.I. duPont de Nemours and Company, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.478 be amended by establishing a tolerance for residues of the herbicide rimsulfuron, in or on tomatoes at 0.1 ppm. During the course of the review the Agency determined that the data supported a tolerance of 0.05 ppm, therefore, the Agency is establishing a tolerance of 0.05 ppm in tomatoes.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end

residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of rimsulfiuron (*N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonaminde) and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of rimsulfuron on tomatoes at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by *N*-(4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) are discussed below.

1. Several acute toxicology studies placing technical rimsulfuron in toxicity category III for acute dermal toxicity and primary eye irritation and toxicity category IV for acute oral toxicity, acute inhalation toxicity and primary dermal irritation.

2. A subchronic feeding study in dogs with a no-observed-effect level (NOEL) of 9.63 milligrams/kilogram/day (mg/kg/day) in males and 10.6 mg/kg/day in females.

3. A subchronic feeding study in rats with a NOEL of 102 mg/kg/day in males and 120 mg/kg/day in females.

4. A rat developmental study with a developmental NOEL of greater than 6,000 mg/kg/day, the highest dose tested.

5. A rabbit developmental study with a developmental NOEL of 500 mg/kg/day.

6. A two-generation rat reproduction study with a reproductive NOEL of 165 mg/kg/day for males and 264 mg/kg/day for females.

7. An *in vitro* gene mutation assay (CHO/HGPRT) with no evidence of mutagenicity with or without activation.

8. An *in vitro* unscheduled DNA synthesis in primary rat hepatocytes with no DNA damage or induced repair evident.

9. A mammalian cell cytogenics (Human Lymphocytes) assay--not clastogenic in human lymphocytes with or without activation.

10. An *in vivo* micronucleus assay in mice--did not induce micronucleated polychromatic erythrocytes.

11. An *in vivo* micronucleus test in mice--no significant differences in the frequency of micronucleated cells were noted in bone marrow cells.

12. A 1–year dog feeding study with a NOEL of 1.6 mg/kg/day in males and 86.5 mg/kg/day in females. Due to questionable biological significance of the effects at 81.8 mg/kg/day in males, the Heath Effects Division's Hazard Identification Assessment Review committee determined the dose of 81.8 mg/kg/day to be the NOEL only for risk assessment purposes.

13. An 18–month mouse chronic feeding/carcinogenicity study with a NOEL of 351 mg/kg/day in males and 488 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 1,127 mg/kg/day in males and 1,505 mg/kg/day in females, the highest dose tested.

14. A 2–year rat chronic feeding/carcinogenicity study with a NOEL of

11.8 mg/kg/day in males and 163 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 414 mg/kg/day in males and 569 mg/kg/day in females, the highest dose tested.

Based on a NOEL of 81.8 mg/kg/day in the 1–year dog feeding study and a safety factor of 100, the reference dose (RfD) has been set at 0.818 mg/kg/day. This tolerance plus the existing tolerances have a theoretical maximum residue contribution of 0.00452 mg/kg/day and would utilize less than 0.19% of the reference dose (RfD) for children 1–6 years old. There are no population subgroups for which the percentage of the RfD utilized is greater than for children 1–6 years old.

B. Toxicological Endpoints

1. *Acute toxicity*. No toxicological effects attributable to a single exposure (dose) were identified in any of the studies. Therefore, this risk assessment is not required.

2. *Short- and intermediate-term toxicity*. EPA has concluded that available evidence doe not indicate any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity*. EPA has established the RfD for *N*-((4,6-dimethyloxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide at 0.818 mg/kg/day. This RfD is based on the systemic NOEL of 81.8 mg/kg/day for males in a 1–year toxicity study in beagle dogs.

4. *Carcinogenicity*. On July 29, 1994 the HED RfD/ Peer Review classified rimsulfuron as a ''Group E'' chemical. The HED Hazard Identification Assessment Review Committee (HIARC) classified rimsulfuron as ''not likely'' human carcinogen according to EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.478) for the residues of rimsulfuron, in or on corn, field, fodder; corn, field, forage; corn, field, grain; and potato, tubers at 0.1 ppm. The petitioner has proposed a tolerance of 0.1 ppm for tomatoes. The Agency has determined that a tolerance of 0.05 ppm is appropriate. Risk assessments were conducted by EPA to assess dietary exposures and risks from *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. An acute risk assessment is not required as the available studies did not indicate any evidence of significant toxicity from acute exposure.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, the Agency has made very conservative assumptions--100% of tomatoes and all other commodities having rimsulfuron tolerances will contain rimsulfuron residues and those residues will be at the level of the tolerance. These assumptions will result is an overestimate of dietary exposure.

Thus, in making a safety determination for this tolerance, the Agency is taking into account this conservative exposure assessment.

The existing tolerances (published and pending) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to less than 1% of the RfD for the U.S. population (48 states). There are no population subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water— Chronic exposure and risk*. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic levels of concern (LOC) for rimsulfuron in drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and consumption of 2 liters of water per day, the Agency's level of concern from chronic exposure in drinking water is 29,000 parts per billion (ppb) for adults. For children (10 kg and consuming 1 liter of water per day) the level of concern for drinking water is 8,200 ppb.

Because all the Agency's estimates for the levels of rimsulfuron in drinking water were less than 2 ppb, potential residues in drinking water are not greater than the Agency's level of concern.

3. *From non-dietary exposure.* There is no non-food use of rimsulfuron currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, *N*-(4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) does not appear

to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that *N*-(4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute risk assessment is not required as the available studies did not indicate any evidence of significant toxicity from acute exposure.

2. *Chronic risk.* Using the TMRC exposure assumptions described in Unit II. C. of this preamble, EPA has concluded that aggregate exposure to *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide from food will utilize < 1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl(-2-pyridinesulfoonamide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. A short and intermediate-term risk assessment is not required as available studies did not indicate any evidence of significant toxicity from short or intermediate-term exposure.

E. Aggregate Cancer Risk for U.S. Population

EPA concludes that rimsulfuron does not pose a carcinogenic risk as available studies did not provide any evidence of carcinogenicity for rimsulfuron.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental and Reproductive toxicity studies.* The prenatal developmental toxicity data demonstrated no indication of increased sensitivity of rabbits to *in utero* exposure to rimsulfuron. In addition, the multigeneration reproduction study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. In both studies, the maternal LOEL was less than or equivalent to the NOEL for effects in the offspring.

For chronic dietary risk assessment, the Agency determined the 10x factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. Removal of the 10X is based on a complete database. The present UF of 100 (10X each for inter-and intra-species variability) is adequate to ensure protection of these population subgroups from exposure to rimsulfuron for reasons stated below:

a. There is no indication of increased sensitivity to young animals following pre- and/or post-natal exposure to rimsulfuron.

b. There is no increased sensitivity to fetuses as compared to maternal animals following in utero exposures in rats and rabbits.

c. There is no increased sensitivity to pups as compared to adults in a multi-generation reproduction toxicity study in rats.

d. Considering the overall toxicity profile of rimsulfruon, it was noted that toxic effects were only observed at or near the Limit Dose with all short- and long-term studies.

2. *Acute risk.* EPA has concluded that there is reasonable certainity of no harm from acute exposure as the available studies did not indicate any evidence of significant toxicity from acute exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide from food will utilize < 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to *N*-((4,6-dimethoxpyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide residues.

4. *Short- or intermediate-term risk.* EPA has concluded that there is reasonable certainity of no harm from short or intermediate-term exposure as the available studies did not indicate any evidence of significant toxicity from such exposure.

III. Other Considerations

A. Metabolism in Plants and Animals

The Agency has concluded that only rimsulfuron needs to be regulated and assessed for dietary assessment in tomatoes. The Agency has previously concluded that the nature of the residue in corn and potatoes is adequatly understood. Metabolism of rimsulfuron proceeds primarily by two pathways:

1. Contraction of the sulfonylurea bridge resulting in the formation of IN–70941 and minor amounts of IN–70942 is the major route; and,

2. Hydrolysis (cleavage) of the sulfonylurea bridge to yield IN–J290 and IN–E9260 is the minor route.

The nature of the residue in animals is adequately understood based on acceptable ruminant and poultry metabolism studies. The two pathways of E9636 metabolism in ruminants and poultry are consistent with those demonstrated in field corn, and potatoes.

B. Analytical Enforcement Methodology

An adequate analytical method, high-pressure liquid chromatography using a UV detector, is available for enforcement purposes. The analytical method for enforcing these tolerances has been submitted for publication in the Pesticide Analytical Manual, Vol II (PAM II). Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in PAM, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5973).

C. Magnitude of Residues

Based on available field trial results, the appropriate tolerance level for rimsulfuron residues in or on tomatoes is 0.05 ppm, and no tolerances for rimsulfuron residues are required for tomato processed commodities.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for rimsulfuron in or tomatoes. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico are not an issue for these petitions.

E. Rotational Crop Restrictions

No tolerances for inadvertent residues of rimsulfuron are required in rotational crops. The rotational crop restrictions contained on the proposed Shadeout label (EPA 352–556) are adequate.

IV. Conclusion

Therefore, the tolerance is established for residues of rimsulfuron in/or on tomatoes at 0.05 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 5, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300639] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* , or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the

Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Bussiness Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and oher required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.478 is revised to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues

(a) *General.* Tolerances are established for residues of the herbicide rimsulfuron (*N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, fodder	0.1
Corn, field, forage	0.1
Corn, field, grain	0.1
Potatoes, tubers	0.1
Tomatoes	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–9068 Filed 4–2–98; 1:56 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–149 and 96–61; DA 98–556]

Independent LECs Providing In-Region, Interstate, Interexchange Services on an Integrated Basis; Delay of Deadline

AGENCY: Federal Communications Commission.

ACTION: Final rule; partial stay.

SUMMARY: The Common Carrier Bureau of the Federal Communications Commission has released an Order staying the provision for the April 18, 1998 deadline by which independent LECs providing in-region, interstate, interexchange services on an integrated basis must comply with the Commission's requirement that they provide these services through a separate affiliate. Petitions for reconsideration of the separate affiliate requirement are currently under consideration by the Commission and may not be decided by the April 18, 1998 deadline for compliance. To ensure that independent LECs do not incur compliance costs while the possibility of changes to the requirement still exists, the Order released by the Common Carrier Bureau stays the portion of the rule that provides the deadline for compliance until 60 days after the release of a Commission reconsideration order addressing this issue.

DATES: Effective March 24, 1998, 47 CFR 64.1903(c) published July 3, 1997 (62 FR 35974) is stayed until 60 days after the release of the Commission's order on reconsideration in CC Docket Nos. 96–149 and 96–61. The Commission will publish the date on which the stay expires in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–7152.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

In the *LEC Classification Order,* 62 FR 35974, July 3, 1997, which was released on April 18, 1997, the Commission revised its regulatory treatment of Bell Operating Companies (BOCs) and independent local exchange carriers (LECs) that provide domestic, interstate, interexchange, and international services. The Common Carrier Bureau has released this Order to stay the April 18, 1998 deadline by which independent LECs currently providing in-region, interstate, interexchange services on an integrated basis must comply with the Commission's requirement that they provide these services through a separate affiliate.

In the *LEC Classification Order,* the Commission concluded that independent LECs must provide in-region, interstate, interexchange services through a separate affiliate that satisfies the separation requirements enumerated in the *Fifth Report and Order,* 49 FR 34824, September 4, 1984. The Commission recognized that independent LECs providing these services on an integrated basis face greater costs of complying with the *Fifth Report and Order* separation requirements than those already providing such services on a separated basis. Accordingly, the Commission allowed independent LECs providing in-region, interstate, interexchange services on an integrated basis one year from the date of release of the *LEC Classification Order* (i.e., until April 18, 1998) to comply with the *Fifth Report and Order* separation requirements (47 CFR 64.1903(c).)

Following the release of the *LEC Classification Order,* a number of petitioners sought reconsideration of a variety of issues, including the decision

to apply the *Fifth Report and Order* separation requirements to independent LECs providing in-region, interstate, interexchange services. These petitions currently are under consideration by the Commission and may not be decided by April 18, 1998, the deadline for compliance with the separate affiliate requirement. We find that it is in the public interest for the Commission to address and resolve, prior to the deadline for compliance, petitioners' claim that this requirement should not be applied to independent LECs, so such LECs need not incur compliance costs while the possibility of changes to this requirement still exists. Accordingly, we find good cause to stay § 64.1903(c) which provides the date by which independent LECs providing in-region, interstate, interexchange services must comply with the *Fifth Report and Order* separation requirements until 60 days after release of a Commission reconsideration order addressing this issue.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 98–8932 Filed 4–3–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

Global Positioning System (GPS) Technology

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of interpretation; request for participation in pilot demonstration project.

SUMMARY: The FHWA believes global positioning system (GPS) technology and many of the complementary safety management computer systems currently being used by the motor carrier industry, provide at least the same degree of monitoring accuracy as the ''automatic on-board recorders'' allowed by the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 395.15. Accordingly, the FHWA is announcing a voluntary program under which a motor carrier with GPS technology and related safety management computer systems may enter into an agreement with the FHWA to use such systems in a pilot demonstration project to record and monitor drivers' hours of service in lieu of complying with the handwritten ''records of duty status'' requirement of the FMCSRs, 49 CFR 395.8. Consistent with the President's initiatives in reinventing government and regulatory reform, the project is intended to demonstrate whether the motor carrier industry can use the technology to improve compliance with the hours-of-service requirements in a manner which promotes safety and operational efficiency while reducing paperwork requirements.

DATES: This interpretation is effective April 6, 1998. Applications for participation in the pilot demonstration project will be accepted until October 5, 1998.

ADDRESSES: Written applications should be mailed to Office of Motor Carrier Research and Standards (HCS–10), Federal Highway Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan L. Price, Office of Motor Carrier Safety and Technology, (202) 366–5720, Mr. Neill L. Thomas, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Application requests and specific questions regarding this pilot demonstration project may also be directed to the contact person(s) named in this notice or the Division or Regional Offices of the FHWA in your State.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo/su__docs.

Background

On September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers, at their option, to use certain automatic on-board recording devices to record their drivers' records of duty status in lieu of the required handwritten records of duty status. This provision is now codified at 49 CFR 395.15. Many motor carriers that employed that technology found that their compliance with the hours-of-service regulations improved. New technologies are emerging, however, and the narrowly crafted on-board recorder provision is becoming obsolete. Before considering changes to the rule, the FHWA believes it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations. The FHWA also hopes to demonstrate the safety and economic advantages to the motor carrier industry when the technology is used to reduce the prescriptive paperwork and recordkeeping requirements of the hours-of-service regulations (49 CFR part 395). The FHWA intends to carefully evaluate results of the pilot demonstration project. Should the results prove to be positive and the safety potential of the involved technologies confirmed, the agency will consider proposing revisions to the FMCSRs.

The FHWA is aware of the benefits of GPS technology to monitor and control drivers' compliance with the hours-of-service regulations. Although § 395.15 was originally promulgated for a specific technology, the FHWA believes GPS technology and many of the complementary safety management computer systems currently being used by the motor carrier industry provide at least the same degree of monitoring accuracy, while substantially complying with the requirements of § 395.15. Accordingly, the FHWA will allow volunteer motor carriers to use GPS technology to meet the ''automatic on-board recorder'' provisions of § 395.15 in order to demonstrate the safety potential of this technology. The FHWA invites motor carriers that believe their GPS technology programs meet the requirements set forth in this document to seek permission to participate in this demonstration project.

The conditions that will apply during the demonstration project are included in a question and answer format that expresses the interpretation.

Premise: Section 395.2 of the FMCSRs defines an ''automatic on-board recording device'' as ''an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.'' Section 395.15 of the FMCSRs provides motor carriers the authority to use ''automatic on-board recording devices'' to record

their drivers' hours-of-service in lieu of complying with the handwritten record of duty status requirements of § 395.8.

There are limited provisions of § 395.15 that are not entirely adaptable to GPS technology and related computer systems. The table below sets out those provisions and then describes what the GPS technology and related computer systems have available to satisfy, or go beyond, what is required by § 395.15.

49 CFR 395.15	GPS technology
§ 395.15(a)(1) permits use of ''Automatic on-board recording device'' (OBR) as defined at 49 CFR 395.2: capable of recording driver's duty status accurately and automatically * * * must be integrally synchronized with specific CMV functions * * * must record engine use, road speed, miles driven (axle revolutions), date and time of day (internal clock).	Records driver's duty status accurately and automatically * * * not ''integrally synchronized'' with specific CMV functions * * * Computes distance traveled by vehicle position readings (latitude/longitude) provided by satellite * * * Road speed estimated by time elapsed between vehicle position readings.
§ 395.15(b)(3) Support systems: must provide information about on-board sensor failures and identify edited data.	Support systems provide information about on-board system failures and identify edited data.
§ 395.15(f) Reconstruction of records of duty status: Drivers must note any failure of automatic OBRs and reconstruct records of duty status (RODS) for current day and past 7 days * * * must prepare handwritten RODs until device is operational.	If communications to CMV fail, vehicle position and sensor readings continue to be recorded by satellite and sent to terminal * * * retransmitted to CMV after communications are restored * * * Drivers can immediately request, by telephone, the previous 7 days RODS be sent via facsimile to roadside location * * * unnecessary to reconstruct RODS.
§ 395.15(h)(1) Submission of RODS: Driver must submit, electronically or by mail, to motor carrier, each RODS within 13 days following completion of each RODS.	Provides motor carrier automatically with access to all driver and vehicle records on a continual, ''real-time,'' basis.
§ 395.15(h)(2): Driver must review and verify all entries are accurate before submission to motor carrier.	Motor carrier furnishes driver with duty status summary * * * duty status entries available to driver for review and verification daily.
§ 395.15(h)(3): Submission of RODS certifies all entries are true and correct.	Driver's verification message certifies all entries are true and correct.
§ 395.15(i)(1): Motor carrier must obtain manufacturer's certificate that the design of OBR meets requirements.	The FHWA provides written approval.
§ 395.15(i)(2): Duty status may be updated only when CMV is at rest, except when registering time crossing State boundary.	Company policy prohibits any entry while CMV is in motion * * * records violations automatically * * * takes remedial action.
§ 395.15(i)(3): OBR and support systems must be, to the maximum extent practicable, tamper proof.	Provides time, location, and sensor signals by satellite service. System provides audit trails of all keyboard interactions.
§ 395.15(i)(4): OBR must warn driver visually and/or audibly the device has ceased to function.	Provides audible and/or visible warnings to CMV driver and motor carrier.
§ 395.15(i)(7): OBR and support systems must identify sensor failures and edited data.	Provides audit trails of all sensor failures and edited data.
§ 395.15(i)(8): OBR must be maintained and recalibrated in accordance with the manufacturer's specifications.	Performs maintenance in accordance with manufacturer's specifications * * * Renders calibration unnecessary.

Question: May Global Positioning System (GPS) technology and complementary safety management computer systems be used to meet the ''automatic on-board recording device'' provisions of § 395.15?

Guidance: As written, § 395.15 is not consistent in all details with newer technologies such as GPS. However, the FHWA believes the GPS technology and complementary safety management computer systems currently being used by specific motor carriers—for example Werner Enterprises, Inc. (Werner)—substantially conform with the requirements of § 395.15. More importantly these systems are capable of providing a superior proactive, ''real-time,'' approach to monitoring and controlling drivers'' hours-of-service. Werner is entering into an agreement with the FHWA to utilize GPS technology in lieu of handwritten records of duty status. Werner and any other motor carrier that wishes to enter into a similar agreement must have GPS technology and complementary safety management computer systems which meet the conditions specified in paragraphs (a) through (j).

(a) *Authority to use GPS technology.*

(1) The motor carrier may require drivers to use GPS technology to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8.

(2) Drivers required by motor carriers to use GPS technology shall use such devices to record their hours of service.

(b) *Information requirements.* The following five requirements must be observed by the motor carrier and driver.

(1) The on-board GPS technology shall produce, upon demand, a driver's hours-of-service chart, in an electronic display or printout, showing the time and sequence of duty status changes, including the drivers' starting time at the beginning of each day.

(2) The on-board technology shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with handwritten or printed records of duty status for the previous 7 consecutive days.

(3) Computer support systems used in conjunction with GPS technology at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours-of-service records, including the information specified in 49 CFR 395.8(d). The computer support systems must also be capable of identifying system failures and edited data.

(4) The driver shall have in his/her possession and/or make available for inspection while on duty, records of duty status for the previous 7 consecutive days. These records shall consist of information stored in and retrievable from the GPS technology, handwritten records, computer generated records, or any combination thereof.

(5) All hard copies of the driver's records of duty status must be signed by the driver. The driver's signature certifies the information contained thereon is true and correct.

(c) *Duty Status.* The required thirteen duty status and additional information items must be recorded as follows:

(1) ''Off duty'' or ''OFF'', or by an identifiable code or character.

(2) ''Sleeper berth'' or ''SB'', or by an identifiable code or character (only if the sleeper berth is used).

(3) ''Driving'' or ''D'', or by an identifiable code or character.

(4) ''On-duty not driving'' or ''ON'', or by an identifiable code or character.

(5) Date.

(6) Total miles driving today.

(7) Truck or tractor and trailer number.

(8) Name of carrier.

(9) Main office address.

(10) 24-hour period starting time (e.g., midnight, 9:00 AM, noon, 3:00 PM).

(11) Name of co-driver.

(12) Total hours.

(13) Shipping document number(s), or name of shipper and commodity.

(d) *Location of duty status change.* For each change of duty status (e.g., the place and time of reporting for work, starting to drive, on-duty not driving, and where released from work), the geographic coordinates must be recorded and automatically converted to city and State locations.

(e) *Reconstruction of records of duty status.* Drivers must immediately note any failure of the GPS technology or complementary safety management computer systems. Upon request of enforcement officials, drivers must contact their motor carriers and request facsimile copies of their ''records of duty status'' for the previous 8 days.

(f) *On-board information.* An information packet containing the following three items must be carried on board the vehicle, and available for review, at all times:

(1) An instruction sheet describing in detail how data is stored and retrieved from the GPS technology.

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip.

(3) A copy of this interpretation, and a letter from the FHWA certifying that the motor carrier's GPS technology and complementary safety management computer systems substantially comply with the provisions of 49 CFR 395.15.

(g) *Driver's verification of records of duty status.*

(1) The driver shall review and verify that all entries provided to him/her by the GPS technology are accurate.

(2) The driver's verification message certifies that all entries made by the driver or generated by GPS technology are true and correct.

(h) *Performance of GPS technology.* Motor carriers that use GPS technology for recording their drivers' records of duty status in lieu of the handwritten record shall ensure the following five requirements are met.

(1) The GPS technology and complementary safety management computer systems are, to the maximum extent practicable, tamper proof and do not permit altering of the information collected concerning the driver's hours of service;

(2) GPS technology must have the capability to display the following six items.

(i) Driver's total hours of driving for the current day.

(ii) Driver's total hours on duty for the current day.

(iii) Driver's miles driving for the current day.

(iv) Driver's hours on duty for the prior 7 consecutive days, including the current day.

(v) Driver's total hours on duty for the prior 8 consecutive days, including the current day.

(vi) The sequential changes in the driver's duty status and the times the changes occurred for each driver using the device.

(3) The GPS technology and complementary safety management computer systems are capable of recording separately each driver's duty status when there is a multiple-driver operation;

(4) The motor carrier's drivers are adequately trained regarding the proper operation of the GPS technology.

(5) The motor carrier must maintain a second (back-up) copy of the electronic hours-of-service records, by month, in a different physical location than where the original data is stored.

(i) *Rescission of authority.* Consistent with 49 CFR 395.15(j), the FHWA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements of 49 CFR 395.8 if the FHWA has determined any one of the following three events has occurred.

(1) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FHWA.

(2) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours-of-service limitations set forth in 49 CFR 395.3.

(3) The motor carrier or driver has tampered with or otherwise abused the GPS technology and/or the complementary safety management computer systems for purposes contrary to the hours-of-service rules set forth in 49 CFR part 395.

(j) *Termination of Participation.* The motor carrier may terminate its participation upon written notice to the FHWA.

Question: How will the success of the pilot demonstration project be evaluated?

Guidance: The FHWA plans to evaluate the demonstration project in the following four ways:

(a) Level of compliance with the hours-of-service regulations.

(b) Accident involvement.

(c) Paperwork burden reduction.

(d) Improvements in operational efficiency (i.e., costs associated with preparing, reviewing, and retaining hours-of-service data).

As stated previously, the FHWA intends to carefully evaluate results of the pilot demonstration project. Should the results prove to be positive and the safety potential of the involved technologies confirmed, the agency will consider proposing revisions to the FMCRs.

(5 U.S.C. 553(b); 23 U.S.C. 315; 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48)

Issued on: March 25, 1998.

Gloria J. Jeff,

Deputy Federal Highway Administrator.

[FR Doc. 98–8882 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–97–3130]

RIN 2127–AG72

Light Truck Average Fuel Economy Standard, Model Year 2000

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 2000. The issuance of the standard is required by statute. Pursuant to section 322 of the fiscal year (FY) 1998 DOT Appropriations Act, the light truck standard for MY 2000 is 20.7 mpg.

DATES: The amendment is effective May 6, 1998. The standard applies to the 2000 model year. Petitions for reconsideration must be submitted within 45 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator,

National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Otto G. Matheke, III, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, NHTSA shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Pursuant to this authority, the agency has set light truck CAFE standards through MY 1999. See 49 CFR 533.5(a). The standard for MY 1999 is 20.7 mpg.

NHTSA began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

NHTSA thereafter issued a notice of proposed rulemaking.

(NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg standard was adopted by a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, NHTSA issued a final rule (62 FR 15859) establishing light truck fuel economy standards for the 1999 model year. This final rule was not preceded by a Notice of Proposed Rulemaking (NPRM). The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act precluded the issuance of any standards other than those set for the 1998 model year. Because it had no discretion, NHTSA determined that issuing a NPRM was unnecessary and contrary to the public interest.

On October 27, 1997, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1998 was enacted. Pub. L. 105–66. Section 322 of that Act provides:

> Sec. 322. None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for NHTSA to set the MY 2000 standard is approximately April 1, 1998. However, the agency cannot promulgate such a standard without the expenditure of funds, and it may not spend any funds in violation of the terms of Section 322 of the FY 1998 Appropriations Act.

The agency notes that the language contained in Section 322 of the FY 1998 Appropriations Act is identical to that found in Section 330 of the FY 1996 Appropriations Act and Section 323 of the FY 1997 Appropriations Act. The adoption of identical language in the FY 1998 Act compels the conclusion that Congress considered the agency's prior interpretation of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted in the previous year.

Examination of the legislative history of the FY 1998 Act further supports this view. The language contained in Section 322 remained unmodified as part of H.R. 2169, which was eventually enacted as the FY 1998 Act. Section 322 was reported by the House Committee on Appropriations as part of H.R. 2169. The Committee print of the House Report to accompany H.R. 2169 stated, at page 100, that the section precluded NHTSA from prescribing CAFE standards that differ from those set for the 1999 model year.

As explained above, Section 322 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MYs 1998 and 1999. As was the case with the establishment of the MY 1999 standard, the agency has once again not issued a Notice of Proposed Rulemaking (NPRM) and has therefore not offered an opportunity for notice and comment prior to issuance of the MY 2000 light truck standard. In NHTSA's view, the express directive contained in the FY 1998 Appropriations Act precludes the agency from exercising any discretion in setting CAFE standards for the 2000 model year. As NHTSA cannot expend any funds to set the 2000 standard at any level other than the MY 1999 standard, providing an opportunity for notice and comment would be unnecessary and contrary to the public interest. Accordingly, NHTSA is setting the MY 2000 light truck CAFE standard at the MY 1999 level of 20.7 mpg.

II. Impact Analyses

A. Economic Impacts

The agency has not prepared a final economic assessment because of the restrictions imposed by Section 322 of the FY 1998 DOT Appropriations Act.

All past fuel economy rules, however, have had economic impacts in excess of $100 million per year. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures. Although the agency has no discretion under the statute (as well as with respect to the costs it imposes), NHTSA is treating this rule as ''economically significant'' under Executive Order 12866 and ''major'' under 5 U.S.C. 801.

B. Environmental Impacts

NHTSA has not conducted an evaluation of the impacts of this action under the National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this notice.

C. Impacts on Small Entities

NHTSA has not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking is not a ''rule'' as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. Furthermore, as Congress has eliminated the agency's discretion by precluding any action other than the one taken in this notice, NHTSA would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a ''small business'' under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, NHTSA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The agency notes that Section 322 of the FY 1998 DOT Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as the agency is precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. NHTSA has therefore not prepared a written assessment of this rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Department of Energy Review

In accordance with section 49 U.S.C. § 32902(j), NHTSA submitted this final rule to the Department of Energy for review. That Department made no unaccommodated comments.

III. Conclusion

Based on the foregoing, the agency is establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2000 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

PART 533—[AMENDED]

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. § 533.5(a) is amended by revising Table IV to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7

* * * * *

Issued On: March 30, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–8883 Filed 3–31–98; 5:05 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 022398A]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice of aboriginal subsistence whaling quotas.

SUMMARY: NMFS announces aboriginal subsistence whaling quotas and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 1998, the quotas are 77 bowhead whales struck, and 5 gray whales landed. These quotas and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC) and the harvest of gray whales

by members of the Makah Indian Tribe (Tribe). These are initial quotas that will remain in effect for the 1998 season unless they are revised as a result of the completion of arrangements with the Russian Federation. Any revisions to the quotas will be published in the **Federal Register**.

DATES: Effective April 6, 1998. Comments on the aboriginal subsistence whaling quotas and related limitations must be received by May 6, 1998.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (WCA), 16 U.S.C. 916 *et seq.*, and by rules at 50 CFR part 230. The rules require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock, and gray whales from the Eastern stock in the North Pacific. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups, Alaska Eskimos and Chukotka Natives in the Russian Far East. The gray whale quota was also based on a joint request by the Russian Federation and the United States, again with documentation of the needs of two Native groups, the Chukotka Natives and the Makah Indian Tribe in Washington State.

These actions by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales, and by the Tribe for gray whales, as discussed in greater detail in this document (see ''Background information'' and ''1997 Annual Meeting''). The harvests will be conducted in accordance with cooperative agreements between NOAA and the AEWC, and between NOAA and the Makah Tribal Council (Council); these agreements are the means by which NOAA recognizes the AEWC and the Tribe as Native American whaling organizations under 50 CFR part 230.

Quotas

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 1998–2002, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1995–97 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 1997 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 1998 is 82 (67 + 15). Because the quota approved by the IWC in 1997 was based in part on a request for five bowheads a year for the Chukotka people, the 1998 quota for the AEWC is 77 strikes (82 - 5). The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC.

The United States and the Russian Federation plan to conclude an arrangement to ensure that the total quota of bowhead whales landed and struck will not exceed the quotas set by the IWC.

The IWC also set a 5-year block quota (1998–2002) of 620 gray whales, with an annual cap of 140 animals taken. The IWC regulation does not address the number of allowed strikes. The requested quota and accompanying documentation assumed an average annual harvest of 120 whales by the Chukotka people and an average annual harvest of 4 whales by the Makah Indian Tribe. In accordance with the agreement between NOAA and the Council, the Makah hunters will take no more than five gray whales in any 1 year. The Council will manage the harvest to use no more than 33 strikes over the 5-year period, and will take measures to ensure that the overall ratio of struck whales to landed whales does not exceed 2:1. Because the U.S. request for a gray whale quota was not based on the needs of separate whaling villages, but rather on the needs of the Tribe as a whole, the Council will allocate the quota among whaling captains to whom permits have been issued.

The United States and the Russian Federation will also conclude an arrangement to ensure that the block quota and annual cap for gray whales are not exceeded.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR part 230) contain a number of other provisions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains, or crew under the control of those captains, may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization (the AEWC or the Council), as well as applicable rules in part 230. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, the season has been closed, or their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Background Information

The United States is a member of the IWC, the body established by the International Convention for the Regulation of Whaling (ICRW). U.S. participation in the IWC and management of whaling activities under U.S. jurisdiction are governed by the WCA, which requires that relevant IWC regulations be submitted by the Secretary for publication in the **Federal Register**. This notice fulfills that requirement.

The IWC's primary function is the adoption of regulations (called the ''Schedule''), which are considered an integral part of the Convention. Since the late 1970s, the IWC has set quotas for the aboriginal subsistence harvest of whales from several stocks, including bowhead whales from the Bering-Chukchi-Beaufort Seas stock and gray whales from the Eastern stock in the North Pacific. Although the IWC sets quotas for the aboriginal subsistence harvest of these stocks at the request of a Contracting Government, the quotas are not assigned to a particular group of aborigines or to a particular country. The reason for this is found in Article V.2.c of the ICRW, which specifies that regulations may not ''allocate specific quotas to any factory or ship or land station or to any group of factory ships or land stations.''

During the 2 decades that the IWC has set quotas for aboriginal whaling, it has been the case that only one Contracting Government has made a request for a quota from any one stock. During the 1980s, however, up to 10 animals of the gray whale quota based on the Soviet Union's request were understood by the IWC to be available for take by Alaska Eskimos, through an informal

arrangement between the Soviet Union and the United States. This arrangement was modeled on the bilateral or multilateral arrangements of Contracting Parties to allocate commercial quotas set by the IWC before the moratorium on commercial whaling took effect. Catches of gray whales for aboriginal subsistence use by Alaska Eskimos, when they occurred, were reported by the United States each year and were published in the Annual Reports of the IWC. No IWC member objected to these catches.

During these 2 decades, the IWC has never established a mechanism for recognizing the subsistence needs of an aboriginal group, other than by setting a quota based on the documentation of those needs by the Contracting Government. The IWC has never adopted a resolution or taken any other action explicitly recognizing subsistence needs of a particular group. While Alaska Eskimos were taking gray whales in the 1980s, the only indications in the IWC record of the U.S.-Soviet arrangement were brief floor statements noting the existence of the bilateral agreement.

The IWC has developed the practice of setting aboriginal quotas that are in place for 3 or 4 years. For example, the IWC in 1994 set a quota of 140 gray whales for each of the years 1995–97, based on a proposal by the Russian Federation. At the same meeting, the IWC adopted by consensus a proposal by the United States for a total of 204 bowhead whales for the years 1995–98, where an annual cap on strikes was also specified.

In 1996, when the United States first put forward the proposal for a gray whale quota for the Makah Indian Tribe, the U.S. delegation did not ask the Russians to share the existing (1995–97) quota of 140 per year, which had been based on the subsistence needs of the Chukotka people. Instead, it requested an increase in the existing quota; the U.S. proposed to allow an additional take from the same stock of up to five gray whales a year in the years 1997–2000 from waters off the west coast of the United States. This approach was consistent with the U.S. position that each country wishing to establish or continue an aboriginal subsistence hunt must submit its own unique documentation (''needs statement''), justifying its request for the setting of an appropriate quota. While the U.S. proposal had considerable support at the 1996 annual meeting, it did not appear to have the necessary three-quarters majority vote for a Schedule amendment and was withdrawn before a vote was taken.

1997 Annual Meeting

In preparation for the IWC's Annual Meeting in October 1997, the U.S. delegation began considering suggestions from other Commissioners that the United States should find a way to share a gray whale quota with the Russians, preferably a quota lower than the combined requests of 145 per year. This approach had implications for the U.S. position that aboriginal subsistence quotas should be based on unique documentation of the needs of each aboriginal group, as well as on the conservation requirements of each stock.

Because the gray whale quota of 140 per year would expire in 1997, the Russians had to propose a new Schedule amendment at the 1997 annual meeting. Extensions of quotas are not automatic; they require the same three-quarters or consensus vote as any other Schedule amendment. In August 1997 the Russian government submitted to the IWC a request for an annual quota of 140 gray whales for the years 1998–2002. At the same time, the U.S. government stated its intention to propose an amendment to the Schedule for gray whales. Both countries submitted needs statements documenting the subsistence needs of their Native groups. Both governments also indicated they would propose amendments to the Schedule provision on bowhead whales.

As explained, 1997 was the first year when two Contracting Governments were simultaneously requesting quotas from the same stock for purposes of aboriginal subsistence whaling. After extensive discussions with the AEWC about bowhead whales and the Makah Tribe about gray whales, as well as an internal policy review, the U.S. delegation consulted with the Russian delegation on the appropriate formulation of Schedule language, given the Convention's prohibition against allocating quotas to individual countries and the desire expressed by some delegations for a shared quota.

The Russian and U.S. delegations each made a presentation about the needs of their Native groups for gray whales and bowhead whales at the meeting of the IWC's Aboriginal Subsistence Whaling Subcommittee on October 18, 1997. The needs statements were each discussed at considerable length by the Subcommittee.

Following the meeting of the Subcommittee, the two delegations again consulted and decided to submit joint proposals for Schedule amendments for the gray whale and bowhead whale quotas. The joint proposal for a block quota for bowhead whales was adopted by consensus on the afternoon of October 22, 1997.

The joint proposal for a gray whale quota began with the customary introductory language:

> The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Party on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.

The proposal then specified, for the years 1998–2002, that the number of gray whales not exceed 620, provided that the number of gray whales taken in any 1 of the years 1998–2002 not exceed 140.

The two delegations also circulated a written explanation and delivered oral statements demonstrating the basis for the proposed numbers. The 5-year block quota of 620 represented a reduction of 105 from the combined original requests. The total of 620 assumed an average annual harvest of 120 by the Chukotka people and 4 by the Makah Tribe. The joint explanation said that the block quota would be allocated through a bilateral arrangement.

The gray whale proposal was debated in a plenary session on the afternoon of October 22, 1997. Some delegations suggested that an amendment should be made to the introductory portion of the proposal. Debate was then adjourned to allow for consultation among the delegations.

One delegation proposed to the U.S. delegation that the following words be added: ''whose traditional subsistence and cultural needs have been recognized by the International Whaling Commission''. U.S. delegates responded that the words ''by the International Whaling Commission'' were not acceptable, because the IWC had no established mechanism for recognizing such needs, other than adoption of a quota.

At a Commissioners-only meeting the next morning, the U.S. representatives expressed their understanding that adoption of a quota in the Schedule constituted IWC approval, with no further action required. A clear majority of Commissioners then expressed their support for the U.S. approach. When the plenary session resumed, the Chair announced that a consensus had been achieved. The Russia-United States proposal for a gray whale quota was adopted on October 23, 1997, without a vote or further debate, with the addition of the words ''whose traditional aboriginal subsistence and cultural needs have been recognized''.

NOAA therefore concludes that the gray whale quota set by the IWC is available for use, under the limitations set forth above, by members of the Makah Tribe. The Tribe's subsistence and cultural needs have been recognized by the IWC's setting a quota for gray whales based on the documentation of those needs, and by the United States in the NOAA-Council agreement and other documents.

Procedural Matters

Licensing: A question has been raised about the method of issuing licenses to aboriginal hunters. Since 1979, NOAA's rules (at 50 CFR 230.5) have automatically issued a license to whaling captains identified by the relevant Native American whaling organization. The Assistant Administrator for Fisheries, as well as the two organizations, may suspend the license of any captain who does not comply with NOAA's rules.

This rule serves the statutory purposes of identifying hunters who are allowed to take whales in the subsistence harvest; ensuring that hunters have adequate crews, supplies, and equipment; and enforcing applicable rules, including the prohibition against receiving money for participation in the hunt. NOAA relies upon the Native American whaling organizations to make the administrative decision as to the eligibility of whaling captains. The rule thus minimizes Federal interference in the Native American organizations' administration of the subsistence hunt. Over the years, it has proved to be an effective and efficient means of complying with the WCA while allowing self-governance by Native groups.

Environmental assessment: A draft environmental assessment (EA) on the Makah harvest of gray whales was made available for public comment on August 22, 1997. The final EA was completed on October 17, 1997 (see 62 FR 5393). The EA weighed the impacts of the U.S. government's support of the Makah request to continue their traditional practice of whaling, and considered several alternatives. The EA, which incorporated and responded to public comments, concluded that the proposed action would have no significant impact on the human environment.

Monitoring program: NMFS and the IWC have been monitoring the status and population trends of the gray whale for several decades. NMFS and its predecessor agencies have monitored the eastern North Pacific stock of gray whale during its southbound migration since 1952; annual gray whale shore surveys off California were conducted between 1967–68 and 1980–81, and between 1984–85 and 1987–88. NMFS conducted a status review for the gray whale and certain other species in 1984 (49 FR 44774, November 9, 1984) and 1991 (56 FR 29471, June 27, 1991). For the status reviews, NMFS estimated that the eastern North Pacific stock of gray whale was increasing at an annual rate of approximately 2.5 percent, and had recovered to or exceeded its population size prior to commercial exploitation. By the time of the 1991 status review, the estimate of abundance for this stock was 21,113.

With the determination to remove the eastern North Pacific stock of the gray whale from the List of Endangered and Threatened Wildlife, NMFS indicated its intention to implement a 5-year program to monitor the status of this stock, 58 FR 3121 at 3135 (January 7, 1993). The contents of this monitoring program are summarized in 59 FR 28846 (June 3, 1994), and Gray Whale Monitoring Task Group, *A 5-year Plan for Research and Monitoring of the Eastern North Pacific Population of Gray Whales* (NMFS, October 1993). NMFS is now implementing this monitoring program.

Results from research conducted under the 5-year monitoring program indicate that the population remains healthy and is continuing to recover to levels approaching its carrying capacity, i.e., its equilibrium population. Surveys of northbound migrating cow/calf pairs were conducted between 1994 and 1997. Indices of calf production (estimate of number of calves/total population estimate) were 4.4 percent in 1994, 2.6 percent in 1995, 5.1 percent in 1996, and 6.5 percent in 1997. These values were similar to values reported from surveys of northbound migrating cow/calf pairs conducted in the early 1980s. Another northbound survey will be conducted in 1998.

Estimates of abundance from the southbound migration were made during the winters of 1992–93, 1993–1994, and 1995–96. The population estimate from the 1992–93 survey was 17,674 and the 1993–94 estimate was 23,109. The most recent shore count of the southbound migration was made between December 1995 and February 1996; the resulting estimate was 22,571. The 1993–94 and 1995–96 estimates are not statistically different from each other. The final southbound migration shore survey for the 5-year period following delisting had to be suspended in early February 1998 due to severe weather.

Data from all the surveys will be used to assess the status of this stock (e.g., estimated population status relative to carrying capacity, estimated rate of increase). A workshop to review a draft status report is scheduled for the summer of 1999.

Research concerning the carrying capacity for the eastern North Pacific stock of gray whale also was recommended in the 5-year research and monitoring plan. Based on a revised Bayesian analysis of gray whale population dynamics, point estimates for the equilibrium population (i.e., the carrying capacity) ranged from 25,130 to 30,140, depending upon the starting year of the trajectory.

Results from research conducted under the 5-year research and monitoring program and earlier studies indicate that the eastern North Pacific stock of gray whale continues to increase at a rate of approximately 2.5 percent per year. These results are consistent with the conclusion that the take of five additional gray whales per year by the Makah Tribe will have no significant impact on the eastern North Pacific stock of gray whale.

Classification

The Assistant Administrator is issuing the aboriginal subsistence whaling quotas for the 1998 season, consistent with action taken by the International Whaling Commission, as required by the Whaling Convention Act, 16 U.S.C. 916 et seq. Consequently, this notice constitutes a foreign affairs function, exempt from the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(a)(1).

Because prior notice and an opportunity for public comment are not required to be provided for this notice by 5 U.S.C. 553,or any other law, the analytical requirements for the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

Dated: March 30, 1998.

Dave Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8845 Filed 3–31–98; 3:13 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 033098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 31, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1998 TAC of Atka mackerel for the Central Aleutian District was established by Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 20,720 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for Atka mackerel in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,720 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Atka mackerel in the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 31, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8843 Filed 3–31–98; 4:58 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 65
Monday, April 6, 1998

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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–97–500]

RIN [1904–AA75]

Energy Conservation Program for Consumer Products: Public Workshop on Manufacturer Impacts Analysis Methodology for the Fluorescent Lamp Ballast Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Availability and Public Workshop.

SUMMARY: The Department of Energy (the Department or DOE) today gives notice that copies of the ''Summary of the Final Inputs for the Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts'' and the ''Manufacturer Impact Analysis Methodology'' documents will be available for review and comment on April 7, 1998. In addition, the Department will hold a public workshop to discuss the Final Inputs to the Draft Report and the Manufacturer Impact Analysis methodology for the fluorescent lamp ballast standards program.

DATES: The public workshop will be held on Tuesday, April 28, 1998, from 9 am to 5 pm. Written comments (5 copies) must be received on or before May 28, 1998.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585. Comments should be addressed to Anthony T. Balducci at the address indicated below under Further Information.

Copies of the transcript of the public workshop, public comments received, and this notice may be read or purchased at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony T. Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Phone: (202) 586–8459, Fax: (202) 586–4617, E–mail: anthony.balducci@hq.doe.gov

Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Phone: (202) 586–2945, Fax: (202) 586–4617, E–mail: Brenda.Edwards-Jones@hq.doe.gov

Mr. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0103, (202) 586–9526, E-mail: Eugene.Margolis@hq.doe.gov

SUPPLEMENTARY INFORMATION:

The Department of Energy is implementing enhanced procedures for the development and revision of appliance efficiency standards, including the fluorescent lamp ballast standards. See 61 FR 36973 (July 15, 1996). One of the themes of these process improvements is the Department's commitment to share analyses with the public and provide meaningful opportunity for public comment.

As part of our effort to review fluorescent lamp ballast standards, the Department is making the following documents available: ''Summary of the Final Inputs for the Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts'' and ''Manufacturer Impact Analysis Methodology.''

The Department is taking steps consistent with the new process for its rulemaking concerning energy conservation standards for fluorescent lamp ballasts. DOE will hold a workshop on Tuesday, April 28, 1998, to obtain information from stakeholders and interested parties relative to the manufacturer impact analysis methodology for fluorescent lamp ballast manufacturers. The workshop will be held at the U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121 in Room 1E–245 from 9 a.m. to 5 p.m. In addition the Department invites the submission of written comments on the Summary of the Final Inputs for the Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts and the Manufacturer Impact Analysis Methodology.

The list of major topics for discussion at the workshop is as follows:

A. The Final Inputs for the Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts

B. The Procedure for conducting the Manufacturer Impact Analysis

C. The Manufacturer Impact Analysis Methodology Document

D. The Schedule for conducting the Manufacturer Impact Analysis

E. The Ballast Standards Rulemaking Schedule

The Department will use the information gathered at the workshop to guide its approach to development of revised energy conservation standards for fluorescent lamp ballasts.

Copies of the above mentioned reports and this notice, will be available on April 7, 1998, on the Office of Codes and Standards web site which is as follows: http://www.eren.doe.gov/buildings/codes__ standards/index.htm. If you have any questions, plan to attend the workshop, or if you are unable to access the web site and wish to obtain material for the workshop, please contact Ms. Brenda Edwards-Jones at (202) 586–2945 or Mr. Anthony T. Balducci at (202) 586–8459, or (202) 586–4617 by fax.

Issued in Washington, DC, on April 1, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–8953 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–TP–98–101]

Workshop Regarding Test Procedures, Labeling, Standards Compliance, and Related Matters for Commercial Water Heaters, Boilers, Furnaces, Air Conditioners, and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE) will hold an informal public workshop to discuss issues and gather information related to DOE's development of proposed rules for energy efficiency test procedures, labeling, and standards compliance as they relate to commercial water heaters, boilers, furnaces, air conditioners, and heat pumps. All persons are hereby given notice of the opportunity to attend and participate in this public workshop and to submit written comments.

DATES: The public workshop will be held on Tuesday, April 14, 1998, from 9 a.m. until 4:45 p.m., and on Wednesday, April 15, 1998, from 9 a.m. to 3:30 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Written comments are welcome, especially following the workshop. Please submit 10 copies (no faxes) and a computer diskette (WordPerfect 6.1) to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Commercial Products: Water Heaters, Boilers, Furnaces, Air Conditioners, and Heat Pumps, Docket No. EE–TP–98–101,'' EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138, e-mail: cyrus.nasseri@ee.doe.gov; or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507, e-mail: edward.levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Department of Energy is drafting a proposed rule to implement the Energy Policy and Conservation Act (EPCA) provisions for energy efficiency test procedures, labeling, and standards compliance concerning commercial water heaters, boilers, furnaces, air conditioners, and heat pumps. 42 U.S.C. 6314–6316. While EPCA calls for adoption of test procedures referenced in the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), Standard 90.1, several issues have been raised concerning how the Standard should be interpreted. The purpose of the public workshop is to discuss the following issues for developing the notice of proposed rulemaking:

a. Clarification of coverage and category definitions in reference standards for commercial water heaters;

b. Determination of procedures for measuring insulation value and heat loss in unfired commercial hot water storage tanks;

c. Definition of ''packaged'' boiler for purposes of the proposed rulemaking;

d. Treatment of ''jacket losses'' in combustion and thermal efficiency calculations;

e. Uniformity of test conditions, procedures, and setup requirements across different types of commercial boilers and furnaces;

f. Appropriate treatment of commercial boilers and furnaces with unusual features for specialized applications;

g. Correct external static pressure test conditions for commercial air conditioners and heat pumps in light of typical outlet duct pressures observed in buildings;

h. Determination of cost-effective and reliable statistical sampling regimes for standard certification and enforcement;

i. Identification of practical certification and enforcement testing regimes for products with low production volumes;

j. Determination of the information that should be displayed on certification labels; and

k. Effective schemes for labeling mixed component systems.

The Department is preparing a paper entitled, ''Issues Paper for the Commercial Water Heaters, Boilers, Furnaces, Air Conditioners, and Heat Pumps Workshop on April 14 and 15, 1998,'' that explains and discusses these issues in greater detail. Copies will be available on request. For many of the issues, the paper sets forth alternative approaches that the Department is considering to include in the Notice of Proposed Rulemaking.

The Department is particularly interested in receiving at the workshop comments and views of interested parties concerning: (1) The above-listed issues; (2) alternative approaches the Department is considering for addressing these issues; (3) information that the National Institute of Standards and Technology should take into account in interpreting ASHRAE Standard 90.1 test procedures for commercial water heaters, boilers, furnaces, air conditioners, and heat pumps for DOE's consideration; and (4) any viable alternatives that may have been overlooked in the preparation of the issue paper. The Department encourages those who wish to participate in the workshop to obtain the issue paper and to make presentations that address its contents. Workshop participants need not limit their statements to those topics, however. The Department is interested in receiving views concerning other issues that participants believe would affect the content of test procedures, labeling, and standards compliance for commercial water heaters, boilers, furnaces, air conditioners, and heat pumps.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated under antitrust law. After the meeting and period for written comments, the Department will consider the views presented in formulating a Notice of Proposed Rulemaking regarding energy efficiency test procedures, labeling, and standards compliance as they relate to commercial water heaters, boilers, furnaces, air conditioners, and heat pumps.

If you would like to participate in the workshop, to receive workshop materials, or to be added to the DOE mailing list to receive future notices and information regarding commercial water heaters, boilers, furnaces, air conditioners, and heat pumps, please contact Ms. Brenda Edwards-Jones, (202)586–2945.

Issued in Washington, DC, on April 1, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–8952 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 28

[Docket No. 98–06]

RIN 1557–AB58

International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulation governing international lending, by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP). This proposal also makes other changes to subpart C that are intended to clarify and simplify the rule.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Written comments should be submitted to Docket No. 98–06, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219. In addition, comments may be sent by facsimile transmission to FAX number (202)–874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Tom Rees, Professional Accounting Fellow, Bank Supervision Policy, (202) 874–5180; John Abbott, Deputy Comptroller, International Banking & Finance, (202) 874–4730; Raija Bettauer, Counselor for International Activities, (202) 874–0680; or Saumya R. Bhavsar, Attorney, Legislative and Regulatory Activities, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The International Lending Supervision Act of 1983 (ILSA) , 12 U.S.C. 3901 *et seq.*, requires each Federal banking agency to evaluate the foreign country exposure and transfer risk of banks within its jurisdiction for use in the examination and supervision of these banks. To implement this provision, the Federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries based on economic, social, and political conditions that may lead to increased transfer risk. ''Transfer risk'' arises from an obligor's inability to perform on its debt obligations using the agreed-upon currency due to the actions of the government that controls that currency. These actions include instances where a country is unable or unwilling to provide the necessary foreign exchange, because of, for example, a balance of trade deficit or currency restrictions.

In addition, ILSA directs each Federal banking agency to require banks to establish and maintain a special reserve whenever the agency determines either that the quality of a bank's international assets (*i.e.*, those assets included on a bank's Country Exposure Report, form FFIEC 009) has been impaired by the protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or that there are no definite prospects for the orderly restoration of debt service. 12 U.S.C. 3904(a)(1). ILSA also requires that these reserves be charged against current income and not considered as part of capital and surplus or allowances for possible loan losses. 12 U.S.C. 3904(a)(2).

Subpart C of 12 CFR part 28 implements ILSA and requires national banks and District of Columbia banks to establish reserves, referred to as allocated transfer risk reserves (ATRR), against potential losses on banks' foreign loans due to certain countries' transfer risk. Subpart C also sets forth the accounting treatment for various fees received by banks when making international loans and contains explicit requirements for the reporting and disclosure of international assets.

On July 5, 1995 (60 FR 34907), the OCC published proposed changes to 12 CFR parts 20 and 28, which set out the OCC's rules governing the international operations of domestic branches and Federal branches and agencies of foreign banks. The proposed changes included substantive modifications to part 28 and a consolidation of all the provisions relating to international banking that were previously contained in parts 20 and 28 into one CFR part, part 28. These proposed changes were part of the OCC's Regulation Review Program to update and streamline regulations and to eliminate requirements that impose inefficient and costly regulatory burdens on national banks. At that time the OCC did not propose changes to subpart C of part 28 but invited public comment on subpart C in order to bring to the OCC's attention issues that could warrant consideration in a subsequent rulemaking.

On May 2, 1996 (61 FR 19524), the OCC published a final rule on part 28. In the preamble to the final rule, the OCC noted that it had received one comment on subpart C of part 28 and that the commenter recommended that the accounting provisions be amended to be uniform among the Federal banking agencies and consistent with GAAP. In response, the OCC stated in the preamble that it would address the issue raised by the commenter after further review of the rules in question.

For the reasons discussed below, the OCC is proposing to amend subpart C consistent with the commenter's suggestion. This proposal does not, however, amend the other two substantive provisions in subpart C dealing with the ATRR and reporting and disclosure of international assets. The OCC invites comment on any aspect of this proposal.

Discussion of Proposal

Accounting Treatment for Fees on International Loans (§ 28.53)

Current § 28.53 provides a lengthy discussion on the separate accounting treatment for each type of fee charged by banks in connection with their international lending. This proposal revises that section by replacing the discussion of the accounting treatment with a statement that banks are to account for fees on international loans in accordance with GAAP.

ILSA requires the Federal banking agencies to issue regulations for accounting for fees charged by banks in connection with international loans. (12 U.S.C. 3905(a)(2)(A)). In order to avoid excessive debt service burden on debtor countries, section 906(a) of ILSA (12 U.S.C. 3905(a)) prohibits a bank, in connection with restructuring an international loan, from charging fees in an amount that exceeds the administrative costs of restructuring the loan, unless the fee is amortized over the life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) requires the Federal banking agencies to issue regulations prescribing the accounting treatment for agency, commitment, management, and other fees in connection with international loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

When ILSA was enacted in 1983 and the Federal banking agencies' final rule

on accounting for international loan fees was first published in 1984, Congress and the Federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP did not ensure the desired uniformity in how banks account for international loan fees. The preamble to the 1984 rule stated that the Federal banking agencies would reexamine the need for a discussion of accounting treatment if the Financial Accounting Standards Board (FASB) were to issue a final pronouncement or standard on this subject. 49 FR 12192 (March 29, 1984).

Since that time, FASB has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA (12 U.S.C. 3905). In addition, although there are some differences between § 28.53 and the GAAP standard (Financial Accounting Standard No. 91), they are relatively minor. For instance, GAAP requires different accounting methods than § 28.53 in the recognition of fees and administrative costs of originating, restructuring or syndicating international loans. However, adoption of the GAAP standard would not impose additional burden on banks, but would reduce burden in some instances.

Therefore, to reduce the regulatory burden of banks and simplify the rule, the OCC is proposing to eliminate the detailed discussion concerning the particular accounting method to be followed in accounting for various fees on international loans. The OCC proposes to require instead that national banks follow GAAP in accounting for such fees, subject to the amortization requirement for fees charged in connection with restructuring an international loan that exceed the administrative cost of the restructuring.[1] In the event that FASB changes the GAAP rules on fee accounting for international loans, the OCC will reexamine its rule in light of ILSA to assess the need for further revision to the regulation.

This proposal does not affect, in any way, the standards by which a bank recognizes loss on international assets affected by transfer risk, nor does it change the accounting treatment of a bank's transfer risk reserve. As discussed earlier, the proposal does, however, change the accounting treatment of fees that banks collect on international loans by adopting GAAP accounting requirements for fee income on loans.

The change summarized above removes the need for the definitions of ''international syndicated loan'' and ''loan agreement'' which are used only in the discussion in current § 28.53. Accordingly, the proposal amends § 28.51 by removing the definitions of ''international syndicated loan'' and ''loan agreement'' from §§ 28.51(e) and (f), respectively, and redesignating the remaining definitions accordingly.

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As is explained in greater detail in the preamble to this proposal, there is only one substantive change and this change would simplify the regulation to make it consistent with generally accepted accounting principles. The proposed rule will reduce the regulatory burden on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, consistent with section 202 of the Unfunded Mandates Act of 1995 (2 U.S.C. 1532), the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the proposed rule simplifies the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles. The proposed rule also makes other nonsubstantive changes to subpart C that are intended to clarify and simplify the rule.

List of Subjects in 12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to amend part 28 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 28—INTERNATIONAL BANKING ACTIVITIES

1. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

Subpart C—International Lending Supervision

§ 28.51 [Amended]

2. Section 28.51 is amended by removing paragraphs (e) and (f), and redesignating paragraphs (g) and (h) as paragraphs (e) and (f).

3. Section 28.53 is revised to read as follows:

§ 28.53 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative costs of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees in accordance with generally accepted accounting principles.

Dated: March 30, 1998.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 98–8864 Filed 4–3–98; 8:45 am]

BILLING CODE 4810–33–P

[1] The proposed change in this rulemaking is substantively identical to the change proposed by the Federal Deposit Insurance Corporation. (*See* 62 FR 37748 (July 15, 1997).)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require modification of the slat and flap control computer (SFCC) in the aft electronics rack. This proposal is prompted by issuance of mandatory continuing airworthiness information by

a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the SFCC caused by computer software anomalies or contamination by conductive dust. This condition, if not corrected, could result in uncommanded slat retraction during takeoff and consequent insufficient wing lift available to complete a successful takeoff.

DATES: Comments must be received by May 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–67–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Génórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 and A321 series airplanes. The DGAC advises that, during the takeoff of a Model A320 series airplane, the slat and flap control computer (SFCC) incorrectly interpreted the prior failure of a rotary switch in the Command Sensor Unit (CSU) as an out-of-detent condition of the flap control lever. Consequently, the SFCC commanded the slats to retract to position 0, contrary to the pilot's commanded position 1. In addition, the DGAC advises that it has received reports in which, during operation on Model A321 series airplanes, the SFCC failed because conductive dust from the air conditioning system had contaminated the SFCC system.

The SFCC on certain Model A320 series airplanes is similar in design to that on Model A321 series airplanes; therefore, both models may be subject to the same unsafe condition. The failure of the SFCC, if not corrected, could result in uncommanded slat retraction during takeoff and consequent insufficient wing lift available to complete a successful takeoff.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–27–1096, dated March 14, 1996, and Revision 01, dated January 14, 1998, which describes procedures for modification of the SFCC 1 and SFCC 2 in the aft electronics rack on Model A320 series airplanes. This modification involves replacement of SFCC 1 and SFCC 2 with improved parts and modification of the SFCC software to correct anomalies.

In addition, Airbus has issued Service Bulletin A320–27–1103, dated June 14, 1996, which describes procedures for modification of the SFCC 1 and SFCC 2 in the aft electronics rack on Model A321 series airplanes. This modification involves replacement of SFCC 1 and SFCC 2 with improved parts, installation of a dust shield, and modification of the coding of the polarizing pins on the ARINC 600 plug on the rack of the SFCC 1 and SFCC 2.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–085–099(B), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,080, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–67–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Service Bulletin A320–27–1096, Revision 01, dated January 14, 1998; and Model A321 series airplanes, as listed in Airbus Service Bulletin A320–27–1103, dated June 14, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the slat and flap control computer (SFCC), which could result in uncommanded slat retraction during takeoff and consequent insufficient wing lift available to complete a successful takeoff, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the SFCC 1 and SFCC 2 in the aft electronics rack, in accordance with Airbus Service Bulletin A320–27–1096, dated March 14, 1996, or Revision 01, dated January 14, 1998 (for Model A320 series airplanes); or Airbus Service Bulletin A320–27–1103, dated June 14, 1996 (for Model A321 series airplanes); as applicable.

Note 2: After accomplishment of the modification required by paragraph (a) of this AD, Temporary Revision No. 4.02.00/02 may be removed from the Airbus Model A320 and A321 Airplane Flight Manuals.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 4: The subject of this AD is addressed in French airworthiness directive 97–085–099(B), dated March 12, 1997.

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8904 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–45–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require a one-time inspection to determine the torque values of the coupling fitting attachment bolts at fuselage station 10790, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the coupling fitting attachment bolts between the center wing section and the fuselage, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by May 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–45–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–45–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it has received reports of loose bolts that attach the coupling fitting to the center wing section. Investigation has revealed that the torque values for these bolts, as specified in Fokker Service Bulletin F28/53–125, dated January, 23, 1993, are below the actual torque value required. Therefore, airplanes on which Fokker Service Bulletin F28/53–125 has been accomplished may have loose bolts in this area of the airplane. This condition, if not corrected, could result in loss of the coupling fitting attachment bolts between the center wing section and the fuselage, and consequent reduced structural integrity of the airplane.

Related AD

In 1993, the FAA issued AD 93–13–04, amendment 39–8617, which mandates Fokker Structural Integrity Program (SIP) Document 28438, Part I, including revisions up through October 15, 1992. Item 53–10–25 of that document recommends accomplishment of Fokker Service Bulletin F28/53–125, dated January 23, 1993, as optional terminating action for the repetitive inspection requirements of that SIP item.

Explanation of Relevant Service Information

In light of the reports of loose bolts discussed previously, the manufacturer has issued Fokker Service Bulletin F28/53–143, dated August 30, 1996, to correct the erroneous torque values specified in Fokker Service Bulletin F28/53–125. Among other things, Fokker Service Bulletin F28/53–143 procedures for a one-time inspection to determine the torque values of the coupling fitting attachment bolts at fuselage station 10790, and re-torquing of the bolts to the correct value, if necessary. Accomplishment of the actions specified in this service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1996–119 (A), dated September 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin, F28/53–143, dated August 30, 1996.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 128 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $207,360, or $7,680 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 98–NM–45–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, serial numbers 11003 through 11201 inclusive, 11991 and 11992; on which Fokker Service Bulletin F28/53–125, dated January 23, 1993, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the coupling fitting attachment bolts between the center wing section and the fuselage, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Within 3,000 flight cycles or 1 year after the effective date of this AD, whichever occurs later, perform a one-time inspection to determine the torque values of the coupling fitting attachment bolts between the fuselage and the center wing section at fuselage station number 10790, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/53–143, dated August 30, 1996.

(1) If the torque values are within the limits specified by the service bulletin, no further action is required by this AD.

(2) If the torque value of any bolt is outside the limits specified by the service bulletin, prior to further flight, re-torque the bolt in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1996–119 (A), dated September 30, 1996.

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8902 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–312–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require a one-time inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the main landing gear (MLG); operational inspections to ensure smooth operation of the MLG operating mechanism; and follow-on actions. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent partial seizure of the forward door of the MLG operating mechanism, which could result in the inability to lower or retract the MLG.

DATES: Comments must be received by May 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–312–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–312–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–312–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on

certain British Aerospace BAe Model ATP airplanes. The CAA advises that an operator made an emergency landing with the left main landing gear (MLG) jammed in the ''up'' position. Investigation of the incident revealed that the probable cause was entrapped grit in the operating mechanism of the MLG, which caused partial seizure of the spring strut that drives part of the forward door of the MLG operating mechanism. Grit and other runway debris also could enter the MLG operating mechanism of other airplanes with this type design. Resistance in the MLG operating mechanism caused by entrapped grit can cause the door 'A' frame to function out of sequence with the movement of the oleo (a cylindrical strut with a built-in telescopic shock absorber that damps or absorbs rectilinear shock). Such partial seizure of the forward door of the MLG operating mechanism, if not corrected, could result in the inability to lower or retract the MLG.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997, which describes procedures for a one-time visual inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the MLG; cleaning, degreasing, and relubricating the door operating mechanism; and replacement of worn components with new or serviceable parts.

The service bulletin also describes procedures for repetitive operational inspections to ensure smooth operation of the spring strut of the forward door of the MLG, and relubrication of the operating spring and sliding tube of the forward door 'A' frame.

FAA's Conclusions

This airplane model is manufactured in The United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Service Bulletin

Operators should note that, unlike the procedures described in British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997, which do not specify actions to be taken if corroded or damaged parts are detected during inspection, this proposed AD requires repair of corroded or damaged parts, in accordance with a method approved by the FAA. Additionally, unlike the service bulletin, which does not specify action to be taken if smooth operation of the spring strut cannot be achieved, this proposed AD would require replacement of discrepant parts with new or serviceable parts, prior to further flight, in accordance with a method approved by the FAA. The FAA has determined that, in light of the safety implications and consequences associated with the discrepancies described previously, these discrepancies must be corrected prior to further flight.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–312–AD.

Applicability: BAe Model ATP airplanes, constructor's number 2001 through 2063 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent partial seizure of the forward door of the main landing gear (MLG) operating mechanism, which could result in the inability to lower or retract the MLG, accomplish the following:

(a) Within 300 flight hours or within 90 days after the effective date of this AD, whichever occurs first, perform a one-time visual inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the MLG; and clean, degrease, and relubricate the door operating mechanism; in accordance with British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997.

(1) If no corrosion, wear, or damage is detected during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(2) If any corrosion, damage, or worn component is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, as applicable.

(i) If any corrosion or damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(ii) If any worn component is detected, within 600 flight hours after performing the inspection required by paragraph (a) of this AD, replace the component with a new or serviceable part in accordance with the service bulletin.

(b) Within 300 flight hours after accomplishing the inspection required by paragraph (a) of this AD, perform an operational inspection to ensure smooth operation of the spring strut of the forward door of the MLG, and relubricate the operating spring and sliding tube of the forward door 'A' frame, in accordance with British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997.

(1) Repeat the operational inspections thereafter at intervals not to exceed 300 flight hours, until the accumulation of 1,500 flight hours after the accomplishment of the inspection required by paragraph (a) of this AD.

(2) Following the accomplishment of all inspections required by paragraph (b)(1) of this AD, repeat the operational inspections and relubrication required by paragraph (b) of this AD at intervals not to exceed 1,500 flight hours.

(c) If any discrepancy is detected during any operational inspection and relubrication required by paragraph (b) of this AD, prior to further flight, replace any discrepant part with a new or serviceable part in accordance with a method approved by the Manager, International Branch, ANM–116.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8901 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require installation of two reinforcing brackets on the keel beam in the lower shell of the main landing gear bay. This proposal is prompted by a report of cracking of the keel beam that was discovered during full-scale fatigue testing. The actions specified by the proposed AD are intended to prevent fatigue cracking of the keel beam, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by May 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–203–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that fatigue cracking of the keel beam in the lower shell of the main landing gear bay was discovered during full-scale fatigue testing. The cracks had initiated at the fastener holes drilled in the keel beam. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–53–156, Revision 2, dated December 10, 1996, and Revision 3, dated January 8, 1997, which describes procedures for installing two reinforcing brackets on the keel beam in the lower shell of the main landing gear bay. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, approved this service bulletin.

FAA's Determination

The FAA has reviewed the installation described previously and has determined that implementation of this installation will positively address the subject unsafe condition.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed action, and that the average labor rate is $60 per work hour. The cost for required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,220, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dronier: Docket 97–NM–203–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3047 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the keel beam, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 11,900 total landings, or within 24 months after the effective date of this AD, whichever occurs later, install two reinforcing brackets on the keel beam in the lower shell of the main landing gear bay in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–53–156, Revision 2, dated December 10, 1996, or Revision 3, dated January 8, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8899 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require a one-time

operational test of the fire shut-off valves (FSOV's) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

DATES: Comments must be received by May 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–80–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received reports of fire shut-off valves (FSOV's) failing to close during scheduled operational tests of the engine fire shut-off system. Examination of one of the FSOV's that failed revealed that the rear bearing in the electric motor of the FSOV was degraded, which prevented the actuator from closing the FSOV. The cause of the degradation of the rear bearing of the electric motor is under investigation. Failure of the FSOV's to close, if not corrected, could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

Explanation of Relevant Service Information

Airbus has issued A300/A310/A300–600 All Operator Telex (AOT) 29–22, dated November 24, 1997, which describes procedures for a one-time operational test of the four FSOV's installed on each airplane to determine if the FSOV's are functioning correctly. If any FSOV fails during the test, the AOT specifies that the failed FSOV or the actuator of the failed FSOV, as applicable, must be replaced with a new or serviceable part. The DGAC classified this AOT as mandatory and issued French airworthiness directive 97–384–241(B)R1, dated January 14, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously, except as discussed below.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between Proposed Rule and the All Operator Telex

Operators should note that, although Airbus A300/A310/A300–600 All Operator Telex 29–22, dated November 24, 1997, allows a compliance time of 1,000 flight hours for testing FSOV's that have already been tested, the FAA has determined that an interval of 1,000 flight hours would not address the identified unsafe condition in a timely manner. The FAA considered the safety implications associated with failure of the fire shut-off valves and, in consonance with the DGAC, finds that a compliance time of 500 flight hours for performing the operational testing is warranted for all affected airplanes, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 1 work hour per airplane to accomplish the proposed test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of

the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–80–AD.

Applicability: Model A300, A310, and A300–600 series airplanes; as listed in Airbus All Operator Telex 29–22, dated November 24, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a one-time operational test of the 4 fire shut-off valves (FSOV's) on the airplane, in accordance with Airbus All Operator Telex (AOT) 29–22, dated November 24, 1997. If any FSOV fails the test, prior to further flight, replace the failed FSOV or actuator, as applicable, with a new or serviceable FSOV or actuator, as applicable, in accordance with AOT 29–22.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–384–241(B)R1, dated January 14, 1998.

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8898 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–5]

Proposed Amendment of Class E Airspace; Roxboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Roxboro, NC. A Global Positioning System (GPS) Runway (RWY) 6 Standard Instrument Approach Procedure (SIAP) has been developed for Person County Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Person County Airport.

DATES: Comments must be received on or before May 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–5, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

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

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

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 those comments a self-addressed,

stamped postcard on which the following statement is made: ''Comments to Airspace Docket No 98–ASO–5.'' 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 Regional 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, Airspace Branch, ASO–520, 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 Class E airspace at Roxboro, NC. A GPS RWY 6 SIAP has been developed for Person County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Person County Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Roxboro, NC [Revised]

Person County Airport, NC

(Lat. 36°17′08″N, long 78°59′00″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Person County Airport.

* * * * *

Issued in College Park, Georgia, on March 25, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 98–8837 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–094–FOR]

Illinois Regulatory Program

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

ACTION: Proposed rule: public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of two proposed amendments to the Illinois regulatory program (hereinafter the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This first proposed amendment consists of revisions to Illinois' statutes pertaining to definitions and areas unsuitable for surface coal mining operations. The second proposed amendment consists of revisions to Illinois' regulations pertaining to a definition for ''previously mined areas'' areas unsuitable for surface coal mining operations, permitting, prime farmland, bonding, performance standards, and blasters certification. The amendments are intended to revise the Illinois program to be consistent with the corresponding Federal regulations and SMCRA, clarify existing regulations, and improve operational efficiency.

This document sets forth the times and locations that the Illinois program and proposed amendments to that program are available for public inspection, the comment period during which interested persons submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., May 6, 1998. If requested, a public hearing on the proposed amendments will be held on May 1, 1998. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on April 21, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendments, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours,

Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, IL 62701–1787, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913,16, and 913.17.

II. Description of the Proposed Amendment

By letter dated March 28, 1996, Illinois notified OSM of revisions to the Illinois Surface Coal Mining Land Conservation and Reclamation Act that were enacted through House Bill (H.B.) 965 and signed into law by the Governor of Illinois on February 7, 1996. These revisions primarily address changes brought about by the July 1, 1995, reorganization and name change of the Illinois regulatory authority, which were approved by OSM on July 11, 1995 (60 FR 35696). Revisions were made to 225 ILCS 720/1.03, Definitions; 225 ILCS 720/7.03. Procedure for designation of areas unsuitable for mining operations; and 225 ILCS 720.7.04, Land Report. By letter dated February 26, 1998 (Administrative Record No. IL–5009), Illinois submitted a proposed amendment to revise its regulations in response to letters dated January 6, 1997, and June 17, 1997 (Administrative Record Nos. IL–1951 and IL–2000, respectively), that OSM sent to Illinois in accordance with 30 CFR 732.17(c) and in response to a required program amendment at 30 CFR 912.16(w). Illinois also amended its program to clarify existing regulations and to implement the statutory changes made by H.B. 965. Illinois proposes to amend its regulations at Title 62 of the Illinois Administrative Code (62 IAC). A brief discussion of the proposed amendments are presented below.

A. *Revision to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act).* Illinois proposes the following changes to the State Act:

1. *225 ILCS 720/1.03 Definitions.* At § 1.03(a)(4), the definition for the term ''Department'' was changed from the ''Department of Mines and Minerals'' to the ''Department of Natural Resources.'' At § 1.03(a)(8), the definition of the term ''Department of Energy'' was removed.

2. *225 ILCS 720/7.03 Procedure for Designation.* At § 7.03(b), the language ''refer it to the Department of Energy for preparation of'' was replaced by the word ''prepare.'' At § 7.03(c), the language ''Department of Energy files a'' was replaced by the language ''has been prepared by.''

3. *225 ILCS 720/7.04 Land Report.* At 7.04(a), each instance of the term ''Department of Energy'' was replaced by the term ''Department.'' The language ''and referred by the Department to the Department of Energy for a Land Report'' was removed from the end of the first sentence. The last sentence was revised to read: ''Each Land Report shall be completed not later than eight months after receipts of the petition.'' Section 7.04(c) was removed.

B. *Revisions to Illinois' Permanent Program Regulations.* Illinois proposes the following revisions to its regulations:

1. *62IAC 1701.5 Appendix A. Definitions.* Illinois proposes to amend the definition of ''previously mined area'' by adding the phrase ''that has not been reclaimed to the standards of 62 III. Adm. Code 1700 to 1850'' after the date ''August 3, 1977.''

2. *62 IAC Part 1761 Areas Designated by Act of Congress.* At § 1761.12(b)(1), Illinois proposes to remove the reference to § 1761.11(f) or (g). At § 761.12(c), Illinois proposes to replace the reference to ''Section 1761.11(d)(2)'' with a reference to ''Section 1761.11(a)(4)(B).''

3. *62 IAC Part 1764 State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations.* At § 1764.13(a), the term ''Illinois Department of Mines and Minerals'' was replaced by the term ''Illinois Department of Natural Resources.'' The language in the first sentence of § 1764.15(c)(1) was replaced by the language ''After the petition is determined to be complete the Department shall prepare a Land Report.'' Section 1764.15(c)(2) was revised as follows:

> The Land Report shall state objectively the information which the Department has, but shall not contain a recommendation with respect to whether the petition should be granted or denied. Each Land Report shall be completed not later than eight (8) months after the petitioner has been notified the petition is complete under subsection (a)(1).

At § 1764.15(c)(3), the term ''Department of Energy and Natural Resources'' was replaced by the term ''Department'' and the term ''Department'' was replaced by the term ''Land Reclamation Division.''

4. *62 IAC Part 1773, Requirements for Permits and Permit Processing.* At § 1773.11(a), the term ''Illinois Department of Mines and Minerals'' was replaced by the term ''Illinois Department of Natural Resources.'' At § 1773.15(c)(11), references to 62 Ill. Adm. Code 1816.11(a)(2)(B) and 1816.117(a)(2)(B) were added.

5. *62 IAC Part 1774, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights.* At § 1774.11(a), the term ''Illinois Department of Mines and Minerals'' was replaced by the term ''Illinois Department of Natural Resources.'' At § 1774.13(b)(3), the reference to ''1773.19(b) (1) and (3)'' was replaced by a reference to ''1773.19(b).''

6. *62 IAC 1778.14, Violation Information.* Illinois proposes to replace its existing introductory language at § 1778.14(c) with the following language:

> A list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of ''owned or controlled'' and ''owns or controls'' in 62 Ill. Adm. Code 1843.12 or under a Federal or State program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

7. *62 IAC 1785.17, Prime Farmlands.* Illinois proposes to add the following new provision at § 1785.17(e)(5):

> The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation must be located within the post-reclamation non-prime farmland portions of

the permit area. The creation of any such water bodies must be approved by the Department and the consent of all affected property owners within the permit area must be obtained.

8. *62 IAC Part 800, Bonding and Insurance Requirements.* At § 1800.4(a), the term ''Office of Mines and Minerals'' was replaced by the term ''Office of Natural Resources.'' At § 1800.40(b)(2), the language ''serve, by certified mail'' was replaced by the language ''notify in writing.''

9. *62 IAC Part 816, Permanent Performance Standards for Surface Mining Activities and 62 IAC Part 817, Permanent Program Performance Standards for Underground Mining Operations.* At §§ 1816.46(a)(3) and 1817.46(a)(3), Illinois proposes to revise its definition of ''other treatment facilities'' by adding the language ''or to comply with all applicable state and federal water quality laws and regulations.'' At §§ 1816.49(a)(3)(B) and 1817.49(a)(3)(B), concerning impoundments, Illinois proposes to replace the term ''U.S. Soil Conservation Service'' with the term ''U.S. Natural Resources Conservation Service.'' Illinois proposes to revise § 1817.61(a), concerning use of explosives, by adding the language ''that are within 50 vertical feet of the original ground surface'' to the end of the existing provision. At § 1817.62(d), concerning pre-blasting surveys, Illinois replaced the language ''published scheduled beginning'' with the language ''planned initiation.''

Illinois proposes to add the following sentence to the end of § 1816.64(b), concerning public notice of blasting schedule: ''Unscheduled blasting does not include nighttime blasting, which is prohibited at all times.'' At § 1816.649(c)(1), Illinois proposes to require publication of a blasting schedule at least ten days, but not more than 30 days, before beginning a blasting program in which blasts that use more than five pounds of explosive or blasting agent are detonated. At § 1816.64(c)(3), Illinois proposes to require that blasting schedules be revised and republished at least 10 days, but not more than 30 days, before blasting in areas not covered in the current schedule or if the actual blasting times differ from the time periods listed in the current schedule for more than 20 percent of the blasts fired. Section 1816.64(d) was revised by changing the subsection introductory sentence to ''The blasting schedule shall contain at a minimum''; removing existing paragraphs (1) and (2); and redesignating paragraphs (2)(A) through (2)(E) as paragraphs (1) through (5).

At § 1817.66, concerning blasting signs, warnings, and access control, the language ''blasting schedule'' was replaced by the language ''blasting notification required in § 1817.64.'' At §§ 1816.66(d)(2) and 1817.66(d)(2), concerning blasting prohibitions, the language ''unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within one hundred (100) feet'' was added at the end of the provision.

At § 1816.67(c)(1), concerning air blast monitoring, Illinois proposes to replace paragraphs (1)(A) and (1)(B) with the following language:

the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than seventy percent (70%) of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and Section 1816.68(b). This subsection shall not apply to horizontal blast holes drilled from the floor of the pit.

At § 1817.67(c)(1), concerning air blast monitoring, Illinois proposes to replace paragraphs (1)(A) and (1)(B) with the following language:

the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than seventy percent (70%) of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and Section 1817.68(b).

At §§ 1816.67 and 1817.67, concerning ground vibrations, Illinois proposes to number the existing provision in subsection (e) as subsection (e)(1); redesignate subsection (f) as subsection (e)(2); redesignate subsections (f)(1) and (f)(2) as subsections (e)(2)(A) and (e)(2)(B); and redesignate existing paragraphs (g) and (h) as paragraphs (f) and (g). Redesignated subsection (e)(2) was revised to read as follows:

Blasting shall be conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area. Ground vibration limits, including the maximum peak particle velocity limitation of subsection (e)(1) shall not apply at the following locations:

At the end of §§ 1816.83(c)(4) and 1817.83(c)(4), concerning coal mine waste refuse piles, Illinois proposes to add the following new provision:

The Department shall require the addition of neutralization material to be added to the coal mine waste if, based on physical and chemical analyses, this material is needed to prevent acid mine drainage. This subsection is also applicable to the reclamation of fine coal waste (slurry) not meeting the definition of refuse piles.

At 1817.116(a)(1), concerning success of revegetation, a reference to ''Section 1817.116'' was added. At §§ 1816.116(a)(2)(C) and 1817.116(a)(2)(C), concerning success of revegetation, the address for the Department's Springfield office was changed to ''524 S. Second Street, Springfield, Illinois 62701–1787.'' At §§ 1816.116(a)(2)(F) and 1817.116(a)(2)(F), concerning augmentation, subsections (a)(2)(F)(i) were removed. At § 1817.116(a)(3)(E), concerning productivity success, the language ''Production for proof of productivity purposes shall also be determined in accordance with Section 1817.117(a)(2)'' was removed. At §§ 1816.116(a)(5)(A) and 1817.117(a)(5)(A), concerning wetland revegetation, the address for the Department's office was changed to ''524 S. Second Street, Springfield, Illinois 62701–1787.'' Sections 1816.117(c)(3) and 1817.117(c)(3), concerning tree and shrub vegetation, were revised to read as follows:

The number of plots needed to sample the area will not exceed 200 for areas of 50 acres or more. The number of plots needed to sample areas less than 50 acres in size will be calculated employing the following formula: Number of Plots equals 2.5 percent multiplied by Sample Area in acres divided by plot size.

10. *62 IAC Part 1823, Prime Farmland.* At § 1823.1, Illinois proposes to remove the language ''except this Part does not apply to any underground mining operations or activities, nor, except as expressly indicated or required by the Department in a permit, to the surface facilities and activities of surface mining that do not involve drilling, blasting, or mining.'' The title to § 1823.11 was revised to read: ''Prime Farmland: Applicability.'' Illinois proposes to revise § 1823.11 to read as follows:

The requirements of this section shall not apply to:

(a) Coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where uses affect minimal amount of land. Such uses shall meet the requirements of 62 Ill. Adm. Code 1817 for underground mining activities.

(b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

(c) Prime farmland that has been excluded in accordance with 62 Ill. Adm. Code 1785.17(a).

Section 1823.12(c), concerning soil removal, was added to read as follows:

The B and/or C horizons may be left in place for surface disturbance areas if the Department determines the soil capability can be retained.

Section 1823.14(g), concerning soil replacement, was revised by replacing the term ''Soil conservation Service'' with the term ''Natural Resources Conservation Service.''

11. *62 IAC 1825.11, High Capability Lands: Special Requirements.* At § 1825.11(b), the term ''Illinois Department of Mines and Minerals'' was replaced by the term ''Illinois Department of Natural Resources.'' At § 1825.11(c), the following new requirement was added: ''Measurement of success of revegation shall be initiated within ten (10) years after completion of backfilling and final grading on high capability land.''

12. *62 IAC Part 1840, Department Inspections.* At § 1840.1, the term ''Illinois Department of Mines and Minerals'' was replaced by the term ''Illinois Department of Natural Resources.'' Illinois proposes to revise § 1840.11(a) by requiring the Department to conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. Illinois proposes to revise § 1840.11(b) by requiring the Department to conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation.

13. *62 IAC Part 1847, Administrative and Judicial Review.* At § 1847.3(g), permit hearings, Illinois proposes to replace its existing burden of proof provision with the following provision:

(1) In a proceeding to review a decision on an application for a new permit—

(A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the application requirements of the State Act or regulations or as to appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable requirements of the State Act or regulations.

(2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving that the Department's decision was clearly erroneous.

At § 1847.9(j), bond release hearings, Illinois is proposing to allow each party to the hearing to file written exceptions with the hearing officer within ten days after service of the hearing officer's proposed decision. All parties shall have ten days after service of written exceptions to file a response with the hearing officer.

Illinois is proposing to revise § 1847.9(k), bond release hearings, as follows:

If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

At § 1847.9(1), bond release hearings, the citation ''Ill. Rev. Stat. 1991, ch. 110, pars. 3–101 through 3–112'' was replaced by the citation ''735 ILCS 5/3.''

14. *62 IAC Part 1850, Training, Examination and Certification of Blasters.* At § 1850.13(a), training, Illinois proposes to allow the Department, the operator or his representative to conduct blasters training. Sections 1850.14(a) and (b), concerning examination of blasters, were revised to read as follows:

(a) Written examination for blaster certification shall be administered on dates, times, and at locations announced by the Department via direct communication with operators and individuals who request in writing to be so notified. All persons scheduled for a regular examination session will be so notified at least one (1) week prior to the scheduled exam date.

(b) Reexaminations shall be scheduled, if needed, for those persons who do not pass the regularly scheduled examination. The Department shall also allow for examination at this time those persons who have newly applied for certification. All persons scheduled for examination or reexamination during the reexamination session will be so notified at least one (1) week prior to the scheduled reexamination session.

Section 1850.15(a), concerning application and certification, was revised to read as follows:

Each applicant shall submit a completed application for certification on forms supplied by the Department. Any applicant whose completed application has been received, reviewed and accepted by the Department prior to a regularly scheduled examination session shall be scheduled for that session. The following documents shall be included with the completed application form:

At § 1850.16(b)(2), concerning denial, issuance of notice of infraction, suspension, revocation, and other administrative actions, a typographical error was corrected by changing the word ''requirements'' to the word ''requirement.''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 21, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings

will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 the 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 counterpart 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 counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–8893 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–130–FOR; State Program Amendment No. 95–8]

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to regulations pertaining to permit application requirements for reclamation plans, public availability of information, and stream buffer zones. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., May 6, 1998. If requested, a public hearing on the proposed amendment will be held on May 1, 1998. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on April 21, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.15 and 914.16.

II. Description of the Proposed Amendment

By letter dated March 6, 1998 (Administrative Record No. IND–1596), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC) at 310 IAC 12. The full text of the proposed program amendment submitted by Indiana is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is present below.

1. *310 IAC 12–3–46 Surface Mining Permit Application Requirements for Reclamation Plans.* a. The existing provision in subsection (a) was revised by changing the citation references from ''IC 13–4.1–8 and 310 IAC 12–5–1 through 310 IAC 12–5–158'' to ''IC 14–34–10, 310 IAC 12–5, and the environmental protection performance standards of IC 14–34 and this article.'' The following new provision was added:

> The plan shall include, at a minimum, all information required under sections 41 through 45 of this rule, this section, and sections 46.5 through 55 of this rule.

b. The following revisions were made to subsection (b):

New paragraph (2) was added as follows:

> A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 310 IAC 12–4, with supporting calculations for the estimates.

Existing paragraph (2) was changed to paragraph (3) and a citation reference to 310 IAC 12–5–150.1 was added.

Existing paragraph (3) was changed to paragraph (4) and revised to also require that a demonstration of the suitability of topsoil substitutes or supplements be based upon analysis of the total depth of the different kinds of soils. The last sentence of new paragraph (4) was revised to read as follows:

> The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitute or supplements.

Existing paragraph (4) was changed to paragraph (5) and revised by adding the language ''but not limited to'' after the word ''including.'' Existing paragraphs (4)(i) through (4)(vii) were changed to paragraphs (5)(A) through (5)(G). New paragraph (5)(G) was revised by removing the language ''methods for evaluating'' and replacing it with the language ''a soil testing plan for evaluation of.''

Existing paragraphs (5) through (8) were changed to paragraphs (6) through (9) with minor wording changes.

2. *310 IAC 12–3–80 Underground Mining Permit Application Requirements for Reclamation Plans.* a. The existing provision in subsection (a) was revised by changing the citation references from ''chapters 8 and 9 of IC 13–4.1 and 310 IAC 12–5–1 through 310 IAC 12–5–158'' to ''IC 14–34–10, IC 14–34–11, and the environmental protection performance standards of IC 14–34 and this article.'' The following new provision was added:

> The plan shall include, at a minimum, all information required under sections 41 through 55 of this rule.

b. The following revisions were made to subsection (b):

New paragraph (2) was added as follows:

> A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 310 IAC 12–4, with supporting calculations for the estimates.

Existing paragraph (2) was changed to paragraph (3) and it was revised to read as follows:

> A plan for backfiling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross-sections that show the anticipated final surface configuration of the proposed permit area in accordance with 310 IAC 12–5–119.1 through 310 IAC 12–5–121.5 and 310 IAC 12–5–150.1.

Existing paragraph (3) was changed to paragraph (4) and revised to also require that a demonstration of the suitability of topsoil substitutes or supplements be based upon analysis of the total depth of the different kinds of soils. The last sentence of new paragraph (4) was revised to read as follows:

> The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitute or supplements.

Existing paragraph (4) was changed to paragraph (5) and revised by replacing the reference to ''310 IAC 12–5–129'' with a reference to ''310 IAC 12–5–128.3.'' Existing paragraphs (4)(i) through (4)(vii) were changed to paragraphs (5)(A) through (5)(G).

Existing paragraphs (5) through (8) were changed to paragraphs (6) through (9) with minor wording changes.

3. *310 IAC 12–3–110 Public Availability of Information.* Minor wording changes were made to subsections (a) through (e). New subsection (f) was added as follows:

> Information on the nature and location of archaeological resources on public and Indian land, as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, 93 Stat. 721, 16 U.S.C. 470), is confidential.

Existing subsection (f) was changed to (g) and revised by adding ''confidential information'' as one of the types of information for which a person can oppose or seek disclosure.

4. *310 IAC 12–5–32 Surface Mining Stream Buffer Zones.* Subsection (a) is revised as follows:

> (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the director specifically authorizes surface mining activities closer to or through such a stream. The director may authorize such activities only upon finding that: (1) Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and (2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 18 through 19 of this rule.

Subsection (b) was revised by replacing the word ''marked'' with the language ''the operator shall mark it.''

5. *310 IAC 12–5–97 Underground Mining Stream Buffer Zones.* Subsection (a) is revised as follows:

> (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the director specifically authorizes underground mining activities closer to or through such a stream. The director may authorize such activities only upon finding that: (1) underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and (2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 84 through 85 of this rule.

Subsection (b) was revised by replacing the word ''marked'' with the language ''the operator shall mark it.''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations.

Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. e.s.t. on April 21, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 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 counterpart 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 exiting 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 assumption for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–8892 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–131–FOR; State Program Amendment No. 95–13]

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Indiana's regulations pertaining to the definition of ''affected area,'' submittal of underground mining operation plans, and the standards for prime farmland restoration by surface and underground coal mining operations. The amendment is intended to revise the Indiana regulations to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments must be received by 4:00 p.m., e.s.t., May 6, 1998. If requested, a public hearing on the proposed amendment will be held on May 1, 1998. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on April 21, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated March 6, 1998 (Administrative Record No. IND–1597), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to the required program amendments at 30 CFR 914.16(n), 914.16(p), and 914.16(gg) and at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC) at 310 IAC 12 as discussed below.

I. 310 IAC 12–0.5–6 Definition of Affected Area

At section 12–0.5–6, Indiana proposes to designate the existing provision as subsection (a) and amend the definition of ''Affected area'' to mean ''any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations.'' Paragraph (2) was amended by changing the word ''an'' to the word ''any.'' Paragraph (3) was amended by changing the language ''adjacent land'' to ''any adjacent lands.'' Paragraph (4) was revised by changing the language ''an area'' to ''all areas'' at the beginning of the paragraph and adding the language ''except as provided in this section'' at the end of the paragraph. New paragraph (5) was added to read ''Any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations.'' Existing paragraph (5) was redesignated as paragraph (6), the words, ''a site'' were changed to ''any area,'' and the word ''trailings'' was corrected to read ''tailings.'' Existing paragraph (6) was redesignated paragraph (7), the words ''an area'' were changed to ''any areas,'' and the word ''incidental'' was changed to ''incident.'' Existing paragraph (7) was redesignated paragraph (8) and the words ''of a mine'' were removed.

New subsections (b) and (c) were added to read as follows:

(b) The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations unless:

(1) The road was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) The road is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction;

(3) There is substantial (more than incidental) public use; and

(4) The extent and the effect of mining-related uses of the road by the permittee does not warrant regulation as part of the surface coal mining and reclamation operations.

(c) The director shall determine, on a case-by-case basis, whether a particular road satisfies the requirements of subsection (b)(4), based upon the mining-related use of the road and consistent with the definition of surface coal mining operations found in section 125 of this rule.

2. 310 IAC 12–3–78 Underground Mining Permit Applications; Operation Plan; General Requirements

Existing subsections (b) and (c) were added to subsection (a), subsection (a) was revised, new subsection (b) was added, and existing subsection (d) was redesignated as subsection (c). Revised subsection (a) and new subsection (b) read as follows:

(a) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC 14–34 can be accomplished by the applicant. The description shall include, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless the retention of such facilities is necessary for a postmining land use as specified in 310 IAC 12–5–136.5):

(A) Dams, embankments, and other impoundments.

(B) Overburden and topsoil handling and storage areas and structures.

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(D) Spoil, coal processing waste, mine development waste, and noncoal waste removal handling, storage, transportation, and disposal areas and structures.

(E) Mine facilities.

(F) Water pollution control facilities.

(b) In addition to the requirements listed in subsection (a), each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 310 IAC 12–5–139 for each facility.

3. 310 IAC 12–3–98 Special Categories of Mining; Prime Farmland

Minor wording changes and citation reference changes were made throughout this section. Subsection (d)(1) was revised to read as follows:

A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profit descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be

used if their use is approved by the State Conservationist, U.S. Soil Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil-reconstruction standards of 310 IAC 12–5–145 through 310 IAC 12–5–148.5.

4. 310 IAC 12–5–145.5 Prime farmland; special performance standards; United States Soil Conservation Service Criteria

Indiana added the following new provision at 310 IAC 12–5–145.5:

To carry out his or her responsibilities under 310 IAC 12–3–98 and 310 IAC 12–4, the director shall use any prime farmland soil-reconstruction specifications promulgated as rules by the United States Soil Conservation Service for Indiana.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 21, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 counterpart 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 counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–8890 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–015–FOR]

Kansas Abandoned Mine Lane Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas abandoned mine land reclamation plan (hereinafter referred to as the ''Kansas plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions and additions to the Kansas plan pertaining to project ranking and selection procedures and purchasing and procurement systems. The amendment is intended to revise the Kansas plan to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., May 6, 1998. If requested, a pubic hearing on the proposed amendment will be held on May 1, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on April 21, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Russell W. Frum, Mid-Continent Regional Coordinating Center, at the address listed below.

Copies of the Kansas plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002 Telephone: (618) 463–6460.

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763, Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Mid-Continent Regional Coordinating Center, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Plan

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et.seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR Plan has the responsibility and primary authority to implement the program.

On February 1, 1982, the Secretary of the Interior conditionally approved the Kansas plan. Background information on the Kansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the February 1, 1982, **Federal Register** (47 FR 4513). Deficiencies that resulted in the conditional approval were corrected by the State, and on June 3, 1983, all conditions of approval were removed by the Secretary, **Federal Register** (48 FR 24874). Subsequent actions concerning the conditions of approval and amendments to the plan can be found at 30 CFR 916.20 and 916.25.

The Secretary adopted regulations at 30 CFR Part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Description of the Proposed Amendment

By letter dated March 17, 1998 (Administrative Record No. AML–KS–171), Kansas submitted a proposed amendment to its plan pursuant to SMCRA. Kansas submitted the proposed amendment in response to a September 24, 1994, letter (Administrative Record No. AML–KS–169) that OSM sent to Kansas in accordance with 30 CFR 884.15(d). The provisions of the Kansas plan proposed for revision are:

A. Section 884.13(c)(2), Project Ranking and Selection Procedures. 1. Kansas proposes to replace the reference to the Kansas Mined Land Conservation and Reclamation Board (MLCRB) with the Kansas Department of Health and Environment, Surface Mining Section (SMS).

2. Kansas proposes to replace the reference to ''30 CFR 874.14'' with the ''Office of Surface Mining, Abandoned Mine Land Reclamation Program Guidelines.''

3. Kansas proposes to revise the process for selecting sites for reclamation from four steps to three steps.

a. In the first step, Identification and Establishment of Reclamation Priority Problem Areas, Kansas proposes the following:

i. To change the number of priority categories from ten to five as listed in the Office of Surface Mining, Abandoned Mine Land Inventory Manual,

ii. To use site conditions to identify problem areas that will fit into these categories. The results of the evaluation of all site hazards and conditions on a problem area will be used to complete a Problem Area Ranking Matrix.

b. In step two, Eligibility Determination, Kansas proposes to remove item 3, and to change its reference to ''Soil Conservation Service'' to ''Natural Resources Conservation Service.''

c. In step three, Project Selection, Kansas proposes:

i. To delete item 3. (vii), and the last sentence in item 2.,

ii. To delete the language in item 4. and replace it with the following: ''Reclamation can be carried out in a manner that minimizes maintenance to achieve a self-sustaining reclamation solution.,''

iii. To delete the language in item 6. and replace it with the following: ''The probability that remining or developing the site will abate the adverse effects of past mining on the site. If offsite adverse impacts from the affected area so severe as to cause significant danger to public health and safety or to the environment if not abated before the remining takes place.,''

iv. To add new item 9. to read, ''Reclamation activities can be planned in a manner that is cost effective and compatible with the proposed post reclamation land use as intended by the landowner(s).,''

v. To delete the unnumbered paragraph immediately following item 8 that reads:

The results of the evaluation of each factor of a proposed reclamation site will be utilized to complete a PROJECT EVALUATION MATRIX shown in Figure 2. Each parameter will be numerically scored according to its degree of impact and the score will then be adjusted by a standard weighing factor which reflects the parameters significance relative to the total problem. The resultant total score for each site will be used to rank proposed projects within each priority category; a master list will be maintained by the AML Program staff for use by the MLCRB in selecting projects for funding.

vi. To remove the heading, ''Step 4—Selection of Projects,''

v. to revise the paragraph that followed the heading ''Step 4—Selection of Projects'' to read as follows:

Final selection of projects for funding reclamation planning, design and construction during each fiscal year will be based on the SMS's consideration of: (a) sites with the highest numerical scores from Step 1; (b) cost effectiveness of reclaiming lower priority and ranked problems contiguous or in close proximity to higher priority and ranked areas; (c) approximate project costs relative to anticipated available funds to Kansas from the national Abandoned Mine Land Fund; and (d) optimum geographical dispersal of funded projects among eligible sites having the same priority and ranking.

vi. to add a new section to Step 3 to read as follows:

Accomplishments Reporting

Upon completion of any AML project, the SMS will submit Form OSM–76 or other appropriate form(s) to report the accomplishments achieved through the project.

4. Kansas also proposes minor wording changes in this section

B. *Section 884.13(D)(3), Purchasing and Procurement Systems.* Kansas proposes to add the following language under the subsection, ''Other Contract Provisions,'' to read as follows:

All successful Bidders for AML contracts must be eligible per regulation at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Eligibility will be confirmed by consulting the Office of Surface Mining's automated system for identifying and tracking ownership and control links involving permit applicants, permittees, and persons cited in violation notices. This provision will also apply to successful bidders on any non-coal sites eligible for reclamation.

No monies from the AML fund will be expended for reclamation on any non-coal sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, the Comprehensive Environmental Response Compensation and Liability Act of 1980, or other such regulations deemed excludable from funding by the Office of Surface Mining.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendments satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on April 21, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 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. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 916

Intergovernmetnal relations, Surface mining, Underground mining.

Dated: March 27, 1998

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–8891 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–041–FOR]

Maryland Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Maryland regulatory program (hereinafter the ''Maryland program'' under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Maryland regulations pertaining to bonding. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m. E.S.T. April 21, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Program Manager, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contracting OSM's Appalachian Regional Coordinating Center.

George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, Appalachian Regional Coordinating Center, at (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By letter dated March 6, 1997 (Administrative Record No. MD–552.18), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to required amendments at 30 CFR 920.16 (h), (i), (j), and (n). Maryland is revising the Code of Maryland Regulations (COMAR) at section 26.20.14.01B—Performance Bonds and is formally submitting an actuarial study which reviews the adequacy of its alternative bonding system. Specifically, Maryland proposes to require that a performance bond be conditioned upon the permittee faithfully performing every requirement of Subtitle 5 of the Annotated Code of Maryland, the Regulatory Program, the permit, and the reclamation plan. The proposed amendment was announced in the March 25, 1997, **Federal Register** (62 FR 14079). The notice did not clarify that Maryland's alternative bonding system was originally submitted with the understanding that it would cover acid mine drainage. Maryland has since adopted a policy that will limit the liability of the alternative bonding system by increasing the permittee's individual bond amount where unanticipated acid mine drainage develops on a site.

Further, Maryland has now submitted proposed changes to its program found at the Code of Maryland Regulations (COMAR) 26.20.14.05.03 and 26.20.14.05.04. In 1991, OSM approved changes to former COMAR 08.13.09. 15C and 08.13.09.15D (56 FR 63649, December 5, 1991). (Since 1991, Maryland has restructured its regulations and former COMAR 08.13.09.15C is now COMAR 26.20.14.05.03 and former COMAR 08.13.09.15D is now COMAR 26.20.14.05.04). However, Maryland subsequently chose not to promulgate these approved changes. Instead, it now proposes to readopt the language now found at COMAR 26.20.14.05.03 and COMAR 26.20.14.05.04. Section .03 provides that the amount of performance bond be based upon the estimated cost to perform the reclamation required to achieve compliance with the regulatory program and the requirements of the permit in the event of a forfeiture. In addition, the proposed rule establishes a separate bond for revegetation in the amount of $600 per acre of affected land and a general bond in the amount of $1500 per acre for the approved open acre limit.

COMAR 26.20.14.05.04 requires that the amount of the performance bond be adjusted as acreage in the permit are revised, methods of mining operation change, standards of reclamation change, or when the cost of reclamation or restoration work changes.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed

adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 counterpart 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 counterpart Federal regulations.

Unfunded mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 26, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–8894 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 20

46 CFR Part 5

[USCG–98–3472]

RIN 2115–AF59

Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks to improve its adjudication process. This improvement would also affect certain actions involving merchant mariners. First, the proposed rule would consolidate all Coast Guard adjudicative procedures to include the following: the suspension and revocation (S&R) of merchant mariners' licenses, certificates of registry, and documents and the procedures involving class II civil penalties. Second, the proposed rule would eliminate unnecessary procedures from S&R proceedings. The Coast Guard expects the proposed rule to facilitate the efficient use of administrative resources relating to Coast Guard adjudication. It would save time, effort, and money for all parties who are or may become involved in Coast Guard actions.

DATES: Comments must reach the Coast Guard on or before May 6, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–98–3472], U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this rulemaking on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202-366–9329; for information concerning the notice of proposed rulemaking (NPRM) provisions, contact George J. Jordan, Attorney-Advisor, Office of the Chief Administrative Law Judge, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. His telephone number is 202–267–0006.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG–98–3472] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit one copy of all comments and attachments

in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

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

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a public meeting would be helpful to this rulemaking. If an opportunity for oral presentations will help the rulemaking procedures, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard derives its authority to issue this proposed rule in part from 46 U.S.C. 7702. This law, amended by the *Oil Pollution Act of 1990 (Pub. L. 101–380),* authorizes the Coast Guard, in certain situations, to temporarily suspend merchant mariners' credentials. The Coast Guard also derives its authority under 33 U.S.C. 1321(b)(6) to issue rules affecting class II proceedings.

This rulemaking is necessary as part of a Coast Guard effort to improve both: (1) the administrative efficiency of all Coast Guard adjudicative procedures; and (2) specific procedures related to actions involving mariners' credentials. It follows an overall Coast Guard initiative to streamline its resources, yet maintain effectiveness in all affected areas.

The Coast Guard maintains two separate sets of procedural rules that govern administrative adjudication. 46 CFR Part 5 contains the rules for Suspension and Revocation (S&R). The rules of criminal procedure form the basis of the S&R rules. 33 CFR Part 20 contains the rules for class II civil penalties. These rules have their basis in the Model Rules of Administrative Procedure and on other modern rules for civil procedure. Both sets of rules however, contain outdated and inefficient procedures, many of which are not effective in the adjudication of Coast Guard actions.

This rulemaking proposes to consolidate both sets of rules in 33 CFR Part 20. It also seeks to remove those procedures that impede the efficient handling of cases. In addition, it would amend those rules which are not consistent with relevant legal standards and practices.

Another relevant factor adds to the need for this proposed rule. The Coast Guard reduced the number of administrative law judges (ALJs) and field offices in a major effort to streamline its resources. Only six full time ALJs are available to preside over 900–1000 S&R cases in 60 cities throughout the United States, its Commonwealths and Territories. The reduction in personnel that handle adjudicative matters creates the need for a system that can docket and process cases more efficiently.

The ALJ Docketing Center now operates such a system. It manages class II civil penalty cases, S&R cases, and civil penalty and permit sanction cases for the National Oceanographic and Atmospheric Administration (NOAA). This proposed rule would assist in the processing of Coast Guard S&R cases at the ALJ Docketing Center. This rule would allow the ALJ Docketing Center to better administer the adjudication of Coast Guard actions.

In addition, this proposed rule would produce several other benefits. It would ensure that similar cases follow similar procedures. It would eliminate unnecessary hearings and the costs associated with these hearings, such as travel and court reporting costs. It seeks to employ the use of rules that are more familiar to civilian attorneys. It would also incorporate many recommendations of the former Administrative Conference of the United States and practices prevalent in the Department of Transportation and other agencies. This would promote uniformity and consistency in certain proceedings. Finally, this proposed rule would help to promote the settlement process in cases that are undisputed. This would further help to eliminate unnecessary hearings.

This rulemaking proposes to promote and ensure consistent procedural guidelines in the adjudication proceedings involving mariners' certificates, documents, and licenses, class II civil penalties, and other proceedings before Coast Guard ALJs. It would also enable the Coast Guard to maintain regulations in keeping with modern rules of civil and criminal procedure, where applicable.

Discussion of Proposed Rule

1. Consolidated Rules of Procedure and Rules of Evidence

This proposed rule would consolidate all rules of procedure and evidence for administrative adjudication into 33 CFR Part 20. The proposed rule would do so in the following ways—

- Remove the rules of procedure and evidence for S&R cases from 46 CFR Part 5;
- Supersede those rules of procedure and evidence from 46 CFR Part 5 and provide equivalent rules in Part 20;
- Amend certain sections of Part 20 to accommodate specific requirements for S&R in the areas of procedure, for example, regarding the opening of cases; and
- Create certain special rules of evidence relating only to S&R cases into a new subpart in 33 Part 20.

2. Changes in the Rules of Procedure and the Rules of Evidence

The proposed rule would change the rules of procedure and evidence in administrative proceedings in the following ways:

- Complaints replace Notices of Hearings. Under the proposed rule, the investigating officer would file a complaint and propose the place for a hearing, as opposed to the current system in which the investigating officer files charges and serves them on the mariner, telling the mariner where and when to appear to answer the charges. In addition, the complaint would identify the order of suspension or revocation sought, or, in a class II case, the penalty sought.
- Complaint must be Answered in Writing and Within Twenty Days. Under the proposed rule, the mariner must answer the complaint in writing within 20 days. Under the current S&R rules, the mariner answers at a hearing.
- Administrative Law Judge to schedule hearings. Under the proposed rule, the ALJ schedules the hearing after receiving the answer and considering the convenience of both parties. Under the current S&R rule, the investigating officer schedules the hearing in the Notice and the ALJ schedules continuances, etc.
- The Coast Guard May Seek a Default Judgment. Under the proposed rule, if a mariner fails to answer or does not attend a hearing, the Coast Guard may seek a default judgment. Under the current S&R rules, a hearing in the absence of the mariner is required.
- New Procedures for Settlement Agreements. Under the proposed rule, settlement agreements are encouraged. In addition the proposed rule establishes procedures for the process of settlement. Under present S&R practices, although settlement agreements have been encouraged, there is no consistent procedure involved in achieving them.

• Administrative Law Judges to Issue Oral Decisions. This rule proposes that ALJs issue oral decisions in simple cases, when the rights of the parties are not impaired and in order to speed justice. The present S&R rule, 46 CFR 5.571, *Delivery of decision,* does not allow for such decisions, under any circumstance.

• Expedited Hearings Established. This rule proposes that in certain prescribed circumstances, the ALJ may expedite a hearing. Under 46 U.S.C. 7702(d), a mariner whose license, certificate or document is temporarily suspended is entitled to an expedited hearing. However, a hearing is required within 30 days after the suspension. This proposed rule requires that an ALJ be immediately assigned to the case in order that the matter be resolved within the statutory period. Under the current S&R rules, there is no provision for this circumstance.

• The Coast Guard will have the right of appeal in S&R cases. Under the current S&R rules, the Coast Guard reviews only cases in which the charges were found proved and the respondent files an appeal. The inability of the agency to seek review or appeal, in cases where the ALJ ruled against it, is unique to those rules. Neither the APA nor the statutory authority for S&R cases prohibit appeal by an agency. All other Federal administrative agencies can appeal ALJ rulings, and the proposed rules in Part 20 provide for such an appeal.

3. Changes in the Rules of Evidence

This rule proposes to apply the Administrative Procedures Act (APA) rules of evidence as the standard for evidence brought in S&R cases. In current practice some ALJs apply the Federal Rules of Evidence. This proposed rule seeks to have one consistent standard, the APA standard, used in S&R cases.

4. Special Rules of Evidence—Suspension and Revocation Cases

This rule proposes to adopt additional rules of evidence in S&R cases. The Coast Guard recognizes a need for special rules of evidence created specifically for S&R cases. The proposed rule places these special rules in a separate subpart. Current Part 20 Rules do not allow for special rules of evidence to address the unique circumstances that may arise involving an S&R case.

5. Changes in Case Filing

With the opening of the ALJ Docketing Center in Baltimore, Maryland, efficient and effective case management in administrative proceedings is now in effect. The proposed rule seeks to optimize the capabilities of the Docketing Center and improve case filing procedure in the following ways:

• Central Location of Filed Documents. This proposed rule changes the place and method of filing for all administrative proceedings. Parties may now file all pleadings, motions, decisions, and other appropriate documents with the ALJ Docketing Center in Baltimore, Maryland. The current S&R rules require parties to file documents in the Coast Guard District where the case originated. The current rules in 33 CFR Part 20 also require parties to file multiple copies of documents. This proposed rule requires parties to submit only a single signed copy of a specified form instead of the previously required formatted documents.

6. Changes in the Rules of Discovery

This proposed rule would change the discovery rules in all administrative proceedings. The rules would be changed in the following ways:

• Fifteen-Day Limit to Submit Final Exhibits and Witnesses. The rules would be changed to require that parties submit final lists of witnesses and proposed exhibits 15 days or more before a hearing, unless otherwise allowed at the discretion of the ALJ. The current class II rules require parties to submit final exhibits 5 days or more before a hearing.

• Consistent Discovery Procedures Established. Under the current S&R rules, there are no formal discovery procedures. This can create problems when copies of exhibits and witnesses are not presented in a timely manner and with sufficient notice to the other party. Most ALJs have introduced requirements for discovery on their own, but these differ from judge to judge.

Summary of Proposed Changes

33 CFR Part 20—Rules of Practice, Procedure, and Evidence for Coast Guard Administrative Proceedings

1. Revise the title of 33 CFR Part 20 to indicate that it applies to all formal adjudicative proceedings of the Coast Guard.

2. Revise the authority citation for part 20 to include the authority for S&R of merchant mariners' licenses, certificates of registry, and documents.

3. Where the term ''administrative proceeding'' appears throughout part 20, it would now refer to S&R cases and class II civil penalty cases.

4. In section 20.101, the reference to the statutory authority for S&R is now added.

5. In section 20.102, *Definitions,* S&R proceedings are defined and appropriate references to S&R cases are added in other definitions.

6. In section 20.302, *Filing of documents and other materials,* the address of the ALJ Docketing Center is added. This eliminates the requirement to file multiple copies of cases with the docket clerk.

7. In section 20.307, *Complaint,* changes to section would enable the Coast Guard to propose a sanction early in the complaint. Under current S&R procedures, the Coast Guard may not propose a sanction until the penalty phase.

8. Revise section 20.601(c)(2), *Discovery—General,* to eliminate the reference to 33 CFR 20.807.

9. Revise section 20.807, *Exhibits and Documents,* paragraph (b), to now require 15 days to submit final exhibits instead of 5 days. This would provide for the timely submittal of pertinent information by both parties, well before the hearing. It would preclude undue confusion and disruption by allowing both parties adequate time in which to review documents and exhibits.

10. Section 33 CFR 20.902, *Decision of Administrative Law Judge,* allows an ALJ to issue an oral decision instead of a written decision in appropriate cases.

11. Section 20.903, *Record of Proceedings,* changes the site for public examination of record to the ALJ Docketing Center.

12. Section 20.904, *Reopening,* already allows the reopening of a record for the taking of added evidence. The new procedures deal with the subsequent reversal of a conviction that served as the basis for a suspension or revocation and with the issuance under 46 U.S.C. 7702(c) of a new document in certain circumstances after revocation.

13. Section 20.1001, *Appeals—General,* changes the address to file notices and briefs to the ALJ Docketing Center.

14. Section 20.1103, *Availability of Decisions,* adds the ALJ Docketing Center as a public reading room. It also provides the Internet address for filing appeal decisions and the index of appeal decisions.

15. A new Subpart L, *Expedited Hearings,* provides procedures for an expedited hearing after the temporary suspension of a license, certificate, or document.

16. A new Subpart M, *Evidentiary rules for Suspension and Revocation Hearings,* added to Part 20, includes the sections of Part 5 that deal with

evidentiary matters which are specific to S&R cases.

17. Changes to 46 CFR Part 5 would remove similar rules now covered in part 33 CFR Part 20. In addition, some rules are now governed by the power of the ALJ to regulate the course of the hearing. For specific information, refer to the chart below:

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PROPOSED CHANGES TO 46 CFR PART 5

* "Removed" as unnecessary. These items are now covered under the powers of the judge to regulate the course of the hearing.

Sections in Part 5	Title	Change	Equivalents in Part 20
5.1 - 5.5	Subpart A Authority and Purpose		
5.3	Purpose of regulations	Revised	None
5.11-5.35	**Subpart B - Definitions**		
5.11	Commandant	Revised	20.102(e)
5.13	Coast Guard District	Removed	
5.23	Charge	Removed	20.102, 20.307
5.25	Specification	Removed	20.102, 20.307
5.33	Violation of law or regulation	Revised	None
5.35	Conviction for a dangerous drug law violation, use of, or addiction to the use of dangerous drugs.	Revised	None
5.51-5.71	**Subpart C - Statements of Policy and Interpretation**		
5.51	Construction of regulations	Retained / No Change	20.103
5.53	Initiating suspension and revocation proceedings	Removed	20.401
5.55	Time limitations	Revised	None
5.63	Standard of Proof	Removed	20.701
5.65	Commandants decisions on appeal and review	Removed / Covered by Part 20	20.1004, 20.1102
5.101-5.105	**Subpart D - Investigations**		
5.105	Course of action available	Revised	None
5.107	Preparation and service of Charges and specifications	Revised	
5.301-309	**Subpart F - Subpoenas**		
5.301	Issuance of subpoenas	Retained / No Change	20.608
5.305	Motions to quash	Retained	20.609
5.307	Enforcement of subpoena	Retained / No Change	20.608, 20.609
5.309	Proof of service	Retained	20.608
5.401	**Subpart G - Witness Fees**	Retained / No Change	20.708
5.501-	**Subpart H - Hearings**		
5.501	Hearings--general	Revised	20.205; Subpart E; Subpart G
5.503	Record of the hearing	Removed / Covered by Part 20	20.903
5.505	Public access to hearing	Removed	None*
5.507	Disqualification of ALJ	Removed / Covered by Part 20	20.204
5.509	Opening the hearing	Removed / Unnecessary [See § 20.704]	None*
5.511	Continuance of a hearing	Removed / Covered by Part 20	20.309; 20.704
5.513	Appearances	Removed / Covered by Part 20	20.301
5.515	Failure of respondent to appear	Removed / Covered by Part 20	20.705; 20.314

PROPOSED CHANGES TO 46 CFR PART 5

* "Removed" as unnecessary. These items are now covered under the powers of the judge to regulate the course of the hearing.

Sections in Part 5	Title	Change	Equivalents in Part 20
5.517	Witnesses excluded from hearing room	Removed / Covered by Part 20	None*
5.519	Rights of respondent	Removed	None
5.523	Motions or objections	Removed / Covered by Part 20	20.309
5.525	Correction or amendment of charges	Removed / Covered by Part 20	20.305
5.527	Answer	Removed / Covered by Part 20	20.308
5.529	Opening statement by investigating officer	Removed	None*
5.531	Opening statement by or on behalf of respondent	Removed	None*
5.533	Presentation of case where there is an admission or no contest answer	Removed	20.308
5.535	Witnesses	Removed / Covered by Part 20	20.706; 20.707
5.537	Evidence	Removed / Covered by Part 20	Subpart H
5.539	Burden of proof	Removed / Covered by Part 20	20.701; 20.702
5.541	Official notice by Commandant and ALJ	Removed / Covered by Part 20	20.806
5.543	Certification of extracts from shipping articles, logbooks, etc.	Removed / Moved to Part 20	20.1303
5.545	Weight of entries from logbooks	Removed / Moved to Part 20	20.1305
5.547	Use of judgment of conviction	Removed / Moved to Part 20	20.1307
5.549	Admissibility of respondent's prior record	Removed / Moved to Part 20	20.1309
5.551	Admissions by respondent	Removed / Moved to Part 20	20.1311
5.553	Testimony by deposition	Removed / Covered by Part 20	20.605
5.555	Treatises	Removed	None*
5.557	Medical examination of respondent	Removed / Moved to Part 20	20.1313
5.559	Argument	Removed	None*
5.561	Submission of proposed findings	Removed / Covered by Part 20	20.710
5.563	Administrative Law Judge's findings and conclusions	Removed / Covered by Part 20	20.902
5.565	Submission of prior record	Removed / Moved to Part 20	20.1315
5.571	Delivery of decisions	Removed / Covered by Part 20	20.304; 20.902
5.573	Notification of right to appeal	Removed / Covered by Part 20	20.1001
5.577	Modification of ALJ's decision and order	Removed	20.904
5.601-607	**Subpart I - Reopening of hearing**	Removed / Covered by Part 20	20.904

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PROPOSED CHANGES TO 46 CFR PART 5

* "Removed" as unnecessary. These items are now covered under the powers of the judge to regulate the course of the hearing.

Sections in Part 5	Title	Change	Equivalents in Part 20
5.701-5.711	**Subpart J - Appeals**		
5.701	Appeals in general	Revised / Adds reference to Part 20	20.1001
5.703	Procedures for appeal	Removed / Covered by Part 20	20.1003
5.705	Action on appeal	Removed / Covered by Part 20	20.1004
5.709	Appeal cases remanded for further proceedings	Removed	None
5.711	Commandant's decisions on appeal	Removed / Covered by Part 20	20.1004, 20.1102
5.901-5.905	**Subpart L - Issuance of new license, certificate of document after revocation**		
5.903	Application procedures	Retained / Parallel process in Part 20	20.904
5.905	Commandant's decisions on application	Retained / Parallel process in Part 20	20.904

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this Rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Benefits: The Coast Guard assumes savings to all parties by simplifying administrative proceedings that help to expedite cases. The Coast Guard's use of Administrative Law Judges (ALJs) is undergoing major change. In the first phase of this process, the Coast Guard established a Docketing Center in Baltimore. It provides administrative law services for all pertinent cases. In the second phase, the Docketing Center would expand its services to permit on-line access to decisions and indices and to improve case management. A part of that effort would be to rewrite 33 CFR Part 20, as here augmented, in plain English.

Executive Order 12988 [61 FR 4728 (February 5, 1996)], on Reform of Civil Justice, also established ''Principles to Promote Just and Efficient Administrative Adjudications.'' It recommends that agencies use case management techniques as a tool for improving their administrative proceedings. It also recommends that they review their adjudication procedures and develop specific ones to—

- Reduce delay in decision making;
- Facilitate self representation where appropriate;
- Expand non-lawyer counseling and representation where appropriate;
- Invest maximal discretion in fact-finding officers;
- Encourage appropriate settlement of claims as early as possible; and
- Develop effective and simple methods, including the use of electronic technology, to educate the public about their policies and procedures.

The primary reason for this entire effort is to achieve and sustain effective case management. First, a central docket permits more efficient assignment of ALJ and staff to contested cases. Second, enhanced office automation (workflow) permits the routine handling of dockets and files by a small staff. Third, a central database permits active supervision of cases.

At present, Notices of Hearings hinder an ALJ's schedule in S&R cases because current rules require notice but do not also require responses from mariners. The result is that ALJs (and the Coast Guard) must prepare for hearings as if all mariners will dispute the charges. Almost half of these cases conclude without ever going to hearings through settlement agreements or withdrawal by the prosecution. However, it is not currently possible to use the hearing date for a case that ends without a hearing to hear another case.

With responsive pleading, ALJs are able to identify which cases would be amenable to disposal by motion and which would need hearings. In cases of class II civil penalties, ALJs are able to schedule hearings only if necessary. Almost half of these cases, through settlement agreements or motions, likewise conclude without ever going to hearings. (Unlike S&R cases, these cases have had a negligible effect on ALJs' schedules.)

Each ALJ depends upon a single Legal Assistant (LA). Each case docketed usually takes three days of an LA's time for docketing; scheduling; arranging for court reporters, hearing rooms, and the ALJ's travel; preparing reports; maintaining the docket record and closing the file; preparing the hearing report; and arranging for final disposition of the case record.

This demand on time holds in every case filed, whether contested or not. (For example: The Coast Guard files a case, and the respondent seeks a change of venue unopposed by the agency. The ALJ would not spend more than an hour or less, on the case; but the LA must still prepare the record for transfer to another ALJ and file it.) This claims almost as much time from respondents as from the Coast Guard. The adjudication procedures of this rule would drastically reduce the demands of the time required of all parties concerned.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard considers whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. These include independently owned and operated small businesses that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects that this proposed rule would have a minimal direct impact on small entities. Holders of licenses, certificates, and documents are not small entities, though they may work for small entities. This rule simplifies many adjudicatory procedures and adds only the requirement to reply by written answer, in most cases, rather than by oral response at hearing.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business or organization, and if you have questions concerning its provisions or options for compliance, please contact Mr. George J. Jordan, Attorney Advisor, Office of the Chief Administrative Law Judge (G–CJ), Room 6302, 202–267–0006.

Collection of Information

This proposed rule does not call for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. Between simplified, expedited adjudicatory procedures and greater use of electronic devices, this rule would reduce the burden of paperwork on the public and private sectors in large and about equal measure.

Unfunded Mandate

Under the Unfunded Mandates Reform Act (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives, and from those alternatives, select the least costly, cost-effective, or least burdensome alternative that achieves the objective of the rule.

No State, local, or tribal government entities would be affected by this

proposed rule. Therefore, this proposed rule would not result in annual or aggregate costs of $100 million or more either to State, local, or tribal governments or to the private sector.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(34) (b) and (c) of COMDTINST M16475.1B, this proposed rule 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

33 CFR Part 20

Administrative Law Judges, Administrative practice and procedure, Appeals, Discovery, Evidence, Hearings.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, rug abuse, Investigations, Licensing, Mariners, Seamen, Penalties.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 20 and 46 CFR Part 5 as follows:

1. Revise 33 CFR Part 20 consisting of §§ 20.101 through 20.1103 to read as follows:

PART 20—RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

Subpart A—General

Sec.
20.101 Scope.
20.102 Definitions.
20.103 Construction and waiver of rules.

Subpart B—Administrative Law Judges

20.201 Assignment.
20.202 Powers.
20.203 Unavailability.
20.204 Withdrawal or disqualification.
20.205 Ex parte communications.
20.206 Separation of functions.

Subpart C—Pleadings and Motions

20.301 Representation.
20.302 Filing of documents and other materials.
20.303 Form and content of filed documents.
20.304 Service of documents.
20.305 Amendment or supplementation of filed documents.
20.306 Computation of time.
20.307 Complaints.
20.308 Answers.
20.309 Motions.
20.310 Default by respondent.
20.311 Withdrawal or dismissal.

Subpart D—Proceedings

20.401 Initiation of administrative proceedings.
20.402 Public notice.
20.403 Consolidation and severance.
20.404 Interested persons.

Subpart E—Conferences and Settlements

20.501 Conferences.
20.502 Settlements.

Subpart F—Discovery

20.601 General.
20.602 Amendatory or supplementary responses.
20.603 Interrogatories.
20.604 Requests for production of documents or things for inspection or other purposes.
20.605 Depositions.
20.606 Protective orders.
20.607 Sanctions for failure to comply.
20.608 Subpoenas.
20.609 Motions to quash or modify.

Subpart G—Hearings

20.701 Standard of proof.
20.702 Burden of proof.
20.703 Presumptions.
20.704 Scheduling and notice of hearings.
20.705 Failure to appear.
20.706 Witnesses.
20.707 Telephonic testimony.
20.708 Witnesses' fees.
20.709 Closing of the record.
20.710 Proposed findings, closing arguments, and briefs.

Subpart H—Evidence

20.801 General.
20.802 Admissibility of Evidence.
20.803 Hearsay evidence.
20.804 Objections and offers of proof.
20.805 Proprietary information.
20.806 Official notice.
20.807 Exhibits and documents.
20.808 Written testimony.
20.809 Stipulations.

Subpart I—Decisions

20.901 Summary decisions.
20.902 Decisions of the ALJ.
20.903 Records of proceedings.
20.904 Reopening.

Subpart J—Appeals

20.1001 General.
20.1002 Records on appeal.
20.1003 Procedures for appeal.
20.1004 Decisions on appeal.

Subpart K—Finality, Petitions for Hearing, and Availability of Orders

20.1101 Finality.
20.1102 Petitions to set aside decisions and provide hearings for civil penalty proceedings.
20.1103 Availability of decisions.

Subpart L—Expedited Hearings

20.1201 Application.
20.1202 Filing of pleadings.
20.1203 Commencement of expedited hearings.
20.1205 Motion for return of temporarily suspended license, certificate of registry, or document.
20.1206 Discontinuance of expedited hearings.
20.1207 Pre-hearing conferences.
20.1208 Expedited Hearings.
20.1209 Appeals of ALJ's decisions.

Subpart M—Supplementary Evidentiary Rules for Suspension and Revocation Hearings

20.1301 Purpose.
20.1303 Authentication and certification of extracts from shipping articles, logbooks, and the like.
20.1305 Admissibility and weight of entries from logbooks.
20.1307 Use of judgments of conviction.
20.1309 Admissibility of respondents' criminal records and records with the Coast Guard before entry of findings and conclusions.
20.1311 Admissions by respondent.
20.1313 Medical examination of respondents.
20.1315 Submission of prior records and evidence in aggravation or mitigation.

Authority: 33 U.S.C. 1321; 42 U.S.C. 9609; 46 U.S.C. 7701, 7702; 49 CFR 1.46.

Subpart A—General

§ 20.101 Scope.

Except as otherwise noted, the rules of practice, procedure, and evidence in this part apply to the following subjects of administrative proceedings before the United States Coast Guard:

(a) Class II civil penalties assessed under section 311(b) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(6)].

(b) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9609(b)].

(c) Suspensions and revocations conducted under 46 U.S.C. Chapter 77.

§ 20.102 Definitions.

Administrative Law Judge or ALJ means any person designated by the Commandant under paragraph 556(b)(3) of the Administrative Procedure Act (APA) [5 U.S.C. 556(b)(3)] to conduct hearings arising under 33 U.S.C. 1321(b); 42 U.S.C. 9609(b); or 46 U.S.C. Chapter 77.

Chief Administrative Law Judge or Chief ALJ means the Administrative Law Judge appointed as the Chief

Administrative Law Judge of the Coast Guard by the Commandant.

Class II Civil penalty proceeding means a trial-type proceeding for the assessment of a civil penalty that offers an opportunity for an oral, fact-finding hearing before an ALJ.

Coast Guard Representative means an official of the Coast Guard designated to prosecute an administrative proceeding.

Commandant means the Commandant of the Coast Guard. It includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any matter.

Complaint means a document issued by a Coast Guard representative alleging a violation for which a penalty may be administratively assessed under 33 U.S.C. 1321(b) or 42 U.S.C. 9609(b), or a merchant mariner's license, certificate of registry, or document suspended or revoked under 46 U.S.C. 7703 or 7704.

Hearing Docket Clerk means an employee of the Office of the Chief ALJ who is responsible for receiving documents, determining their completeness and legibility, and distributing them to ALJs and others, as required by this part.

Interested person means a person who, as allowed in § 20.404, files written comments on a proposed assessment of a class II civil penalty or files written notice of intent to present evidence in any such hearing held on the proposed assessment.

Mail means first-class, certified, or registered matter sent by the Postal Service, or matter sent by an express-courier service.

Motion means a request for an order or ruling from an ALJ.

Party means a respondent or the Coast Guard.

Person means an individual, a partnership, a corporation, an association, a public or private organization, or a governmental agency.

Personal delivery means delivery by hand or in person, or through use of a contract service or an express-courier service. It does not include use of governmental interoffice mail.

Pleading means a complaint, an answer and any amendment to such document permitted under this part.

Respondent means a person charged with a violation in a complaint issued under this part.

Suspension and revocation proceeding or *S&R proceeding* means a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ.

§ 20.103 Construction and waiver of rules.

(a) Each person with a duty to construe the rules in this part in an administrative proceeding shall construe them so as to secure a just, speedy, and inexpensive result.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief ALJ, or a presiding ALJ may, after notice, waive any of the rules in this part either to prevent undue hardship or manifest injustice or to secure a just, speedy, and inexpensive result.

(c) Absent a specific provision in this part, the Federal Rules of Civil Procedure control.

Subpart B—Administrative Law Judges

§ 20.201 Assignment.

An ALJ, assigned by the Chief ALJ after receipt of the complaint, shall preside over each administrative proceeding under this part.

§ 20.202 Powers.

The ALJ shall have all powers necessary to the conduct of fair, fast, and impartial hearings, including the powers to—

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on motions;

(d) Order discovery as provided for in this part;

(e) Hold hearings or settlement conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Issue decisions;

(i) Exclude any person from a hearing or conference for disrespect, or disorderly or rebellious conduct; and

(j) Institute policy authorized by the Chief ALJ.

§ 20.203 Unavailability.

(a) If an ALJ cannot perform the duties described in § 20.202 or otherwise becomes unavailable, the Chief ALJ shall designate a successor.

(b) If a hearing has commenced and the assigned ALJ cannot proceed with it, a successor ALJ may. The successor ALJ may, at the request of a party, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 20.204 Withdrawal or disqualification.

(a) An ALJ may disqualify herself or himself at any time.

(b) Until the filing of the ALJ's decision, either party may move that the ALJ disqualify herself or himself for personal bias or other valid cause. The party shall file with the ALJ, promptly upon discovery of the facts or other reasons allegedly constituting cause, an affidavit setting forth in detail the reasons.

(1) The ALJ shall rule upon the motion, stating the grounds for the ruling. If the ALJ concludes that the motion is timely and meritorious, she or he shall disqualify herself or himself and withdraw from the proceeding. If the ALJ does not disqualify herself or himself and withdraw from the proceeding, the ALJ shall carry on with the proceeding, or, if a hearing has concluded, issue a decision.

(2) If an ALJ denies a motion to disqualify herself or himself, the moving party may, according to the procedures in subpart J of this part, appeal to the Commandant once the hearing has concluded. When that party does appeal, the ALJ shall forward the motion, the affidavit, and supporting evidence to the Commandant along with the ruling.

§ 20.205 Ex parte communications.

Ex parte communications are governed by subsection 557(d) of the Administrative Procedure Act [5 U.S.C. 557(d)].

§ 20.206 Separation of functions.

(a) No ALJ may be responsible to, or supervised or directed by, an officer, employee, or agent who investigates or represents the Coast Guard.

(b) No officer, employee, or agent of the Coast Guard who investigates for or represents the Coast Guard in connection with any administrative proceeding may, in that proceeding or one factually related, participate or advise in the decision of the ALJ or of the Commandant in an appeal, except as a witness or counsel in the proceeding or the appeal.

Subpart C—Pleadings and Motions

§ 20.301 Representation.

(a) A party may appear—

(1) Without counsel;

(2) With an attorney; or

(3) With other duly authorized representative.

(b) Any attorney, or by other duly authorized representative shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and the representative's mailing addresses and telephone numbers.

(c) Any attorney or other duly authorized representative shall also file a notice, including the items listed in paragraph (a) of this section, for any withdrawal of appearance.

(d) Any attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless otherwise ordered by the ALJ.

(e) Any person who would act as a duly authorized representative and who is not an attorney shall file a statement setting forth the basis of his or her authority to so act. The ALJ may deny appearance as representative to any person who, the ALJ finds, lacks either the qualifications to represent others or the requisite character, integrity, or proper personal conduct.

§ 20.302 Filing of documents and other materials.

(a) The proper address at which to file all documents and other materials relating to an administrative proceeding is: U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201–4022.

(b) The telephone number is: 410–962–5100.

(c) The fax number is: 410–962–1746.

(d) The appropriate party shall file with the Hearing Docket Clerk an executed original of each document (including any exhibit and supporting affidavit).

(e) A party may file by mail or personal delivery. The ALJ or the Hearing Docket Clerk may permit other methods, such as fax or other electronic means.

(f) When the Hearing Docket Clerk determines that a document, or other material, offered for filing does not comply with requirements of this part, the Clerk may decline to accept the document, or other material, for filing, and return it unfiled. Alternatively, the Clerk may accept it, advise the person offering it of the defect, and require that person to correct the defect.

§ 20.303 Form and content of filed documents.

(a) Each filed document must clearly—

(1) State the title of the case;

(2) State the docket number of the case, if one has been assigned;

(3) Designate the type of filing (for instance: petition, notice, or motion to dismiss);

(4) Identify the filing party by name and capacity acted in; and

(5) State the address, telephone number, and any fax number of the filing party and, if that party is represented, the name, address, telephone number, and any fax number of the representative.

(b) Each filed document must—

(1) Measure 8–½ by 11 inches, except that a table, chart, or other attachment may be larger if folded to the size of the filed document to which it is physically attached;

(2) Be printed on just one side of the page and be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(3) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(4) Have a left margin of at least 1–1/2 inches and other margins of at least 1 inch; and

(5) Be bound on the left side, if bound.

(c) Each filed document must be in English or, if in another language, accompanied by a certified translation. The original of each filed document must be signed by the filing party or her or his representative. Unless the rules in this part or the ALJ requires it to be, no filed document need be verified or accompanied by an affidavit. The signature constitutes a certification by the signer that she or he has read the document; that, to the best of her or his knowledge, information, and belief, the statements made in it are true; and that she or he does not intend it to cause delay.

(d) Complaints, answers, and simple motions may employ forms approved for use in proceedings of the Coast Guard instead of the format set out in this section.

§ 20.304 Service of documents.

(a) The ALJ shall serve upon each party to the proceeding a copy of each document issued by the ALJ in it. The ALJ shall serve upon each interested person, as determined under § 20.404, a copy of the notice of hearing. Unless this part provides otherwise, the ALJ shall upon request furnish to each such interested person a copy of each document filed with the Hearing Docket Clerk or issued by the ALJ.

(b) Unless the ALJ orders otherwise, each person filing a document with the Hearing Docket Clerk shall serve upon each party a copy of it.

(c) If a party filing a document must serve a copy of it upon each party, each copy must bear a certificate of service, signed by or on behalf of the first party, stating that she or he has so served it. The certificate shall be in substantially the following form:

I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by [specify the method]:

_____

(1) [name, address of party]

_____

(2) [name, address of party]

Done at _____, this _____ day of _____, 19____ or 20____.

[Signature]

For _____

[Capacity]

(d) Service of any document may be by mail or personal delivery. Service of any document other than the complaint and the answer may be by fax or other electronic means, at the discretion of the ALJ; but the Hearing Docket Clerk may limit the times and circumstances of service by fax or other electronic means.

(e) Unless the ALJ orders otherwise, each document filed in accordance with § 20.302 must be served upon each counsel or other representative or, if the party is not represented, upon the party herself or himself. Service upon counsel or representative constitutes service upon the person to be served.

(f) Service must be made at the address of the counsel or representative, or, if the party is not represented, at the last known address of the residence or principal place of business of the person to be served.

(g) If service is by personal delivery, it is complete when the document is handed to the person to be served, is delivered to the person's office during business hours, or, if the person to be served has no office, is delivered to the person's residence and deposited in a conspicuous place. If service is by mail, fax, or other electronic means, it is complete either upon deposit in the mail or with the electronic transmission.

(h) If a person refuses to accept delivery or fails to claim a properly addressed document sent under this subpart, the document is deemed served anyway. Service is valid at the date and the time of mailing, of deposit with a contract service or express-courier service, or of refusal to accept delivery.

§ 20.305 Amendment or supplementation of filed documents.

(a) Each party or interested person shall amend or supplement a previously filed pleading or other document if she or he learns of a material change that may affect the outcome of the administrative proceeding. However, no amendment or supplement may broaden the issues without an opportunity for

any other party or interested person both to reply to it and to prepare for the broadened issues.

(b) The ALJ may allow other amendments or supplements to previously filed pleadings or other documents.

(c) Each party or interested person shall notify the Hearing Docket Clerk, the ALJ, and every other party or interested person, or her or his representative, of any change of address.

§ 20.306 Computation of time.

(a) In the computation of any period of time prescribed in this part—

(1) The first day of the period is not included; and,

(2) When the period is 7 days or less, intermediate Saturdays, Sundays, and Federal holidays are not included either; but,

(3) Unless the last day of the period is a Saturday, Sunday, or Federal holiday, it is included.

(b) If service or filing is by domestic mail, the period for response would run an added 3 days.

(c) An ALJ, for cause shown, may——

(1) Upon request for extension made before the end of the original period or of the period as extended by a previous order, with or without motion or notice, order a period extended; or

(2) Upon motion made after the end of the original period or of the period as extended, permit the act to be done when the failure to do it before the end was excusable.

§ 20.307 Complaints.

(a) The complaint must set forth——

(1) The statute or rule allegedly violated;

(2) The pertinent facts involved; and

(3)(i) The amount of the class II civil penalty sought; or

(ii) The order of suspension or revocation proposed.

(b) The Coast Guard shall propose a place of hearing when filing the complaint.

(c) The complaint must conform to the requirements of this subpart for filing and service.

§ 20.308 Answers.

(a) The respondent shall file a written answer to the complaint 20 days or less after service of the complaint. The answer must conform to the requirements of this subpart for filing and service.

(b) The person filing the answer shall, in the answer, either agree to the place of hearing proposed in the complaint or propose an alternative.

(c) Each answer must state whether the respondent intends to contest any of the allegations set forth in the complaint. It must include any affirmative defenses that the respondent intends to assert at the hearing.

(1) The answer must admit or deny each numbered paragraph of the complaint. If it states that the respondent lacks sufficient knowledge or information to admit or deny a particular paragraph, it denies that paragraph. If it does not specifically deny a particular allegation made in the complaint, it admits that allegation.

(2) If an answer generally denies the complaint, it constitutes a failure to file an answer.

(d) A respondent's failure without good cause to file an answer admits each allegation made in the complaint.

§ 20.309 Motions.

(a) A person may apply for an order or ruling not specifically provided for in this subpart, but shall apply for it by motion. Each written motion must comply with the requirements of this subpart for form, filing, and service. Each motion must state clearly and concisely—

(1) Its purpose, and the relief sought;

(2) Its statutory or regulatory authority; and

(3) The facts constituting the grounds for the relief it seeks.

(b) A proposed order may accompany a motion.

(c) Each motion must be in writing; except that one made at a hearing will be sufficient if stated orally upon the record, unless the ALJ directs that it be reduced to writing.

(d) Except as otherwise required by this part, a party shall file any response to a written motion 10 days or less after service of the motion. When a party makes a motion at a hearing, an oral response to the motion made at the hearing is timely.

(e) Unless the ALJ orders otherwise, the filing of a motion does not stay a proceeding.

(f) The ALJ will rule on the record either orally or in writing. She or he may summarily deny any dilatory, repetitive, or frivolous motion.

§ 20.310 Default by respondent.

(a) The ALJ may find a respondent in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown.

(b) Each motion for default must conform to the rules of form, service, and filing of this subpart and must include a proposed decision. The respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.

(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of her or his right to a hearing on those facts.

(d) Upon finding a respondent in default, the ALJ shall issue a decision against her or him.

(e) For good cause shown, the ALJ may set aside a finding of default.

§ 20.311 Withdrawal or dismissal.

(a) An administrative proceeding may end in withdrawal without any act by an ALJ in any of the following ways:

(1) By the filing of a stipulation by all parties who have appeared in the proceeding.

(2) By the filing of a notice of withdrawal by the Coast Guard representative at any time before the respondent has served a responsive pleading.

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act [33 U.S.C. 1321 (b)(6)] or section 109(d) of the Comprehensive Environmental Response, Compensation and Liablility Act [42 U.S.C. 9609 (b)], by the filing of

(i) A notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, but before the issuance of an order of the Commandant assessing or denying a class II civil penalty, together with

(ii) A certification by the representative that the filing of the notice is due to a request by the Attorney General—in accordance with subsection 10(d) of Executive Order 12777 [56 FR 54757; 3 CFR, 1991 Comp., p. 351]—that the Coast Guard refrain from conducting an administrative proceeding.

(b) Unless the stipulation or notice of withdrawal states otherwise, a withdrawal under paragraph (a) of this section is without prejudice.

(c) Except as provided in paragraph (a) of this section, no administrative proceeding may end in withdrawal unless approved by an ALJ upon such terms as she or he deems proper.

(d) Any party may move to dismiss the complaint, or may lodge a request for relief, for failure of another party to—

(1) Comply with the requirements of this part or with any order of the ALJ;

(2) Show a right to relief based upon the facts or law; or

(3) Prosecute the proceeding.

(e) A dismissal resides within the discretion of the ALJ.

Subpart D—Proceedings

§ 20.401 Initiation of administrative proceedings.

An administrative proceeding commences when the Coast Guard representative files the complaint with the Hearing Docket Clerk and serves a copy of it on the respondent.

§ 20.402 Public notice.

Upon the filing of a complaint under 33 U.S.C. 1321(b) (6), the Coast Guard provides public notice of a class II civil penalty proceeding. The notice appears in the **Federal Register**.

§ 20.403 Consolidation and severance.

(a) A presiding ALJ may for good cause, with the approval of the Chief ALJ and with all parties given notice and opportunity to object, consolidate any matters at issue in two or more administrative proceedings docketed under this part. (Good cause includes the proceedings' possessing common parties, questions of fact, and issues of law and presenting the likelihood that consolidation would expedite the proceedings and serve the interests of justice.) The ALJ may not consolidate any matters if consolidation would prejudice any rights available under this part or impair the right of any party to place any matters at issue.

(b) Unless directed otherwise by the Chief ALJ, a presiding ALJ may, either in response to a motion or on his or her own motion, for good cause, sever any administrative proceeding with respect to some or all parties, claims, and issues.

§ 20.404 Interested persons.

(a) Any person not a party to a class II civil penalty proceeding under 33 U.S.C. 1321(b)(6) who wishes to be an interested person in the proceeding shall, 30 days or less after publication in the **Federal Register** of the public notice required by § 20.402, file with the Hearing Docket Clerk either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing in the proceeding.

(b) The presiding ALJ may, for good cause, accept late comments or late notice of intent to present evidence.

(c) Each interested person shall receive notice of any hearing due in the proceeding and of the decision in the proceeding. He or she may have a reasonable opportunity to be heard and to present evidence in any hearing.

(d) The opportunity secured by paragraph (c) of this section does not extend to—

(1) The issuance of subpoenas for witnesses;

(2) The cross-examination of witnesses; or

(3) Appearance at any settlement conference.

Subpart E—Conferences and Settlements

§ 20.501 Conferences.

(a) Any party may by motion request a conference.

(b) The ALJ may direct the parties to attend one or more conferences before or during a hearing.

(c) The ALJ may invite interested persons to attend a conference, other than a settlement conference, as the ALJ deems appropriate.

(d) The ALJ shall give reasonable notice of the time and place of any conference to the parties, and to interested persons if invited. A conference may occur in person, by telephone, or by other appropriate means.

(e) Each party, and any interested person invited, shall be fully prepared for a useful discussion of all issues properly before the conference, both procedural and substantive, and be authorized to commit themselves or those they represent respecting those issues.

(f) Unless the ALJ excuses a party, the failure of a party to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in it and to any consequent orders or rulings.

(g) The ALJ may direct that any of the following be addressed or furnished before, during, or after the conference:

(1) Methods of service and filing.

(2) Motions for consolidation or severance of parties or issues.

(3) Motions for discovery.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) The desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the substantive standards, rules, and other policies of the Coast Guard.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the proceeding.

(h) No one may stenographically report or otherwise record a conference unless the ALJ allows.

(i) During a conference, the ALJ may dispose of any procedural matters on which he or she is authorized to rule.

(j) Actions taken at a conference may be memorialized in—

(1) A stenographic report if authorized by the ALJ;

(2) A written transcript from a magnetic tape or the equivalent if authorized by the ALJ; or

(3) A statement by the ALJ on the record at the hearing summarizing them.

§ 20.502 Settlements.

(a) The parties may submit a proposed settlement to the ALJ.

(b) The proposed settlement must be in the form of a proposed decision, accompanied by a motion for its entry. The decision must recite the reasons that make it acceptable, and it must be signed by the parties or their representatives.

(c) The proposed decision must contain—

(1) An admission of all jurisdictional facts;

(2) An express waiver of—

(i) Any further procedural steps before the ALJ; and

(ii) All rights to seek judicial review, or otherwise challenge or contest the validity, of the decision;

(3) A statement that the decision will have the same force and effect as would a decision made after a hearing; and

(4) A statement that the decision resolves all matters needing to be adjudicated.

Subpart F—Discovery

§ 20.601 General.

(a) Unless the ALJ orders otherwise, each party—and each interested person who has filed written notice of intent to present evidence at any hearing in the proceeding under § 20.404—shall make available to the ALJ and to every other party and interested person—

(1) The name of each expert and other witness the party intends to call, together with a brief narrative summary of their expected testimony; and,

(2) A copy, marked as an exhibit, of each document the party intends to introduce into evidence or use in the presentation of its case.

(b) During a pre-hearing conference ordered under § 20.501, the ALJ may direct that the parties exchange witness lists and exhibits either at once or by correspondence.

(c) The ALJ may establish a schedule for discovery and shall serve a copy of any such schedule on each party.

(1) The schedule may include dates by which the parties shall exchange witness lists and exhibits and file any requests for discovery and objections to such requests.

(2) Unless the ALJ orders otherwise, the parties shall exchange witness lists and exhibits 15 days or more before hearing.

(d) Further discovery may occur only by order, and then only when the ALJ determines that—

(1) It will not unreasonably delay the proceeding;

(2) The information sought is not otherwise obtainable;

(3) The information sought has significant probative value;

(4) The information sought is neither cumulative nor repetitious; and

(5) The method or scope of the discovery is not unduly burdensome and is the least burdensome method available.

(e) A motion for discovery must set forth—

(1) The circumstances warranting the discovery;

(2) The nature of the information sought; and

(3) The proposed method and scope of discovery and the time and place where the discovery would occur.

(f) If the ALJ determines that he or she should grant the motion, he or she shall issue an order for the discovery, together with the terms on which it will occur.

§ 20.602 Amendatory or supplementary responses.

(a) Each party or interested person shall promptly amend or supplement—

(1) The name of each expert and other witness he or she intends to call, together with a brief narrative summary of their expected testimony;

(2) The list of documents he or she intends to introduce into evidence; and

(3) Any information previously provided, if he or she knows that—

(i) It was incorrect or incomplete when provided; or,

(ii) Though correct when provided, it no longer is and that, in the circumstances, a failure to amend or supplement it amounts to a knowing concealment.

(b) The ALJ may impose a further duty to amend or supplement.

§ 20.603 Interrogatories.

(a) Any party requesting interrogatories shall so move to the ALJ. The motion must include—

(1) A statement of the purpose and scope of the interrogatories; and

(2) The proposed interrogatories.

(b) The ALJ shall review the proposed interrogatories, and may enter an order either—

(1) Approving the service of some or all of the proposed interrogatories or;

(2) Denying the motion.

(c) A party shall serve on the party named in the interrogatories the approved written interrogatories.

(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated instead of a response. A party, the party's attorney, or the party's representative shall sign the party's responses to interrogatories.

(e) Responses or objections must be filed within 30 days after the service of the interrogatories.

(f) A response to an interrogatory is considered sufficient when—

(1) The burden of ascertaining the information in a response to an interrogatory is substantially the same for all parties involved in the action;

(2) The information may be obtained from an examination, audit, or inspection of records, or from a compilation, abstract, or summary based on such records; and

(3) The records from which such answers may be derived or ascertained are fully specified.

(g) The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the resource and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

§ 20.604 Requests for production of documents or things, for inspection or other purposes.

(a) Any party seeking production of documents or things for inspection or other purposes shall so move to the ALJ. The motion must state with particularity—

(1) The purpose and scope of the request; and

(2) The documents and materials which are requested to be produced.

(b) The ALJ shall review the motion and enter an order approving or denying it in whole or in part.

(c) A party shall serve on the party in possession, custody, or control of the documents the order to produce or to permit inspection and copying of documents.

(d) A party may, after approval of an appropriate motion by the ALJ, inspect and copy, test, or sample any tangible things that contain, or may lead to, relevant information, and that are in the possession, custody, or control of the party upon whom the request is served.

(e) A party may, after approval of an appropriate motion by the ALJ, serve on another party a request to permit entry upon designated property in the possession or control of the other party for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or area. A request to permit entry upon property must set forth with reasonable particularity the feature to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(f) The party upon whom the request is served shall respond within 30 days after the service of the request.

Inspection and related activities will be permitted as requested, unless there are objections, in which case the request for each objection must be stated.

§ 20.605 Depositions.

(a) The ALJ may order a deposition only upon a showing of good cause and upon a finding that—

(1) The information sought is not obtainable more readily by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for a witness to present at the hearing.

(b) Testimony may be taken by deposition upon approval of the ALJ of a motion made by any party.

(1) The motion must state—

(i) The purpose and scope of the deposition;

(ii) The time and place it is to be taken;

(iii) The name and address of the person before whom the deposition is to be taken;

(iv) The name and address of each witness from whom a deposition is to be taken;

(v) The documents and materials which the witness is to produce; and

(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.

(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(c) Upon a showing of good cause the ALJ may enter, and serve upon the parties, an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is

ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions shall be stenographically recorded and transcribed at the expense of the party requesting the deposition. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses as were noted at the taking of the deposition and which would have been sustained if the witness were personally present and testifying, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the ALJ for a ruling on the objection(s). The ALJ may then limit the scope or manner of the taking of the deposition.

(k) When a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the ALJ.

(l) Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins, or as soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(m) A deposition may be taken by telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the ALJ.

(n) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions and arrangements as are prescribed in the order of the ALJ, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (m) of this section. After the deposition has been taken, and copies of the video recording are provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the ALJ. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

§ 20.606 Protective orders.

(a) In considering a motion for an order of discovery—or a motion, by a party or other person from whom discovery is sought, to reconsider or amend an order of discovery—the ALJ may enter any order that justice requires, to protect a person from annoyance, embarrassment, oppression, or undue burden or expense. This order may—

(1) Confine discovery to specific terms and conditions, such as a particular time and place;

(2) Confine discovery to a method other than that selected by the party seeking it;

(3) Preclude inquiry into certain matters;

(4) Ordain that discovery occur with no one present except persons designated by the ALJ;

(5) Preclude the disclosure of a trade secret or other proprietary information, or allow its disclosure only in a designated way or only to designated persons; or

(6) Require that the person from whom discovery is sought file specific documents or information under seal for opening at the direction of the ALJ.

(b) When a person from whom discovery is sought seeks a protective order, the ALJ may let him or her make all or part of the showing of good cause *in camera.* The ALJ shall record any proceedings *in camera.* If he or she enters a protective order, he or she shall seal any proceedings so recorded. These shall be releasable only as required by law.

(c) Upon motion by a person from whom discovery is sought, the ALJ may—

(1) Restrict or defer disclosure by a party either of the name of a witness or, if the witness comes from the Coast Guard, of any prior statement of the witness; and

(2) Prescribe other appropriate measures to protect a witness.

(d) Any party affected by a protective order shall have an adequate opportunity, once learning the name of the witness and obtaining a narrative summary of expected testimony—or, if the witness comes from the Coast Guard, obtaining any prior statement—to prepare for cross-examination and for the presentation of the party's case.

§ 20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the ALJ may take such action as is just. This may include the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the proceeding, designated facts are established.

(c) Order that the party not introduce into evidence—or otherwise rely upon, in support of any claim or defense—that evidence that was withheld.

(d) Order that the party not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Allow the use of secondary evidence to show what the evidence withheld would have shown.

§ 20.608 Subpoenas.

(a) An ALJ may issue a subpoena for the attendance of a person, the giving of testimony, or the production of books, papers, documents, or any other relevant evidence. A party seeking a subpoena shall request its issuance by motion.

(b) An ALJ may, for good cause shown, apply to the United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence.

(c) A person serving a subpoena shall prepare a written statement setting forth either the date, time, and manner of service or the reason for failure of service. He or she shall swear to or

affirm the statement, attach it to a copy of the subpoena, and return it to the ALJ who issued the subpoena.

§ 20.609 Motions to quash or modify.

(a) A person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, ask the ALJ to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed

(1) 10 days or less after service of a subpoena compelling the appearance and testimony of a witness or the production of evidence or

(2) At or before the time specified in the subpoena for compliance, whichever is earlier.

(c) If the subpoena is served at a hearing, the person to whom it is directed may, in person at the hearing or in writing within a reasonable time fixed by the ALJ, ask the ALJ to quash or modify it.

(d) The ALJ may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue.

Subpart G—Hearings

§ 20.701 Standard of proof.

The party that bears the burden of proof shall prove his or her case or affirmative defense by a preponderance of the evidence.

§ 20.702 Burden of proof.

(a) Except for an affirmative defense, or as provided by paragraph (b) of this section, the Coast Guard bears the burden of proof.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order bears the burden of proof.

§ 20.703 Presumptions.

In each administrative hearing, a presumption—

(a) Imposes on the party against whom it lies the duty of going forward with evidence to rebut or meet the presumption; but

(b) Does not shift to that party the risk of non-persuasion, which remains throughout the hearing upon the party that bears it.

§ 20.704 Scheduling and notice of hearings.

(a) With due regard for the convenience of the parties, and of their representatives or witnesses, the ALJ shall, as early as possible, fix the date, time, and place for the hearing and notify all parties and interested persons.

(b) The ALJ may grant a request for a change in the date, time, or place of a hearing.

(c) At any time after commencement of a proceeding, any party may move to expedite the proceeding. A party moving to expedite shall—

(1) Explain in the motion the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits supporting any representations of fact.

(d) After timely receipt of the motion and any responses, the ALJ may expedite pleadings, pre-hearing conferences, and the hearing, as appropriate.

§ 20.705 Failure to appear.

The ALJ may enter a default under § 20.310 against a respondent threatening to fail, or having failed, to appear at a hearing unless—

(a) Before the time for the hearing, the respondent shows good cause why neither the respondent nor his or her representative can appear; or

(b) 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.

§ 20.706 Witnesses.

(a) Each witness shall testify under oath or affirmation.

(b) If a witness fails or refuses to answer any question the ALJ finds proper, the failure or refusal constitutes grounds for the ALJ to strike all or part of the testimony given by the witness or to take any other measure he or she deems appropriate.

§ 20.707 Telephonic testimony.

(a) The ALJ may order the taking of the testimony of a witness by telephonic conference call. A person presenting evidence may by motion ask for the taking of testimony by this means. The arrangement of the call must let each participant listen to and speak to each other within the hearing of the ALJ, who shall ensure the full identification of each so the reporter can create a proper record.

(b) The ALJ may issue a subpoena directing a witness to testify by telephonic conference call. The subpoena in any such instance issues under the procedures in § 20.608.

§ 20.708 Witnesses' fees.

(a) Each witness summoned in an administrative proceeding shall receive the same fees and mileage as a witness in a District Court of the United States.

(b) The party or interested person who calls a witness is responsible for all fees and mileage due under paragraph (a) of this section.

§ 20.709 Closing of the record.

(a) When the ALJ closes the hearing, he or she shall also close the record of the proceeding, as described in § 20.903, unless he or she directs otherwise. Even after the ALJ closes it, he or she may reopen it.

(b) The ALJ may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.

(a) Before the ALJ closes the hearing, he or she may hear oral argument so far as he or she deems appropriate. Before the ALJ decides the case, and upon terms he or she finds reasonable, any party may file a brief, proposed findings of fact and conclusions of law, or both.

(b) Any oral argument, brief, or proposed findings of fact and conclusions of law form part of the record of the proceeding, as described in § 20.903.

Subpart H—Evidence

§ 20.801 General.

Any party may present his or her case or defense by oral, documentary, or demonstrative evidence; submit rebuttal evidence; and conduct any cross-examination that may be necessary for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The ALJ may admit any relevant oral, documentary, or demonstrative evidence, unless privileged. Relevant evidence is evidence tending to make the existence of any material fact more probable or less probable than it would be without the evidence.

(b) The ALJ may exclude evidence if its probative value is substantially outweighed by the danger of prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

§ 20.804 Objections and offers of proof.

(a) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record. No party may raise an objection on appeal unless he or she raised it before the ALJ.

(b) Whenever evidence is excluded, the party offering such evidence may make an offer of proof, which must appear in the record.

§ 20.805 Proprietary information.

(a) The ALJ may limit introduction of evidence or issue such protective or other orders as in his or her judgment are consistent with the object of preventing undue disclosure of proprietary matters, including, among others, ones of a commercial nature.

(b) When the ALJ determines that information in a document containing proprietary matters should be made available to another party, the ALJ may direct the party possessing the document to prepare a non-proprietary summary or extract of it. The summary or extract may be admitted as evidence in the record.

(c) If the ALJ determines that a non-proprietary summary or extract is inadequate and that proprietary matters must form part of the record to avert prejudice to a party, the ALJ may so advise the parties and arrange access to the evidence for a party or representative.

§ 20.806 Official notice.

The ALJ may take official notice of such matters as could courts, or of other facts within the specialized knowledge of the Coast Guard as an expert body. When all or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the decision must state as much; and any party, upon timely request, shall receive an opportunity to rebut the fact.

§ 20.807 Exhibits and documents.

(a) Each exhibit must be numbered and marked for identification by the party offering it. The original of each exhibit so marked, whether or not offered or admitted into evidence, must be filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The party introducing each exhibit so marked shall supply the exhibit to the ALJ and to every party to the proceeding.

(b) Unless the ALJ directs otherwise, each party who would offer an exhibit upon direct examination shall make it available to every other party for inspection 15 days or more before the hearing. The ALJ will deem admitted the authenticity of each exhibit submitted before the hearing unless a party either files written objection and serves it on all parties or shows good cause for failure to do both.

(c) In class II civil penalty proceedings under 33 U.S.C. 1321(b)(6), each exhibit introduced by an interested person must be marked, and filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The interested person shall supply the exhibit to the ALJ and to every party to the proceeding. The requirements of paragraph (b) of this section apply to any interested person who would offer an exhibit upon direct examination.

§ 20.808 Written testimony.

The ALJ may enter into the record the written testimony of a witness. The witness shall be, or have been, available for oral cross-examination. The statement must be sworn to, or affirmed, under penalty of perjury.

§ 20.809 Stipulations.

Any party or interested person may stipulate, in writing, at any stage of the proceeding, or orally at the hearing, to any pertinent fact or other matter fairly susceptible of stipulation. A stipulation binds all parties to it.

Subpart I—Decisions

§ 20.901 Summary decisions.

(a) Any party, after commencement of the proceeding and 15 days or more before the date fixed for the hearing, may, with or without supporting affidavits, move for a summary decision in all or any part of the proceeding on the grounds that there is no genuine issue of material fact and that the party is entitled to a decision as a matter of law. Any other party may, 10 days or less after service of the motion, serve opposing affidavits or countermove for summary decision. The ALJ may set the matter for argument and call for the submission of briefs.

(b) The ALJ may grant the motion if the filed affidavits, documents, material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue of material fact and that a party is entitled to a summary decision as a matter of law.

(c) Each affidavit must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Once a party has moved for summary decision and supported his or her motion as provided in this section, no party opposing the motion may rest upon the mere allegations or denials of facts contained in his or her own pleadings. The response to the motion, by affidavit or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of material fact for the hearing.

(d) If it appears from the affidavit of a party opposing the motion that this party cannot, for reasons stated, present by affidavit matters essential to justify his or her opposition, the ALJ may deny the motion for summary decision, may order a continuance to enable the obtaining of information, or may make such other order as is just.

(e) No denial of all or any part of a motion for summary decision is subject to interlocutory appeal.

§ 20.902 Decisions of the ALJ.

(a) After closing the record of the proceeding, the ALJ shall prepare a decision containing—

(1) A finding on each material issue of fact and conclusion of law, and the basis for each finding;

(2) The disposition of the case, including the assessment of a class II civil penalty or an order of suspension or revocation, as appropriate;

(3) The date upon which the decision will become effective;

(4) A statement of further right to appeal; and,

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the decision.

(b) The decision of the ALJ must rest upon a consideration of the whole record of the proceedings.

(c) The ALJ may, upon motion of any party or in his or her own discretion, render the initial decision from the bench (orally) at the close of the hearing and prepare and serve a written order on the parties or their authorized representatives. In rendering his or her decision from the bench, the ALJ shall state the issues in the case and make clear, on the record, his or her findings of fact and conclusions of law.

(d) If the ALJ renders the initial decision orally, and if a party asks for a copy, the Hearing Docket Clerk shall furnish a copy excerpted from the transcript of the record. The date of the decision is the actual date of the oral rendering of the decision by the ALJ.

§ 20.903 Records of proceedings.

(a) The transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings constitute the official record of a proceeding. This record also includes any motions or other matters regarding the disqualification of the ALJ.

(b) Any person may examine the record of a proceeding at the U.S. Coast Guard Administrative Law Judge Docketing Center; Room 412; 40 S. Gay Street; Baltimore, MD 21201–4022. Any person may obtain a copy of part or all of the record after payment of reasonable costs for duplicating it in accordance with 49 CFR part 7.

§ 20.904 Reopening.

(a) To the extent permitted by law, the ALJ may, for good cause shown in accordance with paragraph (c) of this section, reopen the record of a proceeding to take added evidence.

(b) Any party may move to reopen the record of a proceeding 30 days or less after the closing of the record.

(1) Each motion to reopen the record must clearly set forth the facts that the movant would try to prove and the grounds for reopening the record.

(2) Any party who does not respond to any motion to reopen the record waives any objection to the motion.

(c) The ALJ may reopen the record of a proceeding if he or she believes that any change in fact or law, or that the public interest, warrants reopening it.

(d) The filing of a motion to reopen the record of a proceeding does not affect the periods for appeals specified in subpart J of this part, except that a motion to reopen the record tolls the running of whatever time remains in the period from the date of filing the motion until either the ALJ acts on the motion or the party filing it withdraws it.

(e)(1) The ALJ shall rescind any order suspending or revoking a merchant mariner's license, certificate of registry, or document if—

(i) The order rests on a conviction—

(A) For violation of a dangerous drug law;

(B) Of an offense that would prevent the issuance or renewal of the license, certificate, or document; or

(C) Of an offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 [23 U.S.C. 401, note]; and

(ii) The respondent submits a specific order of court to the effect that the conviction has been unconditionally set aside for all purposes.

(2) The ALJ, however, may not rescind his or her order on account of any law that provides for a subsequent conditional setting aside, modification, or expunging of the order of court, by way of granting clemency or other relief after the conviction has become final, without regard to whether punishment was imposed.

(f) Three years or less after an S&R proceeding has resulted in revocation of a license, certificate, or document, the respondent may move the reopening of the proceeding to modify the order of revocation to the ALJ Docketing Center.

(1) Any motion to reopen the record must clearly state why the basis for the order of revocation is no longer valid and how the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea.

(2) Any party who does not respond to any motion to reopen the record waives any objection to the motion.

Subpart J—Appeals

§ 20.1001 General.

Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201–4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.

(b) No party may appeal except on the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(3) Whether the ALJ abused his or her discretion.

(4) The ALJ's denial of a motion for disqualification.

(c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.

(d) The appeal must follow the procedural requirements of this subpart.

§ 20.1002 Records on appeal.

(a) The record of the proceeding constitutes the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then,—

(1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.95; but,

(2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.99.

§ 20.1003 Procedures for appeal.

(a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: Commandant (G–LMI); U.S. Coast Guard Headquarters; 2100 Second St., S.W.; Washington, D.C. 20593 and shall serve a copy of the brief on every other party.

(1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the—

(i) Basis for the appeal;

(ii) Reasons supporting the appeal; and

(iii) Relief requested in the appeal.

(2) When the appellant relies on material contained in the record for the appeal, the appellate brief must specifically refer to the pertinent parts of the record.

(3) The appellate brief must reach the Commandant 60 days or less after service of the ALJ's decision. If a brief is not filed within this time, or within another time period authorized in writing by the Commandant, it will be considered not timely.

(b) Any party may file a reply brief with the Commandant 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

(c) No party may file more than one appellate brief or reply brief, unless

(1) The party has petitioned the Commandant in writing and

(2) The Commandant has granted leave to file an added brief. The Commandant will allow a reasonable time for the party to file any additional brief.

(d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

§ 20.1004 Decisions on appeal.

(a) The Commandant shall review the record on appeal to determine whether the ALJ committed prejudicial error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings. The Commandant may take any of these four actions.

(b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

Subpart K—Finality, Petitions for Hearing, and Availability of Orders

§ 20.1101 Finality.

(a) *Civil penalty proceeding.* (1) Unless appealed pursuant to Subpart J of this part, an ALJ's decision becomes an order assessing or denying a class II civil penalty 30 days after the date of its issuance.

(2) If the Commandant issues a decision under subpart J of this part, the decision constitutes an order of the Commandant assessing or denying a class II civil penalty on the date of its issuance.

(b) *S&R proceedings.* (1) Unless appealed pursuant to Subpart J of this part, an ALJ's decision becomes final

action of the Coast Guard 30 days after the date of its issuance.

(2) If the Commandant issues a decision under subpart J of this part, this decision constitutes final action of the Coast Guard on the date of its issuance.

§ 20.1102 Petitions to set aside decisions and provide hearings for civil penalty proceedings.

(a) If no hearing takes place on a complaint for a class II civil penalty, any interested person may file a petition, 30 days or less after the issuance of an order assessing or denying a civil penalty, asking the Commandant to set aside the order and to provide a hearing.

(b) If the Commandant decides that evidence presented by an interested person in support of a petition under paragraph (a) of this section is material and that the ALJ did not consider the evidence in the issuance of the decision, the Commandant shall set aside the decision and direct that a hearing take place in accordance with the requirements of this part.

(c) If the Commandant denies a hearing sought under this section, he or she shall provide to the interested person, and publish in the **Federal Register**, notice of and the reasons for the denial.

§ 20.1103 Availability of decisions.

(a)(1) Copies and indices of decisions on appeal are available for inspection and copying at—

(i) The document inspection facility at the office of any Coast Guard District, Activity, or Marine Safety Office;

(ii) The public reading room at Coast Guard Headquarters; and

(iii) The public reading room of the Coast Guard ALJ Docketing Center; Baltimore, Maryland.

(2) Appellate decisions in S&R proceedings, and both appellate and ALJs' decisions on class II civil penalties, are available on the Department of Transportation Home Page at www.dot.gov or the Coast Guard Home Page at www.uscg.mil.

(b) Any person wanting a copy of a decision may place a request with the Hearing Docket Clerk. The Clerk will bill the person on the terms prescribed in 49 CFR 7.93.

Subpart L—Expedited Hearings

§ 20.1201 Application.

(a) This subpart applies whenever the Coast Guard suspends a merchant mariner's license, certificate of registry, or document without a hearing under 46 U.S.C 7702(d).

(b) The Coast Guard may, for 45 days or less, suspend and seize a license, certificate, or document if, when acting under the authority of the license, certificate, or document—

(1) A mariner performs a safety-sensitive function on a vessel; and

(2) There is probable cause to believe that he or she—

(i) Has performed the safety-sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) Has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or,

(iii) Three years or less before the start of an S&R proceeding, has been convicted of an offense described in subparagraph 205(a)(3) (A) or (B) of the National Driver Register Act of 1982 [23 U.S.C. 401, note].

§ 20.1202 Filing of pleadings.

(a) *Complaint.* If the Coast Guard has temporarily suspended a merchant mariner's license, certificate of registry, or document, it shall immediately file a complaint under § 20.307. The complaint must contain both a copy of a notice of temporary suspension and an affidavit stating the authority and reason for temporary suspension.

(b) *Answer.* In a case under this subpart,

(1) § 20.308 does not govern answers and

(2) The respondent shall therefore enter his or her answer at the pre-hearing conference.

§ 20.1203 Commencement of expedited hearings.

Upon receipt of a complaint with a copy of the notice of temporary suspension and the affidavit supporting the complaint, the Chief ALJ will immediately assign an ALJ and designate the case for expedited hearing.

§ 20.1205 Motion for return of temporarily suspended license, certificate of registry, or document.

(a) *Procedure.* At any time during the proceedings, the respondent may move that his or her license, certificate of registry, or document be returned on the grounds that the agency lacked probable cause for temporary suspension. The motion must be in writing and explain why the agency lacked probable cause.

(b) *Ruling.* If the ALJ grants the motion, the ALJ may issue such orders as are necessary for the return of the suspended license, certificate, or document and for the matter to continue in an orderly way under standard procedure.

§ 20.1206 Discontinuance of expedited hearings.

(a) *Procedure.* At any time during the proceedings, the respondent may move that the expedited hearing discontinue and that the matter continue under standard procedure. A motion to discontinue must be in writing and explain why the case is inappropriate for expedited hearing.

(b) *Ruling.* If the ALJ grants the motion to discontinue, the ALJ may issue such orders as are necessary for the matter to continue in an orderly way under standard procedure.

§ 20.1207 Pre-hearing conferences.

(a) *When held.* As early as practicable, the ALJ shall order and conduct a pre-hearing conference. He or she may order the holding of the conference in person, or by telephonic or electronic means.

(b) *Answer.* The respondent shall enter his or her answer at the pre-hearing conference. If the answer is an admission, the ALJ shall either issue an appropriate order or schedule a hearing on the order.

(c) *Content.* At the pre-hearing conference, the parties shall:

(1) Identify and simplify the issues in dispute and prepare an agreed statement of issues, facts, and defenses.

(2) Establish a simplified procedure appropriate to the matter.

(3) Fix a time and place for the hearing 30 days or less after the temporary suspension.

(4) Discuss witnesses and exhibits. The ALJ shall issue an order directing the exchange of witness lists and documents.

(d) *Order.* Before the close of the pre-hearing conference, the ALJ shall issue an order setting forth any agreements reached by the parties. The order must specify the issues for the parties to address at the hearing.

(e) *Procedures not to cause delay.* Neither any filing of pleadings or motions, nor any conduct of discovery, may interfere with:

(1) The holding of the hearing 30 days or less after the temporary suspension or

(2) The closing of the record early enough for the issuance of an initial decision 45 days or less after the temporary suspension.

(f) *Times.* The ALJ may shorten the time for any act required or permitted under this subpart to enable him or her to issue an initial decision 45 days or less after the temporary suspension.

§ 20.1208 Expedited hearings.

(a) *Procedures.* As soon as practicable after the close of the pre-hearing conference, the ALJ shall hold a hearing, under subpart G of this part, on any issue that remains in dispute.

(b) *Oral and written argument.* Each party may present oral argument at the close of the hearing. The ALJ shall issue a schedule, such as will enable him or her to consider the findings and briefs without delaying the issuance of the decision, for the filing of:

(1) Proposed findings of fact and conclusions of law and

(2) Post-hearing briefs, both under § 20.710.

(c) *ALJ's decision.* The ALJ may render his or her decision from the bench. Alternatively, he or she may issue a written decision. He or she shall render or issue the decision 45 days or less after the temporary suspension.

§ 20.1209 Appeals of ALJs' decisions.

Any party may appeal the ALJ's decision as provided in Subpart J.

Subpart M—Evidentiary Rules for Suspension and Revocation Hearings

§ 20.1301 Purpose.

This subpart contains evidentiary rules that apply only in certain circumstances in S&R proceedings. They supplement, not supplant, the evidentiary rules in Subpart H.

§ 20.1303 Authentication and certification of extracts from shipping articles, logbooks, and the like.

(a) The investigating officer, the Coast Guard representative, any other commissioned officer of the Coast Guard, or any official custodian of extracts from shipping articles, logbooks, or records in the custody of the Coast Guard may authenticate and certify the extracts.

(b) Authentication and certification must include a statement that the person acting has seen the original, compared the copy with it, and found the copy to be a true one. This person shall sign his or her name and identify himself or herself by rank or title and by duty station.

§ 20.1305 Admissibility and weight of entries from logbooks.

(a) Any entry in any official logbook of a vessel concerning an offense enumerated in 46 U.S.C. 11501, made in substantial compliance with the procedural requirements of 46 U.S.C. 11502, is admissible in evidence and constitutes *prima facie* evidence of the facts recited.

(b)(1) Any entry in any logbook of a vessel is admissible into evidence as a record of a regularly conducted activity and, therefore, does not constitute hearsay.

(2) Any entry in any such logbook made in substantial compliance with the procedural requirements of 46 U.S.C. 11502 may receive added weight from the ALJ.

§ 20.1307 Use of judgments of conviction.

(a) A judgment of conviction by a Federal court is conclusive in any S&R proceeding under this part concerning any incident described in 46 U.S.C. 7703 when an act or offense forming the basis of the charge in the proceeding is the same as in the court.

(b) Except as provided in paragraph (c) of this section, no judgment of conviction by a State court is conclusive in any S&R proceeding under this part concerning any incident described in 46 U.S.C. 7703, even when an act or offense forming the basis of the charge in the proceeding is the same as in the court. But the judgment is admissible in evidence and constitutes substantial evidence adverse to the respondent.

(c) An S & R proceeding is conclusive if it is based on a conviction by a Federal or State court for—

(1) The violation of a dangerous drug law;

(2) An offense that would prevent the issuance or renewal of the merchant mariner's license, certificate of registry, or document; or

(3) An offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 [23 U.S.C. 401, note].

(d) If the respondent participates in the scheme of a State for the expunging of convictions, and if he or she pleads *guilty* or *no contest* or, by order of the trial court, has to attend classes, contribute time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of finding of the trial court, the Coast Guard regards him or her, for the purposes of 46 U.S.C. 7704, as having received a final conviction. The Coast Guard does not consider the conviction expunged without proof that the expunging is due to the conviction's having been in error.

(e) No respondent may challenge the jurisdiction of a Federal or State court in any proceeding under 46 U.S.C. 7703 or 7704.

§ 20.1309 Admissibility of respondents' criminal records and records with the Coast Guard before entry of findings and conclusions.

(a) The prior disciplinary record of the respondent is admissible when offered by him or her.

(b) The prior disciplinary record of the respondent is admissible when offered by the Coast Guard representative to impeach the credibility of evidence offered by the respondent.

(c) The use of a judgment of conviction is permissible on the terms prescribed by § 20.1307.

§ 20.1311 Admissions by respondent.

No person may testify regarding admissions made by the respondent during an investigation under 46 CFR part 4, except to impeach the credibility of evidence offered by the respondent.

§ 20.1313 Medical examination of respondents.

In any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination. Any examination ordered by the ALJ is conducted, at Federal expense, by a physician designated by the ALJ. If the respondent fails or refuses to undergo any such examination, the failure or refusal receives due weight and may be sufficient for the ALJ to infer that the results would have been adverse to the respondent.

§ 20.1315 Submission of prior records and evidence in aggravation or mitigation.

(a) The prior disciplinary record of the respondent comprises the following items less than 10 years old:

(1) Any written warning issued by the Coast Guard and not contested by the respondent.

(2) Final agency action by the Coast Guard on any S&R proceeding in which at least one charge was proved.

(3) Any agreement for voluntary surrender entered into by the respondent.

(4) Any final judgment of conviction in Federal or State courts.

(5) Final agency action by the Coast Guard resulting in the imposition against the respondent of any civil penalty or warning in a proceeding administered by the Coast Guard under 33 CFR subpart 1.07.

(6) Any official commendatory information concerning the respondent of which the Coast Guard representative is aware. The Coast Guard representative may offer evidence and argument in aggravation of any charge proved. The respondent may offer evidence of, and argument on, prior maritime service, including both the record introduced by the Coast Guard representative and any commendatory evidence.

(b) The respondent may offer evidence and argument in mitigation of any charge proved.

(c) The Coast Guard representative may offer evidence and argument in rebuttal of any evidence and argument offered by the respondent in mitigation.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

2. The authority citation for 46 CFR Part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

§ 5.1 [Removed]

3. Remove § 5.1

§ 5.3 [Amended]

4. In § 5.3 remove the words ''and procedures.''

§ 5.11 [Removed]

5. Remove § 5.11.

§ 5.13 [Removed]

6. Remove § 5.13.

§ 5.23 [Removed]

7. Remove § 5.23.

§ 5.25 [Removed]

8. Remove § 5.25.

§ 5.33 [Amended]

9. In § 5.33 remove the words ''the charge shall be violation of law or violation of regulation. The specification shall'', and add, in their place, the words ''the complaint in any case of violation of law or violation of regulation shall''.

§ 5.35 [Amended]

10. In § 5.35 remove the words ''the charge will be'' from the first sentence and add, in their place, the words ''the complaint will allege''; and in the first and second sentences remove the words ''circumstances. The specification'' and add, in their place, the words ''circumstances and''.

§ 5.53 [Removed]

11. Remove § 5.53.

§ 5.55 [Amended]

12. In the section heading for § 5.55 remove the words ''charges and specifications'' and add, in their place, the words ''a complaint''; and in paragraph (a) remove the words ''various charges and specifications'' and add, in their place, the words ''a complaint''.

§ 5.63 [Removed]

13. Remove § 5.63.

§ 5.65 [Removed]

13a. Remove § 5.65.

§ 5.105 [Amended]

14. In § 5.105(a) remove the words ''Prefer charges'', and add, in their place, ''Issue complaint''.

15. Revise § 5.107 to read as follows:

§ 5.107 Service of complaints.

(a) When the investigating officer prefers charges, he or she shall prepare and serve a complaint in accordance with 33 CFR part 20.

(b) When the investigating officer serves the complaint, he or she shall also advise the respondent—

(1) Of the nature of suspension and revocation proceedings and their possible results;

(2) Of the right to be represented at the hearing by another person, who may, but need not, be a lawyer;

(3) Of the right to obtain witnesses, records, and other evidence by subpoena; and

(4) That failure or refusal to answer the complaint or to appear at the time, date, and place specified for the hearing may result in a finding of default, which will constitute an admission of the facts alleged in the complaint and the waiver of his or her right to a hearing.

16. Revise § 5.305 to read as follows:

§ 5.305 Quashing a subpoena.

Any person subpoenaed to appear to produce evidence at a hearing may request that the subpoena be quashed or modified using the procedures in 33 CFR 20.609.

17. Revise § 5.501 to read as follows:

§ 5.501 General.

A hearing concerning the suspension or revocation of a merchant mariner's license, certificate of registry, or document is a formal adjudication under the Administrative Procedure Act (APA) [5 U.S.C. 551, *et seq.*]. It is presided over by, and conducted under the exclusive control of, an Administrative Law Judge in accordance with applicable requirements in the APA, the rules in this part, and the rules of administrative practice at 33 CFR part 20. The Judge shall regulate and conduct the hearing so as to bring out all the relevant and material facts and to ensure a fair and impartial hearing.

§§ 5.503 through 5.519 [Removed]

18. Remove §§ 5.503 through 5.519.

§§ 5.523 through 5.565 [Removed]

19. Remove §§ 5.523 through 5.565.

§§ 5.571 through 5.577 [Removed]

20. Remove §§ 5.571 through 5.577.

§§ 5.601 through 5.607 [Removed]

21. Remove and reserve subpart I, consisting of §§ 5.601 through 5.607.

22. Revise § 5.701 to read as follows:

§ 5.701 Appeals in general.

A party may appeal the decision of an Administrative Law Judge under the procedures in subpart J of 33 CFR part 20. A party may appeal only the following issues:

(a) Whether each finding of fact rests on substantial evidence.

(b) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(c) Whether the Judge committed any abuses of discretion.

(d) The Judge's denial of a motion for his or her disqualification.

§§ 5.703 through 5.705 [Removed]

23. Remove §§ 5.703 through 5.705.

§ 5.709 [Removed]

24. Remove § 5.709.

§ 5.711 [Removed]

25. Remove § 5.711.

Dated: March 29, 1998.

P.M. Blayney,

Chief Counsel.

[FR Doc. 98–8830 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–031–1011; FRL–5991–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Minor New Source Review and federally Enforceable State Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware pursuant to requirements of the Clean Air Act (CAA). This SIP revision amends Delaware's minor New Source Review (NSR) permit program. It also creates a federally Enforceable State Operating Permits Program (FESOPP) which provides a mechanism for the terms and conditions of a permit issued pursuant to Regulation No. 2 to be made ''federally enforceable'' for purposes of limiting a source's potential to emit (PTE) a regulated air pollutant. EPA is proposing limited approval of changes to the minor NSR program, because while the SIP revision submitted by Delaware strengthens the SIP, it does not fully meet the current Federal requirements for public participation. EPA is proposing full approval of the FESOPP.

DATES: Comments must be received on or before May 6, 1998.

ADDRESSES: Comments may be mailed to Ms. MaryBeth Bray, Engineer, Permit Programs Section, Air Protection Division (3AP11), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Ms. MaryBeth Bray, (215) 566–2632, at the EPA Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1997, the State of Delaware submitted a revision of its SIP for Regulation No. 2—PERMITS. This revision amends the State's minor NSR program and creates a FESOPP which provides a mechanism for the terms and conditions of a permit issued pursuant to Regulation No. 2 to be made ''federally enforceable'' for purposes of limiting a source's PTE a regulated air pollutant.

A. Minor New Source Review

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires every SIP to ''include a program for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' EPA's regulations now codified at 40 CFR 51.160–51.164 have since the early 1970s required a NSR program be included in every SIP. This requirement is separate from the requirement also set forth in section 110(a)(2)(C) that a State's SIP have ''major'' NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

B. Federally Enforceable State Operating Permit Programs

Many stationary source requirements of the CAA apply only to ''major'' sources. Major sources are those sources whose emissions of air pollutants exceed applicability threshold emissions levels specified in various portions of the CAA. To determine whether a source is major, the CAA focuses not only on a source's actual emissions, but also on its potential emissions (i.e., ''PTE''). Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the PTE major amounts of air pollutants. In situations where unrestricted operation of a source would result in a PTE above major source levels, one way such a source may legally avoid program requirements is by accepting federally-enforceable permit conditions which limit its PTE below the applicable major source thresholds. As a result, the source becomes what is commonly referred to as a ''synthetic minor'' source. [1]Federally-enforceable permit conditions, if violated, are subject to enforcement by EPA and by citizens in addition to the state or local agency. On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs commonly referred to as FESOPPs. See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create ''synthetic minor'' sources.

II. Summary of Delaware's SIP Revisions

A. Minor NSR

In order to evaluate the approvability of Delaware's submittal as a SIP revision, the changes from the current SIP-approved version of Regulation No. 2 must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. EPA's requirements for SIP approval applicable to minor NSR permitting programs are established in 40 CFR part 51, subpart I—Review of New Sources and Modifications, § § 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this analysis. [2]The docket for this rulemaking action contains a Technical Support Document (TSD) prepared by EPA which more fully details the evaluation it performed to determine that Delaware's SIP revision meets the requirements of 40 CFR 51.160–51.164. The TSD is available, upon request, from the EPA Region listed in the **Addresses** section of this document. Overall, the revised Regulation No. 2 is a strengthening of Delaware's current SIP-approved minor NSR program.

With the exception of certain public participation requirements, as described below, EPA has determined that Delaware's revised Regulation No. 2 fully meets the requirements of 40 CFR 51.160–51.164 for minor NSR programs.

Public Participation—The requirements for public participation of minor NSR programs are set forth in 40 CFR 51.161 (Public Availability of Information). Among the requirements for public participation are the following:

(a) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's analysis of the effect on air quality;

(b) A 30–day period for submittal of public comment; and

(c) A notice by prominent advertisement in the area affected of the location of the source information and the agency's analysis of the effect on air quality.

Section 12.2 of Delaware's Regulation No. 2 requires the Delaware Department of Natural Resources and Environmental Control (Department) to make available in at least one location in the state a public file containing a copy of all materials submitted by the applicant (except those granted confidential treatment). It also requires the Department to place an advertisement in a newspaper of general circulation in the county in which the source is located and in a daily newspaper of general circulation throughout the state. These notices must include:

(1) The fact that the application has been received and the facility's name and location;

(2) A brief description of the nature of the application, including the activities and emissions involved; and

(3) A contact person for the Department, the place where the permit file can be inspected, and procedures to request a hearing.

[1] Several other mechanisms for major sources (including major sources of hazardous air pollutants) to become ''synthetic minors'' and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled ''Extension of January 25, 1995 Potential to Emit Transition Policy (August 28, 1996), ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996), ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)'' (January 25, 1995), and ''Approaches to Creating Federally-Enforceable Emissions Limits'' (November 3, 1993).

[2] 2 Delaware has a separate rule to meet the requirements of subpart I applicable to major sources, namely, Regulation No. 25—''Requirements for Preconstruction Review''.

The Department must also send the above information by mail to anyone who has requested to be placed on a mailing list. The Department must hold a public hearing on the application if it receives a meritorious request to do so within 15 days of the public notice, or if the Department deems it to be in the best interest of the State to do so. Within 20 days of a public hearing, the Department must issue a public notice announcing the date, time and location of the hearing. The Department must consider all comments submitted by the applicant and the public in reaching its final determination.

The current SIP-approved version of Regulation No. 2 does not contain any provisions for public participation of minor NSR permits. However, prior to the revision of Regulation No. 2, EPA understands that Delaware followed the public participation provisions of its statute, 7 Del. C., Chapter 60, Section 6004, which is not part of the SIP. The statute provides that the public shall have a minimum of 15 days to request a public hearing, unless Federal law requires a longer time, in which case the longer time shall be stated. However, the revised Regulation No. 2 defers to the statutory minimum 15-day public comment period. Since the current SIP-approved version of Regulation No. 2 does not provide any public participation procedures, the revised Regulation No. 2 is a strengthening of the SIP, even though it does not fully meet the public comment requirements of 40 CFR 51.161 which specify a 30–day public comment period.

On August 31, 1995, EPA proposed revisions to 40 CFR 51.161 to provide that, except for certain specified activities (which would still be required to have a 30-day comment period), states may vary the procedures for, and timing of, public participation in light of the environmental significance of the activity. See 60 FR 45564. EPA is in the process of finalizing this rulemaking action. It is, therefore, possible that Delaware's revised Regulation No. 2, which provides for a minimum 15-day public comment period, would be consistent with EPA's final revisions to 40 CFR 51.161, at least for some types of minor NSR activities.

EPA has determined that the revised Regulation No. 2 overall is a strengthening of the current minor NSR program in Delaware's SIP. The revised Regulation No. 2 meets the criteria of 40 CFR 51.160–51.164, with the exception of the requirements of 40 CFR 51.161(b)(2), which requires a 30-day period for submittal of public comment. As explained above, Delaware's revised Regulation No. 2 strengthens the SIP by specifying public participation procedures and by providing a minimum 15-day public comment period (i.e., time period provided for the public to request a public hearing). Therefore, EPA believes that Delaware's revised minor NSR regulation warrants limited approval.

Under a limited approval, if EPA's future final rulemaking action for revisions to 40 CFR 51.161 is consistent with Delaware's public participation requirements under Regulation No. 2, the limited approval would convert to a full approval. However, if the final revisions to 40 CFR 51.161 are not consistent, but more stringent than, Delaware's Regulation No. 2, EPA would make a SIP call for Delaware to amend its minor NSR public participation procedures in accordance with EPA's final regulatory changes to 40 CFR 51.161.

B. Federally Enforceable State Operating Permits Program

EPA's Federal enforceability criteria applicable to state operating permit program (non-title V) SIP submittals are discussed in a June 28, 1989 **Federal Register** (54 FR 27274). In the June 28, 1989 notice, EPA amended the definition of ''federally enforceable'' to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's PTE, provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. See 54 FR 27274–27286. In summary, the criteria require state programs to:

(a) Be approved into the SIP;

(b) Impose legal obligations to conform to the permit limitations;

(c) Provide for limits that are enforceable as a practical matter;

(d) Issue permits through a process that provides for review and an opportunity for comment by the public and by EPA; and

(e) Ensure that there will be no relaxation of otherwise applicable Federal requirements.

The TSD prepared by EPA for this rulemaking action describes each of the criteria for approval of a state's program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how Delaware's SIP submittal satisfies those criteria.

The revised Regulation No. 2 establishes a process whereby sources can voluntarily seek to identify terms and conditions of an operating permit as federally-enforceable. EPA interprets this to mean that limits on PTE would be recognized for purposes of avoiding the applicability of major source requirements. Such terms and conditions would be specifically designated as ''federally enforceable'' within each permit. Regulation No. 2 establishes a separate public participation process, including a 30-day public comment period, for sources that opt to make terms and conditions federally-enforceable.

As explained above, Regulation No. 2 also implements Delaware's minor NSR program, as required under the CAA and 40 CFR 51.160–51.164. In this proposed rulemaking notice, EPA is also taking action on revisions to Delaware's minor NSR program. Since construction permits under Regulation No. 2 are converted into operating permits after the source completes construction, any permit terms designed to meet minor NSR requirements are transferred to a Regulation No. 2 operating permit. Because Regulation No. 2 operating permits become the permits in which the minor NSR applicable requirements reside, EPA considers the terms and conditions of Regulation No. 2 operating permits to be federally-enforceable (as well as Regulation No. 2 construction permits). In other words, EPA views Delaware's minor NSR program as being comprised of Regulation No. 2 as a whole—including both construction and operating permits issued under Regulation No. 2. However, although Regulation No. 2 operating permits are considered federally-enforceable, EPA currently does not recognize PTE limits contained in those permits as legitimate limits for sources wishing to avoid major source applicability, because the existing SIP-approved version of Regulation No. 2 does not meet EPA's minimum criteria for establishing PTE limits, including practical enforceability and public participation. (See 54 FR 27274; June 28, 1989). Today's action proposes to approve the revised Regulation No. 2 because it now does meet EPA's criteria for establishing federally enforceable PTE limits, so that EPA will recognize a source's limits on PTE for avoiding major source applicability, so long as the individual permit issued under the approved program meets those same requirements. EPA reserves the right to deem any individual permit as not

''federally enforceable'' for purposes of limiting PTE (and, thus, avoiding major source requirements) if a permit contains terms and conditions which are not quantifiable or practically enforceable in accordance with the revised version of Regulation No.2 proposed for SIP approval and the June 28, 1989 criteria.

EPA has determined that the Federal enforceability ''opt-in'' process established in revised Regulation No. 2 (whereby sources can request to have certain permit terms and conditions be designated as federally enforceable for purposes of limiting PTE) fully meets the requirements of EPA's June 28, 1989 criteria for federally enforceable state operating permits programs. EPA proposes full approval of the Regulation No. 2 provisions as meeting the June 28, 1989 criteria for a FESOPP.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this document.

III. Proposed Action

EPA is proposing limited approval of revisions to the Delaware minor NSR program submitted on June 4, 1997, because the revised Regulation No. 2 strengthens the SIP, but does not fully meet the current requirements for public participation of minor NSR programs under 40 CFR 51.161. EPA is proposing full approval of the provisions of Regulation No. 2 establishing a FESOPP which provides a mechanism for sources to request that certain terms and conditions of Regulation No. 2 permits be designated as federally-enforceable for purposes of limiting the PTE regulated air pollutants. Final action by EPA to approve Delaware's FESOPP would confer Federal enforceability status, and EPA would recognize limits on PTE for sources to avoid major source requirements, to existing permits which are issued in accordance with the revised Regulation No. 2 and the June 28, 1989 criteria, including permits which have been issued prior to EPA's final action.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 sections 110 and 301, 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 significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove this revision to Delaware Regulation 2 will be based on whether it meets the requirements of section 110(a)(2)(a)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New source review, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 25, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–8960 Filed 4–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 372

[OPPTS–400128; FRL–5783–1]

Emergency Planning and Community Right-to-Know; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a public meeting regarding the Agency's proposal to add dioxins and dioxin-like compounds to the list of chemicals for which reporting is required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), specifically to discuss potential impact on small entities. This meeting will also cover aspects of ongoing considerations by the Agency of two issues related to listing of dioxins and dioxin-like compounds: possible listing of other persistent bioaccumulative toxic (PBTs) chemicals under section 313 of EPCRA and possible lowering of EPCRA section 313 reporting thresholds for persistent bioaccumulative chemicals.

DATES: The meeting will take place on Friday, May 1, 1998, from 9 a.m. to 5 p.m. The meeting will continue until all registered participants have spoken.

Participants must register to speak by 5 p.m., Tuesday, April 28, 1998.

ADDRESSES: The meeting will be held at: EPA Auditorium, 401 M St., SW., Washington, DC.

All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099 East Tower, Washington, DC 20460. Each comment must bear the docket control number ''OPPTS–400128.'' Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record. Persons submitting information on any portion of what they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Myra Karstadt at 202–260–0658, e-mail karstadt.myra@epa.gov or the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460; Toll-free telephone number: 1–800–535–0202. In Virginia and Alaska call: 703–412–9877. The toll-free TDD number is 1–800– 553–7672.

SUPPLEMENTARY INFORMATION:

I. Background

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment or otherwise manage as waste. The purpose of this requirement is to inform the public, government officials, and industry about chemical management practices for specified toxic chemicals.

On August 28, 1996, EPA received a petition from Communities for a Better Environment that requested addition of dioxins to the list of chemicals for which reporting is required under section 313 of EPCRA. On May 7, 1997, EPA issued in the **Federal Register** a notice that proposed addition of ''a chemical category that includes dioxin and 27 dioxin-like compounds'' to the chemicals for which reports are required under section 313 of EPCRA (62 FR 24887). In that **Federal Register** notice, it was stated that, because of the thresholds for reporting set out in section 313 of EPCRA: ''EPA believes that, under current reportiing thresholds, it is highly unlikely that any entities will be required to report for the proposed chemical category.''

The Agency has been considering possibly lowering reporting thresholds for the chemicals in the proposed category of dioxins and dioxin-like chemicals. In addition, the Agency has been considering how best to use reporting authorities under section 313 of EPCRA to provide the public with information on persistent bioaccumulative toxic chemicals other than those in the category of dioxins and dioxin-like chemicals covered by the May 1997 **Federal Register** notice.

This public meeting is one of a series of meetings that will provide opportunities for discussion among EPA, potentially affected industry groups, and the public, regarding EPA's proposed action concerning dioxins as well as possible actions concerning other persistent bioaccumulative toxic chemicals. This meeting is being held specifically to discuss the potential impacts of the proposed action and other possible actions on small entities, including small businesses and small local governments.

Oral statements will be scheduled on a first-come first-serve basis. To schedule an oral statement, call Thelma Harvey at 202–260–3941. Oral presentations or statements may be limited in time, depending on the number of individuals who have registered to speak. All statements will become part of the public record for the proposed rule and will be considered in the development of the proposed rule and other possible actions.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''OPPTS–400128.'' The record includes comments and data submitted electronically as described below. A public version of this record, which includes printed (paper) records of electronic comments, but which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.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 be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPPTS–400128.'' Electronic comments on this action may be filed online at many Federal Depository Libraries.

Dated: March 30, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8961 Filed 4–3–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 65
Monday, April 6, 1998

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

South Spruce Ecosystem Rehabilitation Project, Dixie National Forest, Iron and Kane Counties, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for the Forest Service to implement several proposals within the South Spruce Ecosystem Recovery Project area, on the Cedar City Ranger District, Dixie National Forest. These proposals include: (1) commercial timber harvest by salvage, release, and improvement cuttings, and associated road construction; (2) burning and mechanical regeneration treatments of aspen forests; and, (3) travel management. Multiple decisions may be issued upon completion of the analysis; however, the cumulative effects of all the proposed actions will be disclosed in the EIS. The purpose of these proposals is to initiate actions that would improve forest health and diversity, accelerate reforestation, meet woody debris objectives, and reduce road densities within the project area. The project area is located approximately 15 miles east of Cedar City, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan (LRMP) for the Dixie National Forest, 1986.

In addition to the management activities proposed to be implemented, a site specific amendment to the LRMP is being proposed. This amendment is necessary in order to ensure that the commercial timber harvest proposed action complies with the LRMP. The amendment is described below under Supplementary Information.

The agency gives notice that the environmental analysis process is underway. During the analysis process, an issue surfaced that warranted disclosure of effects under an EIS. This issue is the high degree of interest associated with the potential to alter the undeveloped character of a portion of the project area due to vegetative management treatments.

Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate in, and contribute to, the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental impact Statement (DEIS) should be submitted by May 11, 1998, which is at least 30 days following the publication of this notice in the **Federal Register**. The DEIS is expected to be available for review by June, 1998. The Record of Decision and Final Environmental Impact Statement are expected to be available by November, 1998.

ADDRESSES: Submit written comments to: District Ranger, Cedar City Ranger District, 82 North 100 East, P.O. Box 627, Cedar City, Utah 84721–0627; FAX: (801) 865–3791; E-mail: Brunswick__Nancy/r4__dixie@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Phillip G. Eisenhauer, Project Environmental Coordinator, by mail at 82 North 100 East, P.O. Box 627, Cedar City, Utah 84721–0627; or by phone at (801) 865–3700; FAX: (801) 865–3791; E-mail: Brunswick__Nancy/r4__dixie@fs.fed.us.

SUPPLEMENTARY INFORMATION: The proposed projects are located in a 52,991 acre analysis area in the upper drainages of the Parowan, Mammoth, Panguitch, Asay and Coal Creek watersheds. Approximately 37,577 acres of the project area are forested and 15,414 acres are non-forested. The proposed commercial conifer treatment areas currently are or will likely be infested with spruce beetle (*Dendroctonus rufipennis*). Spruce beetle populations are at epidemic levels and have killed millions of spruce trees, on approximately 19,000 acres within the project area. In some sites, where spruce was the dominant overstory, few live trees remain. Because spruce beetle populations have been expanding since the early 1990's it is likely the remaining 9,000 acres of spruce forest will become infested.

The purpose of the project is to harvest with salvage cuttings approximately 718 acres of dead, dying, and high risk Engelmann spruce trees to recover wood products that would otherwise be lost, while still meeting desired resource objectives for standing dead and down tree material. Minor amounts of subalpine fir trees (less than 15% of the total removed) would also be removed with improvement cuttings to release healthy aspen, spruce or subalpine fir regeneration, improve residual stand vigor, or that will likely be damaged or killed during the removal of the spruce trees.

Approximately 2,412 acres of spruce forests that are at moderate to high risk to spruce beetle infestation that are located immediately adjacent to infested areas are proposed for harvest with the same commercial salvage and improvement cuttings. These currently uninfested areas will not be harvested until they become infested by epidemic levels of spruce beetles.

On approximately 289 acres adjacent to sites previously harvested by strip clearcutting the purpose of commercial timber harvest is to release or stimulate aspen regeneration and create a more natural forest pattern.

Rehabilitation of areas heavily impacted by bark beetle mortality through the completion of natural and artificial regeneration activities would occur as needed. An estimated 1,625 acres would be planted with spruce seedlings. Reforestation is essential to providing for the most rapid progression toward the desired future condition for forest cover in the project area.

Regeneration treatment of aspen forests is also included in this proposal. Treatments would include both burning and mechanical (commercial and non-commercial harvest) with or without burning. About 9,171 acres of forest are dominated by aspen in the project area. Most are being converted to conifers by natural succession and the lack of fire in the ecosystem. Most vegetation management treatments would lead to an increase in the abundance of aspen, which is the desired goal for resource values identified in the project area (ie: wildlife habitat improvement,

vegetation diversity, and scenic variety and color in the landscape). Approximately 463 acres would be regenerated.

Travel management is proposed for portions of the project area. The purpose of this activity is to restore and rehabilitate ecological values in areas where excessive numbers of open roads exist. Moving these portions of the project area toward or below the LRMP guideline of two miles of open road per square mile will reduce the adverse environmental impacts associated with excessive numbers of open roads. A reduction in open road density will reduce long-term maintenance costs while promoting safe, efficient public travel on the open road system.

Vegetation management treatments involving commercial harvest, aspen regeneration, and travel management would occur on National Forest system lands located within portions of Sections 28–33 of Township(T) 35 South(S), Range(R) 8 West(W); Sections 3–17, 20–24, 26–35 of T.36 S., R.8 W.; Sections 3–10, 15–21, 30–32 of T.37 S., R.8 W.; Sections 1, 2, 11–14, 23–26, 35–36 of T.37 S., R. 8½ W.; Sections 1–6, 8–15, 24–25 and 36 T.36 S., R.9 W.; Sections 10–16, 22–27, 35–36 of T.37 S., R.9 W., Salt Lake City (SLC) Meridian, Iron County, UT; and, Sections 1–2 of T.38 S., R.9 W.; and Sections 5–6 of T.38 S., R.8 W., SLC Meridian, Kane County, UT.

The transportation system required to access commercial harvest areas is largely in place. However, to access all currently infested stands, approximately 2.6 miles of temporary and specified road construction would be required. An additional one half mile of temporary road is proposed to access aspen regeneration areas with commercial sawtimber and non-commercial fuelwood opportunities. No road construction is proposed to occur in areas classified categories one, two or three under Chief Dombeck's interim road policy (36 CFR part 212). A haul route is proposed through Cedar Breaks National Monument along existing roads to facilitate removal of a portion of the trees removed under the commercial harvest proposal.

All newly constructed temporary roads would be obliterated upon completion of the project, and any new permanent or systems road would be physically closed with earth and rock barriers or gates.

In addition to the vegetation management treatments, and related activities, a site-specific amendment to the Dixie National Forest LRMP is being proposed for this project. This amendment is necessary in order to ensure that the commercial harvest proposed action is in compliance with the LRMP. Because of the level of spruce beetle caused mortality along state highways and areas designated semi-primitive recreation management in the LRMP (2A and 2B), commercial harvests in these areas may require that site specific amendments be made regarding scenic resource management.

The proposed actions would implement management direction, contribute to meeting the goals and objectives identified in the DNF–LRMP, and move the project area toward the desired condition. This project EIS would be tiered to the Dixie National Forest LRMP EIS (1986), which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest. As lead agency, the Forest Service would analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative would include mitigation measures and monitoring requirements. No alternatives to the proposed action have been identified at this time, however, the following four preliminary issues have been identified: (1) The presence of log trucks and other heavy machinery on popular recreation traffic routes may increase hazards to personal safety (management indicator: frequency and timing of logging related traffic); (2) Prescribed burning associated with aspen regeneration may generate smoke concentrations that could pool in urban areas (management indicator: number of days expected to exceed guidelines); (3) The proposed activities may affect areas the undeveloped character of areas within the SERP area (measurement indicator: number of acres altered within those areas); and, (4) The proposed harvest levels may not optimize the recovery of the marketable value of the wood products (measurement indicator: percent of acres harvested of the total available spruce mortality on suitable and operable acres).

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official. He can be reached by mail at 82 North 100 East, P.O. Box 580, Cedar City, Utah, 84720–0580.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action. Scoping notices have been sent to potentially affected persons and those currently on the Dixie National Forest mailing list that have expressed interest in timber management proposals, proposals, relating to wildlife habitat modifications and Forest Plan amendments. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Phillip G. Eisenhauer, Project Environmental Coordinator, 82 North 100 East, P.O. Box 627, Cedar City, UT 84720–0627.

The analysis area includes both National Forest System land and private lands. Proposed treatments would occur only on National Forest system lands. A permit is required to use the proposed haul route through Cedar Breaks National Monument. No other federal or local permits, licenses or entitlements would be needed.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy

Act at 40 CFR 1503.3 in addressing these points.

Dated: March 25, 1998.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 98–8863 Filed 4–3–98; 8:45 am]

BILLING CODE 0224–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: May 13–14, 1998.

Place: Kansas City Airport, Marriott, 775 Brasilia, Kansas City, Missouri.

Time: 8:00 am–5:00 pm on May 13; and 8:00 am–11:30 am on May 14, 1998.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a tour of the Agency's Technical Center and a review and discussion of GIPSA's financial status, moisture meter implementation plan, strategy for implementing corn protein, oil, and starch testing, and wheat research results.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: March 27, 1998.

David R. Shipman,

Acting Administrator.

[FR Doc. 98–8729 Filed 4–3–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On November 12, 1997, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. The period of review is February 1, 1996, through January 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of reviews.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Wendy Frankel, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4697 or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 353 (April 1997).

Background

On November 12, 1997, the Department published in the **Federal Register** the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (PRC) (62 FR 60684). We received case and rebuttal briefs from the petitioner, O. Ames Co., and its division, Woodings-Verona. We also received consolidated case and rebuttal briefs from the respondents. One respondent also submitted an additional case brief. The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools, and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wool splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds)in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

These reviews cover five exporters of HFHTs from the PRC, Shandong Huarong General Group Corporation (Shandong Huarong), Liaoning Machinery Import & Export Corporation (LMC), Fujian Machinery Import & Export Corporation (FMEC), Shandong Machinery & Equipment Import & Export Corporation (SMC), and Tianjin Machinery & Equipment Import & Export Corporation (TMC) (collectively, the respondents). The period of review (POR) is February 1, 1996, through January 31, 1997.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the petitioner and case and rebuttal briefs filed by the respondents collectively, as well as a separate case brief from LMC.

Comment 1: Surrogate Value for Labor

The petitioner argues that the Department erroneously calculated labor costs by using surrogate value data sources in the publication, *Statistics on Occupational Wages and Hours of Work (SOOW).* The petitioner asserts that the data is deficient and inappropriate for use in this review because (1) the wage and salary rates listed in the *SOOW* are reported on a wide range of rates for a particular activity (*e.g.*, the industry segment, ''Manufacture of metal products (except machinery and equipment)'') from which the Department calculated a simple average; (2) the SOOW excludes fringe benefits payments, thereby understating labor values; and (3) this data has never been used before in HFHTs or any other antidumping proceeding. The petitioner argues that the Department should use data from *The Yearbook of Labour Statistics (YLS),* which provides more specific wage rate data and has been used in prior reviews of this proceeding.

The respondents contend that the labor data presented in the *SOOW* is more appropriate than that available in the *YLS* for use in this proceeding. The respondents note that the *SOOW* contains considerably more contemporaneous data (*i.e.*, from October, 1994 and 1995) than the *YLS* (the latest edition contains data from 1991). Moreover, the respondents claim, the *SOOW* labor data meets or exceeds minimum wages of reporting countries, since it includes basic wages, cost-of-living allowances and some fringe benefits. The respondents claim that contrary to the petitioner's assertions, the *SOOW* data generally results in an overstated HFHTs labor value since the *SOOW* data is based upon wages paid to full-time skilled workers, while the HFHTs industry (1) reports labor costs based on ''cap'' valuations, (caps generally represent the maximum amount of time spent to produce and pack the merchandise); (2) employs mostly unskilled and occasionally part-time workers; and (3) is labor intensive, and therefore representative of the lower end of the *SOOW* wage scale. Moreover, the respondents contend that the *SOOW* data is specific to the metal industry, which the YLS neglects to address. In addition, the respondents refute the petitioner's claim that the *SOOW* is a new source of data and note that the International Labor Office in Geneva, Switzerland, prepares both the *YLS* and the *SOOW*. Further, according to the respondents, any differences in ''total wages'' reported in the SOOW and ''labor costs'' in the *YLS* are minimal. Finally, the respondents claim that the petitioner's objection to the Department's use of the *SOOW* data is untimely, because the petitioner neglected to address this issue when the Department was soliciting surrogate value data for this administrative review.

DOC Position: We agree with the respondents, in part; however, we do not consider the petitioner's comments on our selection of labor values used for the preliminary results as untimely. While we have considered the shortcomings of the *SOOW* data (*e.g.*, it does not include all fringe benefits), we have determined that for this review period, the *SOOW* data reasonably reflects labor costs for the HFHTs industry.

It is the Department's aim to use surrogate price data which is: (1) an average non-export value; (2) representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. *See Final Results of Antidumping Duty Administrative Review; Sebacic Acid from the People's Republic of China,* 62 FR 10530, 10534 (March 7, 1997). The data in the *SOOW* meets all four of these criteria. First, it reflects an average non-export value. Second, the October 1994 and 1995 *SOOW* data is the most contemporaneous surrogate labor data available for India. Third, the *SOOW* data is specific to the metal industry. We used wage rate data included in the category ''Manufacture of metal products, except machinery and equipment,'' because this category was the best match for the HFHTs industry. Fourth, the *SOOW* data is tax-exclusive. In addition, we disagree with the petitioner that the *SOOW* data understates labor values because, as the respondents note, the *SOOW* data reflects salary rates for skilled, full-time workers in generally capital intensive industries, whereas, the HFHTs industry utilizes predominately unskilled laborers (often working part-time) in labor intensive production. Further, we note that notwithstanding the petitioner's argument regarding the *YLS* data, the petitioner has not submitted the *YLS* data on the record for this review, and therefore, we are unable to address any specific claims with regard to the *YLS* data. As the *SOOW* data reasonably reflects labor costs in the HFHTs industry, we will continue to use *SOOW* data in calculating labor costs for these final results.

Comment 2: Labor and Paint Factors—Facts Available

The petitioner contends that the statute, regulations, and legislative history are clear with regard to the circumstances meriting the Department's use of facts available (FA), and concurs with the Department's decision to apply adverse FA in determining LMC's labor and paint costs for the production of wedges. However, the petitioner objects to the Department's use of LMC's highest reported ''cap'' data as FA rather than resorting to an overall adverse FA rate. The petitioner cites the Department's October 31, 1997, verification report and October 31, 1997, Memorandum to Richard Moreland regarding use of FA (FA Memo, 10/31/97) to support its claim that LMC could not substantiate the validity of its reported labor and paint consumption costs, and thus, the Department should not rely on any of the reported data despite its higher cost in relation to other ''cap'' amounts. The petitioner argues that using such data would be contrary to Department practice and the antidumping statute, as it would allow LMC to profit from its lack of cooperation. The petitioner cites to Department and court precedent to show that as FA the Department should use the highest margin calculated for another producer of wedges in this proceeding.

LMC stresses the fact that its factory is an extremely small operation with limited record-keeping abilities, thus the Department should apply a less stringent standard in valuing labor and paint costs. LMC notes that the amounts it reported were comparable to the figures the Department verified for Shandong Huarong, and the Department was able to adequately verify all other factor inputs at LMC. Therefore, according to LMC, the Department should reasonably assume that LMC's reported ''cap'' valuations are representative of its labor and paint costs. Further, LMC contests the petitioner's recommendation that the Department use total FA, given the circumstances. LMC contends that the petitioner's arguments hinge on limited situations and precedent where total FA was applied, and are not applicable for this proceeding. LMC argues that, at most, the Department should use the partial FA as assigned in the preliminary results.

DOC Position: As indicated in the preliminary results, the Department could not verify LMC's reported labor and paint consumption figures for the wedge models produced. Therefore, pursuant to section 776(a) of the Act, we used FA for labor and paint. We disagree with the petitioner that our failure to apply a total FA margin is inconsistent with the antidumping statute and Department precedent. While the statute allows the Department to use FA in reaching the applicable determination, it does not indicate what facts the Department must employ in applying FA, and does not require the application of total FA in every instance.

In deciding to use partial FA, we note that we adequately verified all other factor inputs reported by LMC. As labor and paint constitute a relatively small proportion of total costs, the integrity of the overall response is not called into question by the labor and paint verification problem, and the use of partial FA is appropriate.

We further note that the cases cited by the petitioner, including *NSK Ltd.* v. *United States,* 809 F. Supp. 115, 119 (CIT 1992), merely affirm the broad discretion granted to the Department in applying FA and do not compel the Department to apply total FA under the circumstances present in this review.

On the other hand, the fact that at verification LMC provided minimal data for paint consumption and no data for labor consumption, despite our requests for information during verification, influenced our decision to apply adverse FA. As a result, pursuant to section 776(b) of the Act, we determined that LMC failed to cooperate by not acting to the best of its ability with regard to labor and paint factors and we used an adverse inference in applying FA for those factors.

Contrary to the petitioner's arguments, the data we selected as adverse partial FA does not reward LMC for failing to cooperate. While LMC's reported labor and paint amounts were comparable to those amounts verified for Shandong Huarong, the ''cap'' amounts used as adverse FA were greater than the highest ''caps'' reported for paint and unskilled labor by any other PRC producer of wedges in this review. Thus, by using LMC's highest ''cap'' amounts for paint and labor for any of its wedges as FA, the Department is satisfied that LMC will not benefit from its lack of cooperation.

Moreover, the statute permits the Department to rely on information placed on the record when making an adverse inference in using FA, such as the ''cap'' information provided by LMC. *See* section 776(b)(4) of the Act. Therefore, use of partial FA was a reasonable exercise of our authority, and we determine that our selection of the highest reported ''caps'' by the respondent as adverse partial FA was appropriate in this case.

Comment 3: LMC Steel Factors

The petitioner contends that LMC has presented contradictory information for the record regarding its steel usage. The petitioner contrasts LMC's original questionnaire response, which states, ''[t]he steel which is used is either ordinary 1045 grade steel round bar or rod or ordinary 1045 grade steel hexagonal bar or rod,'' with LMC's supplemental response, which claims that it uses scrap wheels from railroad cars. Furthermore, the petitioner alleges, record evidence does not demonstrate that LMC uses scrap railroad wheels in the production of the subject merchandise, nor was the Department able to substantiate the claimed scrap steel usage during verification at LMC's supplier. Moreover, the petitioner argues that LMC offered no information on the costs of producing the subject merchandise from scrap (i.e., scrap railroad wheels). The petitioner argues that given these inconsistencies and other errors, the Department should use total FA, and assign LMC either the average or the highest margin calculated for cooperative respondents of bars/wedges in this proceeding.

Citing the *Notice of Final Determination of Sales at Less Than Fair Value; Collated Roofing Nails From the People's Republic of China,* 62 FR 51410 (October 1, 1997) (*Nails*), LMC notes that the Department will accept data which is timely, verifiable, sufficiently complete, demonstrated to be provided based on the best of the respondent's ability, and can be used without undue difficulties. LMC explained that, prior to verification, it corrected the reporting error in its original response by stating in its July 24, 1997, supplemental submission that it used scrap railroad wheels instead of steel bars to produce wedges. In addition, LMC contends that the Department confirmed the factory's usage of scrap railroad wheels in the production of the subject merchandise. LMC cites the *Notice of Final Determination of Sales at Less Than Fair Value; Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, (February 28, 1997) (*Brake Drums*) to demonstrate that the respondents are not required to submit error free responses to avoid the use of FA. LMC contends that the Department will use total FA only when a respondent is ''totally uncooperative.''

DOC Position: We disagree with the petitioner's argument that record evidence does not sufficiently demonstrate that LMC uses scrap railroad wheels in the production of the subject merchandise. During the factors verification conducted at the factory of LMC's supplier, we confirmed the supplier's use of scrap railroad wheels. *See* Factors Verification Report (LMC), October 31, 1997. In examining the company's records we were able to confirm the purchase of scrap railroad wheels, and found nothing to indicate the use of other steel inputs during the period in question.

Further, we concur with LMC's claim that it notified the Department in a timely fashion regarding an inadvertent error in reporting steel inputs. In its July 24, 1997, supplemental questionnaire response, LMC stated that it used scrap railroad wheels in the production of the subject merchandise. LMC submitted this correction as part of a response to the Department's supplemental questionnaire. Therefore, we consider the changes made by LMC in reporting for steel inputs to be a clarification of the record, consistent with the Department's requests for factual information and reporting requirements.

Comment 4: Surrogate Values for Steel Scrap

The petitioner argues that record evidence does not support the Department's use of HTS category 7204.4100, or likewise, any scrap category in valuing LMC's steel costs. The petitioner claims that railroad scrap is a premium quality scrap as opposed to the scrap by-products included in this category, which comprises the cheapest grades of scrap available, generally having a high copper content and, therefore, limited usefulness.

LMC notes that although the petitioner argues that HTS category 7204.4100 is not the correct HTS category for valuing the steel scrap inputs in this case, the petitioner could not propose a more appropriate category. LMC contends that the Department is correct in using HTS category 7204.4100 in valuating its railroad wheel scrap, since this category covers a wide range of steel scrap.

While LMC asserts that the Department used the correct HTS category to value steel inputs, LMC contends that the Department should recalculate the surrogate value within the HTS subheading used. LMC argues that the March 1996 Indian imports from Germany, Korea, and the United Kingdom are small in quantity and

aberrational in price, and therefore, should be disregarded to avoid distorting the per unit scrap value.

Notwithstanding its above argument, the petitioner contends that, should the Department continue to value steel using this HTS category, given the high quality and value attributed to scrap railroad wheels, the Department should not disregard the March 1996 Indian imports from Germany, Korea, and the United Kingdom, as requested by LMC. The petitioner notes that LMC has not provided any information which demonstrates that such import data is aberrational, but merely is seeking to drop the highest scrap values from the import data.

DOC Position: Section 773(c) of the Act directs the Department to value steel used by PRC producers during the POR by using prices of comparable steel in a market-economy country. We used the best data available, which is the data in HTS category 7204.4100. Despite its argument that we should not use this HTS category to value LMC's steel, the petitioner has provided no alternative HTS category that would be more appropriate for valuing LMC's scrap railroad wheels than HTS category 7204.4100. We will, therefore, continue to use this category for the final results.

With respect to the exclusion of data pertaining to small, aberrantly priced import quantities from individual countries, we agree with the respondents that inclusion of such data potentially may be distortive. It is our practice to disregard small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, Final Results of Administrative Reviews,* 62 FR 11813 (March 13, 1997) (Department's response to Comment 2); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania, Final Results of Antidumping Duty Administrative Review,* 62 FR 37194 (July 11, 1997) (Department's response to Comment 1). Consistent with prior HFHTs reviews, we compared the March 1996 Indian data covering imports from Germany, the United Kingdom and Korea, with the Indian import data for the period February through August 1996 (excluding March), U.S. import data for the period January through October 1996, as well as Indonesian data for the calendar year 1996. We have determined that this Indian import data reflects small-quantity pricing and, therefore, will exclude such import data from our surrogate value calculation for these final results.

Comment 5: Use of Actual Factor Data or Use of ''Caps'

Citing *Brake Drums* (Department's response to Comment 19), LMC contends that the Department should apply the verified usage factors for coal, steel and ''other inputs'', rather than the respective ''cap'' amounts reported in its questionnaire response. With respect to coal, LMC claimed that the average per-wedge consumption figures determined at verification are lower than the reported ''caps'' because the ''caps'' were derived during a period when it used less efficient coal.

The petitioner contends the Department should not make modifications to the data reporting methodology established for these reviews. The petitioner states that LMC, as well as the other respondents, have chosen to report their cost data according to a long established ''cap'' reporting methodology. The petitioner argues that since LMC did not report factor values based on the information contained in its books and records, it would not be appropriate for the Department to accept the verified data simply because the factory had no prior experience with the antidumping process, as argued by LMC.

DOC Position: During verification, we were only able to derive average coal consumption figures for all wedges (as opposed to actual model-specific wedge consumption figures) due to LMC's lack of records detailing coal consumption on a model-specific basis. *See* Factors Verification Report (LMC), at 7, (October 31, 1997). There is no record evidence to indicate that the average verified figures are any more accurate with regard to model-specific coal consumption during the POR than the reported model-specific ''cap'' amounts. LMC claimed that the average wedge consumption figures provided at verification are lower than the reported ''caps,'' because the ''caps'' were established during a period when less efficient coal was used. However, LMC was not able to substantiate this claim. Thus, we have continued to use the reported ''caps'' for coal consumption in these final results of reviews.

The purpose of examining the ''caps'' at verification was to determine the accuracy of LMC's questionnaire responses. Verification is not normally an appropriate venue for the submission of new factual information, and we generally collect and use information gleaned at verification only when minor discrepancies are found or when we believe a respondent's methodology may not have been reasonable but can be simply changed. In this case, verification was an opportunity to determine whether LMC's and Shandong Huarong's ''caps'' represented a reasonable approximation of the factor inputs used in the production and distribution of the subject merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2093, (January 15, 1997) (Department's response to Comment 4) (*AFBs*). Our conclusion was that there was no reason to believe that the actual data would differ significantly from the ''caps''. For instance, as a result of verifying LMC's response, we determined that while the steel and packing ''caps'' overstated some factor inputs and underestimated others, on balance LMC's ''caps'' were a reasonable reflection of its actual experience and that any deviation from the reported ''caps'' would be insignificant. This is in contrast to the circumstances in *Brake Drums,* where the verified data differed so significantly from the reported information that use of the reported data would have distorted the margin. *See Brake Drums,* (Department's response to comment 19).

LMC's proposal would convert verification, which is an opportunity to check the accuracy of information previously submitted, into a data-gathering exercise. Furthermore, in LMC's case, although we have the data to replace the estimated steel and packing ''caps'' with actual consumption or usage, the change to our calculations, given the advanced stage of these reviews, would impose an unreasonable burden with no significant increase in accuracy in light of the results of our verification. Therefore, we have used LMC's ''caps'' as reported, except paint and labor. See the Department's position to comment 2 for a discussion of paint and labor, and AFBs. With regard to LMC's comments on ''other inputs,'' we are not sure what specific items LMC is referencing, and therefore, are unable to address this issue.

Comment 6: Surrogate Country Determination for Picks/Mattocks

The respondents contend that the Department should use a different surrogate country in valuing steel inputs for the production of picks/mattocks. The respondents assert that the Department determined in a prior HFHTs review that Indian steel import data prior to 1995 was unusable due to the small volume of imports in HTS

category 7214.50. Further, given the fact that there is no Indian import data for HTS category 7214.50 for the period after March 1996, the respondents contend that there is no indication such data will be available in the future, thus making this HTS category unreliable as a data source and inhibiting the respondents' ability to establish non-dumped prices for current and future reviews in light of exchange rate fluctuations. The respondents state that the Department's statutory language allows for a flexible approach to selecting surrogate country data, and suggests that there is no reason why the Department needs to use the same surrogate country for each of the four distinct hand tool product categories.

The respondents contend that the Department should use Indonesia as the surrogate country in valuing steel for picks/mattocks. The respondents state that there is considerable Indonesian import data specific to the POR as utilized in other antidumping proceedings, which the Department should use for this proceeding.

The respondents argue that, should the Department continue to use the Indian import statistics for HTS 7214.50 from the period April 1995 through March 1996, the Department should disregard Indian imports from Austria and Japan, as was done in the prior review since this data is too small in quantity and too high in value. The respondents further contend that the Department should also disregard Belgian imports in its factor valuation. The respondents suggest that the Belgian import values are very high compared to imports from Brazil and Saudi Arabia, and therefore, may include special bar quality steel (SBQ), a high grade of steel, not used to produce the subject merchandise. According to the respondents, the Department has consistently determined that import data is aberrational and thus, unusable when the imports are too small in quantity to be reliable and extremely high in value compared to other sources. Finally, the respondents state that if the Department continues to use the April 1995 through March 1996 data, it should adjust that data for inflation.

The petitioner contends that the Department should continue to value steel using Indian surrogate country data. The petitioner emphasizes that the Department has consistently rejected the use of Indonesian surrogate data in previous reviews of HFHTs. The petitioner further contends that the respondents offer no justification why the Department should utilize Indonesian surrogate value data only for picks/mattocks, as opposed to other categories of the subject merchandise, most of which are made from steel that falls under the same HTS subheading. Moreover, the petitioner asserts that there is no deficiency in the data; the data encompasses a time frame which overlaps the POR by two months. The petitioner also refutes the respondents' arguments that the Department's reliance on Indian surrogate values has disadvantaged them because of the delay and lack of reliability of these statistics. The petitioner notes that all countries have delays in issuing import statistics and maintains that contrary to the respondents' arguments, the practice of using prior year Indian import statistics and adjusting them for inflation, should in fact make it easier for PRC producers to establish non-dumped prices.

The petitioner further contends that import data can not be rejected on the mere basis that values are too high or low, and notes that the Department only rejects aberrational surrogate value data. The petitioner also refutes the respondents' speculation that the price differential between the current Belgian values and the values from other countries proves that the Belgian imports include SBQ steel. Moreover, the petitioner contends that no grounds exist for the exclusion of the Belgian data, even if it does reflect imports of SBQ steel. The petitioner notes that the Department acknowledged in the prior review that HTS category 7214.50 includes both merchant quality as well as SBQ steel, but it is still the appropriate subcategory to use for surrogate steel values for the production of HFHTs since 1045 carbon steel, the steel actually used in the production of HFHTs, is also classified under this HTS subheading. In light of these facts, the petitioner concludes that Belgian imports should not be excluded from the Department's calculation of steel values. Finally, the petitioner claims that the Department should confirm that HTS category 7214.50 has, in fact, been reclassified as HTS category 7214.99.

DOC Position: Section 773(c) of the Act directs the Department to value steel used by PRC producers during the POR by using prices of comparable steel in a market-economy country. *See* the Department's position with regard to comment 4. With the exception of LMC, all of the respondents use 1045 carbon steel to produce HFHTs. We verified this fact in this review with regard to Shandong Huarong (in prior reviews, the identical steel grade was used by the respondents). This type of steel is classified under HTS category 7214.50 of the Indian import statistics. Therefore, in our preliminary results, we used the most recently published Indian surrogate data under this category, which provides import values for the period April 1995 through March 1996. Consistent with Department policy and our practice in prior reviews, we inflated the calculated factor value to reflect current prices. Moreover, because the respondents have not substantiated their claim that the data used for the preliminary results are unreliable, we do not agree that we should alter our methodology or use a different surrogate country to value steel for the production of picks/mattocks for purposes of these final results. Although the respondents assert that there is import data more specific to the POR, they have provided no record evidence to support their contention that Indonesian surrogate value data would be more appropriate in the picks/mattocks review. Further, we dispute the respondents' claim that the factor value was based on a small volume of Indian imports, when in fact the factor value calculated for the prior 1995–1996 HFHTs review was based on a considerably smaller import volume.

Further, we note that as we could not substantiate the petitioner's claim that HTS category 7214.50 was reclassified as HTS category 7214.99, we have continued to value steel using HTS category 7214.50 of the Indian import statistics.

With regard to Indian imports from Austria and Japan, as in the prior review, we have determined that the respective import quantities are significantly smaller than the imports from other countries during the April 1995 through March 1996 period, and the per-unit values significantly higher. The Department's policy is to disregard imports of small quantities in calculating surrogate values when the per-unit value of these imports is at variance with other information on the record. *See* the Department's response with regard to comment 4. We therefore have excluded the Japanese and Austrian imports from our calculations as the per-unit values of those imports are substantially different from the per-unit values of the larger quantity imports under that HTS category from other countries. We do not agree with the respondents, however, concerning the Belgian imports. Although the per-unit value of Belgian imports into India under the HTS category are higher than the per-unit values of other imports (except from Japan and Austria), the quantities of the Belgian imports are comparable to those from the remaining countries and there is no information on the record to substantiate the

respondents' claim that these values are in any way aberrational. Therefore, we have continued to include them in our factor valuations for these final results.

Comment 7: Ocean Freight

The respondents contend that the source used by the Department to calculate the ocean freight rate between Qingdao/Dalian and Los Angeles for these reviews was inappropriate because the rate used was based on proprietary information and is not available to all shippers. The respondents argue that the proprietary nature of this data puts other shippers at a disadvantage since they do not have access to this information. Further, the respondents claim that this rate is highly inflated since it was based on sample shipments and is not representative of other shipments of the subject merchandise, even those made by the same shipper. In addition, the respondents assert that this rate should not be used, since shipments identified on record as going to Los Angeles may in fact go to the adjacent port of Long Beach.

The other source used by the Department to calculate ocean freight charges was based on Federal Maritime Commission (FMC) data used in *Brake Drums.* Although the respondents do not contest the use of these rates, they request that the Department make downward adjustments to these rates in order to account for price changes between July/August 1995 (the period from which the data was derived) and the POR, by using indices from the Bureau of Labor Statistics, Division of International Prices, U.S. Department of Labor.

The petitioner contends that the record disproves the respondents' claims that the source used to derive ocean freight charges for the Los Angeles route is proprietary since this information is contained in the October 31, 1997 public memorandum to the file regarding surrogate value selection for the preliminary results of these administrative reviews. The petitioner also contends that the Department must rely on verified record evidence regarding U.S. ports of entry, and disregard the respondents' new claim that Long Beach may be the actual port of entry on shipments destined for Los Angeles. The petitioner questions the integrity of the respondents' port of entry claims, and therefore, asserts that the Department should use as FA, Los Angeles as port of entry for all shipments to the United States. In addition, the petitioner contends that the respondents' request that the Department adjust the FMC rates based on publicly available indices is untimely, since such data should have been presented when the Department solicited publicly available information on surrogate values. Moreover, the petitioner notes that the respondents provide no details on what these indices are or how they are maintained, and so there is no reasonable basis upon which to determine if they are even relevant to these reviews of HFHTs.

DOC Position: The ocean freight rate derived for shipments from Qingdao and Dalian to Los Angeles is public information derived from phone conversations with company officials at SeaLand Services, an international freight company. In our October 30, 1996, memorandum to the file in the prior administrative review of HFHTs, we inadvertently treated this as proprietary information. We have since confirmed with SeaLand Services officials that this is public information. *See* Memo to the File (March 12, 1998); Telephone Conversation between Department officials and SeaLand Services. Therefore, the respondents' assertion that this is not publicly available information is misplaced. Further, the respondents claim that certain shipments destined for Los Angeles may have instead been delivered to the adjacent port of Long Beach. We examined shipping and sales documentation during verification, and found no merchandise destined for Los Angeles diverted to Long Beach. Since nothing on the record demonstrates that certain shipments were diverted to Long Beach, we will continue to rely on record evidence regarding port of entry data and apply the appropriate freight charge.

Finally, with respect to the respondents' argument that the FMC rates used by the Department are overstated, the respondents have not provided any information on the record to substantiate this claim nor to demonstrate why it would be appropriate to adjust such rates based on certain indices from the U.S. Department of Labor. Therefore, we are not making any adjustments to the FMC rates used to calculate ocean freight for these final results of reviews.

Comment 8: Double-Counting Freight and Energy Costs as Part of SG&A, Overhead and Profit

The respondents contend that the Department overstated normal value by double-counting freight and energy costs. Specifically, the respondents argue that in addition to the separately stated freight and energy costs included in normal value, freight and energy costs were included in the selling, general and administrative expenses (SG&A), factory overhead, and the profit elements of normal value (*i.e.*, the financial statement used to compute selling, general and administrative expenses (SG&A), factory overhead, and profit ratios already include freight and energy costs either in the raw materials and energy costs themselves or in the ''other expenses'' category of SG&A). Therefore, the respondents argue, in order to avoid double-counting, and in accordance with the methodology used in *Brake Drums* (Department's position to comment 10), the Department should compute company-specific SG&A, factory overhead and profit amounts by multiplying the ratios used to compute these factors against the total sum of direct materials and direct labor, rather than the sum of direct materials, freight, direct labor, and energy.

The petitioner asserts that the Department correctly calculated and applied the ratios used to compute SG&A, factory overhead, and profit. The petitioner points out that the Indian financial statements used to compute these ratios did not separately report freight and freight related expenses. Thus, the petitioner claims it is reasonable to conclude that freight expenses were included within the direct costs (*e.g.*, materials and labor) reported in the financial statements. The petitioner asserts that because the Department included material and energy costs in the denominator of the ratio used to compute SG&A, factory overhead, and profit ratios the Department was correct to include them in the constructed value elements to which these ratios were applied. The petitioner further asserts that *Brake Drums* only applies if freight and freight related items are reported in the SG&A category of the financial statement used to derive the SG&A, factory overhead, and profit ratios. The petitioner maintains that the Indian financial data did not indicate that freight expenses were included as part of SG&A, and therefore, the Department's conclusion that these expenses were included as part of the direct costs was reasonable and appropriate.

DOC Position: We agree with the petitioner. In *Brake Drums*, the Department computed the overhead and SG&A ratios by using expenses listed on an Indian producer's financial statement that included freight (and delivery) expenses. By contrast, in this case, the respondents have provided no record evidence to suggest that the ''other expenses'' category under SG&A on the financial statements from the *Reserve Bank of India Bulletin* includes freight. Therefore, we have no reason to believe

that we have double-counted freight expenses in our calculation of normal value.

Furthermore, we disagree with the respondents' claim that the Department double counted energy costs because we excluded energy costs from the surrogate overhead expenses that were used to calculate the overhead, SG&A, and profit ratios. Therefore, applying these ratios to factors that included energy costs did not overstate energy costs.

Comment 9: Inland Freight

Citing *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir., July 7, 1997) (*Sigma*), the respondents argue that the Department's method of calculating inland freight (*i.e.*, using the distance from the supplier to the factory without comparing it to the distance from the port to the factory) is invalid. The respondents argue that in accordance with the Department practice subsequent to Sigma (*see e.g., Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 60228 (November 7, 1997) (*Paintbrushes*), the Department should amend inland freight expenses for each of the respondents to reflect the shorter of the distance between a) the closest PRC port and the factory or b) the PRC input supplier and the HFHT factory.

Further, the respondents contend that the Department should not increase normal value for inland freight expenses where the PRC producer is located at or near a port, since material inputs were transported over only very short distances. Again, citing *Sigma*, the respondents note that the cost of some inland freight in the exporting country is included in the import values, since the merchandise has to be transported from the factory to the port of export. The respondents claim that these inherent freight costs offset any inland freight costs incurred in the PRC for factories located in or near a port city. Thus, the respondents conclude that adding additional freight expenses to NV would result in double-counting.

The petitioner notes that in *Sigma*, the Court of Appeals for the Federal Circuit (CAFC) assumed that the PRC producer chooses between imports and internally produced merchandise on the basis of delivered price. The petitioner argues that this assumption only makes sense if the full delivered cost is used. Thus, the petitioner argues, if the Department adopts the lesser distance approach discussed above, it should include in normal value import duties on material inputs. The petitioner notes, however, that the Department has excluded surrogate country import duties from factor values in the past on the grounds that the factors of production methodology constructs a value for exported merchandise where duties have been rebated under duty drawback laws. However, the petitioner asserts that the respondents are not eligible for duty drawback on HFHTs because they cannot determine whether they produce HFHTs using domestic or imported steel and, thus, they do not choose suppliers based on the potential of duty drawback.

The petitioner contests the respondents' argument that foreign freight costs inherently included in surrogate country import values ''offset'' the inland freight costs incurred in the country of import. Regardless of a factory's location, the petitioner argues that there are still expenses related to transporting the merchandise from the port to the factory (*e.g.*, unloading at the port, loading onto inland freight transportation vessel, and unloading at the factory). Referencing the Department's determination in the 1993–1994 HFHTs reviews, the petitioner goes on to argue that a per-mile charge does not fully capture freight charges for short distances because the fixed costs of loading and unloading will constitute a higher proportion of total freight cost than on long hauls. In the 1993–1994 reviews, the Department used the freight cost for shipping goods between 25–100 kilometers (km) as the cost for shipping goods less than 100 km. For these instant reviews, the petitioner urges the Department to apply the same methodology.

DOC Position: The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight values for those material inputs that are valued based on CIF import values in the surrogate country. The *Sigma* decision states that the Department should not use a methodology that assumes import prices do not have freight included and thus values the freight cost based on the full distance from the domestic input supplier to producer in all cases. Accordingly, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either (1) The closest PRC port to the HFHT factory, or (2) the domestic input supplier to the HFHT factory. Where the same input is sourced by the same producer from more than one source, we used the shorter of the reported distances for each supplier. *See Final Determination of Sales at Less Than Fair Value: Certain Cut To Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997). In addition, we determined in the 1993–1994 HFHTs review that the fixed costs of loading and unloading short hauls will form a higher proportion of the total cost than long hauls, so minor differences in the distances shipped should not have a significant effect on the total cost. Therefore, where a producer is located at or near a port, we have determined that certain freight charges (*e.g.*, loading and unloading) are still incurred, and thus, have included inland freight expenses to reflect the respective distance between the producer and the port, even if that distance was less than 25 kilometers.

Finally, we disagree with the petitioner's suggestion that the Department add import duties to calculate the factor values for steel. The Department values inputs used by NME producers by determining the cost or price of the input in a market economy that is at a level of economic development comparable to that of the NME. *See* section 773(c)(4) of the Act. Since the Department's NME methodology is aimed at constructing the value of the merchandise for export, it is appropriate to use the costs the surrogate producer would face in producing merchandise for export. In this regard, when the Department uses import prices to value an input, the price of the input is adjusted to make it a delivered price by adding an amount for freight. *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 63 FR 3085, 3087 (January 21, 1998). However, consistent with our standard practice, we do not add Indian import duties to the values reported in the published Indian import statistics as those duties would have been rebated upon export of the finished products. *See Certain Cased Pencils From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 55625, 55634 (November 8, 1994); *Certain Helical Spring Lock Washers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 58 FR 48833, 48841 (September 20, 1993)(*Lock Washers*). We note that the cases cited by the petitioners, including *Lock Washers*, do not support adding import duties to the factor values. As *Sigma* only required the Department to alter its method of valuing foreign inland freight, we will

follow the Department's practice of not adding import duties to factor values.

Comment 10: Exchange Rate Conversion

The respondents contend that in accordance with Section 773A(a) of the statute, the Department should convert factor values in rupees to U.S. dollar values using the exchange rate in effect on the date of the U.S. sale. In the preliminary determination, the Department converted factor values to U.S. dollar values using the average exchange rate for the POR.

DOC Position: We agree with the respondents. We converted Indian rupees into U.S. Dollars using daily exchange rates in accordance with section 773A(a) of the Act.

Comment 11: Surrogate Values for Packing Materials

The respondents claim that the Department used inappropriate surrogate values for certain packing materials (*i.e.*, pallets, paper cartons and big iron knots or buttons—the case briefs refer to these items interchangeably). First, the respondents contend that during the period used to value pallets (February, through August 1996), Indian imports under the appropriate HTS category were very small, resulting in an overstated surrogate value for pallets. Consistent with the Department's practice in previous HFHTs reviews (*see* 1994–1995 and 1995–1996 reviews), the respondents urge the Department to disregard the Indian imports because of the limited quantity imported during the POR. As an alternative, the respondents ask that the Department use data from another surrogate country or value pallets by inflating the value used in the 1995–1996 HFHTs review.

The respondents further contend that the HTS category 4819.10, used to value cartons, covers many products that range widely in value. In addition, some of the imports are very small, indicating that they are not commercial shipments but samples or special orders. For these reasons, and the significant increase in the average value of Indian entries under this HTS subheading since the 1994–1995 review, the respondents request that the Department disregard all such imports that are less than one-half metric ton (or 500 kilograms). Furthermore, the respondents request that the Department compare the resulting value with values derived from other surrogate countries to determine if the value is aberrational.

Finally, the respondents contend that the iron knots utilized by the respondents are not similar to any of the metal packing material classified in HTS category 8309.90.09, which was used to value iron knots. Thus, the respondents contend that the Department grossly overvalued iron knots for the preliminary determination.

The petitioner claims that the import volume (155 pallets) that the Department used to compute the surrogate value for pallets is much closer to the volume actually used by the respondents in these reviews than the 1993 import volume (33,423 pallets) the respondents suggest the Department use to compute this surrogate value, and therefore, more accurately reflects the price the respondents would have paid for this item.

The petitioner refutes the respondents' argument regarding the calculation of Indian surrogate values for paper cartons, noting that since individual cartons weigh a very small amount, what appears to be a small number by weight is actually a significant number of cartons.

Finally, the petitioner argues that the Department should reject the respondents' claim regarding the Indian surrogate values for iron buttons because it is unsupported by any record evidence, and because the respondents provide no alternative method for this valuation.

DOC Position: We have carefully reviewed the information on the record of these reviews with regard to our calculation of surrogate values for pallets, paper cartons and iron knots. With respect to pallets, we compared the Indian import data with the Indian import data used in the prior review and with the Indonesian import data for the calendar year 1996. (U.S. data is reported in number of pallets rather than by weight, and therefore is not comparable.) We have determined that the quantities of Indian and Indonesian imports were very small in comparison to Indian imports in the prior period. Therefore, for these final results we have used the values from the 1995–1996 reviews and indexed them forward to the POR.

We do not agree with the respondents' assertions concerning paper cartons. We have compared the Indian import data for the HTS category used to value cartons for these reviews to the U.S. and Indonesian import data for the calendar year 1996, and to the Indian data used in the prior review period. We note that the data used for the current review does not represent a small quantity of imports in comparison to the Indian data from the prior review. Although the U.S. and Indonesian import quantities were much larger than the Indian imports, the per-unit values do not indicate that the smaller quantity Indian imports are aberrantly priced.

With respect to the respondents' assertion that the Department erroneously valued iron knots, we note that we used the most appropriate data available. Respondents did not provide any evidence to support their contention that this HTS category is inappropriate.

Therefore, for these final results, we will inflate the surrogate value used for pallets for the 1995–1996 review, but will continue to use the Indian surrogate values used in the preliminary results for paper cartons and iron knots.

Comment 12: Marine Insurance

Citing to the *Notice of Final Determination of Sales at Less Than Fair Value; Melamine Institutional Dinnerware Products from China*, 62 FR 1708, 1710 (January 13, 1997) (*Melamine*), the respondents contend that the Department should value marine insurance based on value of the subject merchandise and not according to weight. The respondents further contend that marine insurance rates should not be indexed (adjusted for inflation), because although the value of the property being insured is increasing, it is not clear that the insurance rates have increased.

The petitioner notes that in *Melamine*, the Department calculated marine insurance on the value of the subject merchandise because the record of that review demonstrated that marine insurance was incurred on a value basis. In these reviews, the petitioner contends, the respondents provide no evidence to show they incurred marine insurance based on the value of the merchandise, thus, the Department should not divert from the methodology used in the preliminary results of these reviews and in previous HFHTs reviews of calculating marine insurance based on the weight of the merchandise.

DOC Position: We have carefully reviewed the record in this review and have determined that one respondent, LMC, incurred this expense on the value of the merchandise. However, the record does not provide conclusive evidence that the other respondents incurred marine insurance expenses based on the value of the merchandise. In prior HFHTs reviews, we have valued marine insurance based on weight because record evidence indicated that is how these charges were incurred. In the current reviews, with the exception of LMC, the respondents have not submitted any evidence to the contrary. Thus, for these final results, we will continue to value marine insurance expenses based on weight for all

respondents except for LMC. Where we valued marine insurance expense by using surrogate value amounts based on weight from a prior period, we will inflate these surrogate values to reflect POR price levels. Where we used surrogate values for marine insurance based on value, there is no need to inflate the values since they already represent current POR values.

Comment 13: FMEC—Ocean Freight

FMEC argues that the ocean freight charge used by the Department in these reviews is highly inflated and should be revised using a rate based on publicly available data.

The petitioner notes that FMEC provides no support for its argument with regard to ocean freight.

DOC Position: We agree with the petitioner that FMEC has not substantiated its contention that the ocean freight rate used by the Department in these reviews was inflated. In addition, we note that the rates used are based on publicly available data. *See* the Department's position with regard to comment 7. Therefore, we have not revised our ocean freight calculations for these final results.

Comment 14: Shandong Huarong—Ocean Freight

Noting that it shipped subject merchandise using a market economy carrier, Shandong Huarong asserts that the Department should use the actual cost of these shipments rather than a surrogate value, for these expenses, regardless of the fact that it payed the shipper in Chinese currency (Renminbi). Shandong Huarong acknowledges that the Department's practice in NME reviews has been to require that the carrier be a market-economy shipper and that the payment be made in hard currency for the Department to use those actual expenses. However, Shandong Huarong contends the Department's second condition (*i.e.*, that payment be made in a market-economy currency) is no longer important since the service originated in the PRC, and therefore should be paid for with local currency. Shandong Huarong states that the Department can compare the converted rates to other publicly available ocean freight rates, to determine whether these rates are reasonable.

The petitioner contends the Department should not abandon its established methodology of only using the actual price of an input if the NME manufacturer purchases the input from a market-economy supplier and pays in a convertible currency. According to the petitioner, there is no assurance that using prices paid to market-economy suppliers in Renminbi are free from the same distortions that render prices of inputs purchased within the PRC unusable.

DOC Position: It is the Department's established practice to use the actual cost of a service in its calculations for an NME proceeding only when the service is provided by a market economy vendor and paid for in a convertible currency. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 65527, 655541 (December 13, 1996), and *Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 53711, 53716 (October 15, 1996). Although Shandong Huarong utilized a market-economy shipper for certain shipments, it paid a PRC trading company for the service in Renminbi, and, therefore, did not meet the latter condition. Therefore, we will continue to use a surrogate cost in valuing shipments utilizing PRC freight forwarders.

Comment 15: Shandong Huarong—Steel Factors

Shandong Huarong requests that the Department use the verified amounts for steel and packing material inputs, rather than its reported ''caps.'' Shandong Huarong points out that the actual steel and steel scrap consumption amounts vary significantly from the ''caps.'' Asserting that the statute requires the Department to use verified data, Shandong Huarong notes that the Department corrects data for errors found at verification. More specifically, Shandong Huarong points out that ''in the past the Department corrected the ''cap'' figures by using the verified numbers.''

The petitioner contends that the Department should rely upon Shandong Huarong's record data if differences between the ''caps'' and actual data are not significant. However, noting that it is established Department policy only to allow corrections for minor errors discovered at verification, the petitioner contends that should differences between reported ''caps'' and verified actual amounts be significant, then the Department should reject the data on record and resort to FA.

DOC Position: We disagree with Shandong Huarong's claim that use of actual steel consumption data collected during verification is warranted, as opposed to use of its reported steel ''caps.'' As a result of verifying Shandong Huarong's response, we determined that any deviations from its reported ''caps'' were insignificant, and therefore, we determined that on balance, Shandong Huarong's reported ''caps'' reflected a reasonable estimate of its actual costs. In addition, we note that there is no record evidence to support Shandong Huarong's contentions that we adjusted reported ''caps'' in prior reviews to reflect differences found at verification. In *Melamine,* we note that although adjustments were made as a result of verification findings, respondents in that case reported predominately actual costs, in contrast to the ''cap'' reporting methodology used in the HFHTs review proceedings. Verification in that case was to verify the actual costs, not to determine if what had been reported represents a reasonable estimate of actual costs. Therefore, for these final results, we will continue to use the reported ''caps'' with regard to Shandong Huarong's steel inputs. *See* the Department's response with regard to comment 5 for further discussion of this issue.

Comment 16: Shandong Huarong—Inland Freight

Shandong Huarong states that the price it paid to local suppliers of steel included freight charges, thus, the Department should use the verified information and not add additional freight charges to the price Shandong Huarong paid for steel.

The petitioner contends that Shandong Huarong did not offer evidence to support its argument that the steel price it paid included freight. The petitioner recommends that the Department continue to include a surrogate value for freight in its calculation of normal value.

DOC Position: We disagree with Shandong Huarong. As the Department values the steel inputs used by PRC producers in a comparable market-economy, its argument that domestic steel prices are inclusive of freight charges is irrelevant. Therefore, we have made no adjustments to Shandong Huarong's freight charges, with the exception of our change in valuing freight in accordance with *Sigma. See* the Department's position with regard to comment 9.

Comment 17: SMC—Inland Freight

SMC claims the Department should use the freight rate applicable for distances between 100 and 250 KM, and not the rate for 250–500 KM distances, to value the freight on subject merchandise shipments from a

particular producer that is 250 km from SMC.

The petitioner contends that given that both rates apply to the distance in question, the Department made a reasonable selection and should continue to use the rate for 250–500 KM in its final determination.

DOC Position: We agree with the petitioner that both rates apply to the distance in question. Therefore, we have determined to average the two rates applicable for distances of 250 kilometers (*i.e.*, the rate applicable for distances between 100 and 250 km and the rate applicable for distances between 250 and 500 km).

Comment 18: Ministerial Error Allegations

The respondents alleged that the Department made the following ministerial errors: (1) Shandong Huarong claims that the Department erred by triple counting the cost of transporting coal for certain suppliers; (2) SMC claims that the Department erred in including brokerage, handling and ocean freight charges on an FOB Qingdao sale; and (3) TMC claims that the Department made a data entry error on certain inland freight distances.

The petitioner requests that the Department reject these corrections as they constitute new factual information.

DOC Position: We do not agree that any of these issues constitutes new information. We have reviewed the margin programs and determined that we inadvertently made data entry errors with regard to the first two items above, and have made the appropriate corrections for these final results. However, with regard to the third item, we do not agree that we incorrectly entered certain freight distances for TMC because we simply used the distances TMC reported for the transactions in question in our calculations. Further, we determined that there is nothing on the record to indicate that those distances were inaccurately reported.

Comment 19: SMC's Own Data Entry Errors

SMC purports to have discovered several inadvertent data entry errors on its part with regard to net weight, inland freight distance and gross unit prices for seven observations. SMC requests that the Department accept these data corrections now for incorporation into the final results of reviews.

The petitioner requests that the Department reject these corrections as they constitute new factual information.

DOC Position: The Department will accept corrections of clerical errors made in a party's submission under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42834 (August 19, 1996) (modifying Department policy in response to *NTN Bearing Corp. v. United States,* 74 F. 3d 1204 (Fed. Cir. 1995)).

While we note that SMC alleges a clerical, rather than a substantive error, we are not satisfied that the information provided by SMC is reliable. In its case brief, SMC merely noted various errors contained in it submissions without supplementing the allegation with corroborating or substantiating documentation. We do not agree with SMC's claim that the nature of the error is ''obvious on its face'' since SMC has provided no documentation for the record which would support that contention. Therefore, we are denying SMC's request that we revise alleged data entry errors.

Other Ministerial Errors

We have also corrected an inadvertent error in calculating net U.S. price regarding Shandong Huarong for the preliminary results. We have corrected this error by deducting the foreign inland freight expense from U.S. price for these final results.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong General Group Corporation:		
Bars/Wedges	2/1/96–1/31/97	34.00
Liaoning Machinery Import & Export Corporation (LMC):		
Bars/Wedges	2/1/96–1/31/97	2.94
Fujian Machinery Import & Export Corporation (FMEC):		
Axes/Adzes	2/1/96–1/31/97	5.11
Hammers/Sledges	2/1/96–1/31/97	5.71
Shandong Machinery Import & Export Corporation (SMC):		
Bars/Wedges	2/1/96–1/31/97	38.30
Hammers/Sledges	2/1/96–1/31/97	19.31
Picks/Mattocks	2/1/96–1/31/97	32.38
Tianjin Machinery Import & Export Corporation (TMC):		
Axes/Adzes	2/1/96–1/31/97	1.96
Hammers/Sledges	2/1/96–1/31/97	27.60

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) The cash deposit

rates for the reviewed companies named above, all of which have separate rates, will be the rates for those firms as stated above for the classes or kinds of merchandise listed above; (2) for axes/adzes from SMC, which are not covered by these reviews, the cash deposit rate will be the rate established in the most recent review of that class or kind of merchandise in which SMC received a separate rate; (3) for bars/wedges and picks/mattocks from TMC and FMEC, which are not covered by these reviews, the cash deposit rate will be the rate established in the most recent review of those classes or kinds of merchandise in which these respondents received a separate rate; and (4) the cash deposit rates for non-PRC exporters of the subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. For all other PRC producers or exporters of HFHTs not covered by these review proceedings, the PRC-wide rates are 44.41 percent for hammers/sledges, 66.32 percent for bars/wedges, 108.2 percent for picks/mattocks and 21.93 percent for axes/adzes.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–8846 Filed 4–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098F]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of revision of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has rescheduled the public meeting of its Monkfish Oversight Committee and Advisory Panel that was scheduled for Tuesday, April 14, 1998. The meeting was announced in the **Federal Register** on March 17, 1998. See **SUPPLEMENTARY INFORMATION** for revisions.

DATES: The meeting will be held on April 13–14, 1998.

ADDRESSES: The meeting will be held at the Airport Holiday Inn, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569–5250.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The initial notice published on March 17, 1998 (63 FR 13034). The original notice stated that the meeting was to held on April 14, 1998, only. The meeting is rescheduled for April 13 and April 14, 1998. Agenda is as follows:

Monday, April 13, 1998, 9:30 a.m.—Monkfish Advisory Panel

Evaluate and recommend modifications to the draft final management measures for the Monkfish Fishery Management Plan (FMP).

Monday, April 13, 1998, 9:30 a.m. and Tuesday, April 14, 1998, 8:30 a.m.—Monkfish Oversight Committee

Approval of final management measures to be included in the Monkfish FMP, for New England and Mid-Atlantic Council consideration. On April 13, 1998, the agenda will include time for public comments on the proposed final management measures.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: March 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8844 Filed 3–31–98; 3:12 pm]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in Central Appalachian Coal Futures and Options, Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Central Appalachian coal futures and option contracts. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before April 21, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to NYMEX Central Appalachian coal futures and option contracts.

FOR FURTHER INFORMATION CONTACT:

Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5281. Facsimile number: (202) 418–5527. Electronic mail: jforkkio@cftc.gov

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on May 11, 1998, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's Pending''.

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on March 31, 1998.

Steven Manaster,

Director.

[FR Doc. 98–8851 Filed 4–3–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, April 22, 1998.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs thorughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: March 31, 1998.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–8852 Filed 4–3–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) on the Disposal and Reuse of the Defense Distribution Depot Ogden, UT (DDOU)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The proposed disposal action analyzed in the EA is for all excess DDOU property, in accordance with the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. The Army will retain two parcels of 31.1 and 12.4 acres for use as a reserve component enclave. The remainder of the installation (approximately 1,075 acres) would be available for transfer or conveyance to the Ogden Local Redevelopment Authority (OLRA). Three alternative methods of disposal were analyzed: encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for disposal of the DDOU is encumbered disposal which involves conveying the property with conditions imposed on historic resources, remedial activities, utility easements, access easements, utility dependencies, and lead-based paint.

The EA, which is incorporated into the Finding of No Significant Impact (FNSI), examines potential effects of the proposed action and alternatives on 15 resource areas and areas of environmental concern: land use, climate, air quality, noise, geology, and water resources infrastructure, hazardous and toxic substances, permits and regulatory authorizations, biological resources and ecosystems, cultural resources, economic development, socioeconomics and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environmental Impact Statement is not required prior to implementation of the proposed actions.

DATES: Comments must be submitted on or before May 6, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained

by writing to Mr. Hugh McClellan at the U.S. Army Corps of Engineers, Mobile District, P.O. Box 2288, Mobile, Alabama 36628–0001 or by facsimile at (334) 690–2424.

Dated: March 30, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–8853 Filed 4–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Record of Decision for the Disposal and Reuse of the Former Fitzsimons Army Medical Center, Now U.S. Army Garrison—Fitzsimons (USAG–F), Aurora, Colorado

AGENCY: Department of the Army, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Army announces the availability of the Record of Decision for the disposal and reuse of U.S. Army Garrison—Fitzsimons, Aurora, Colorado. It has been determined that the Environmental Impact Statement (EIS) for the disposal and reuse of the installation adequately assesses the impacts of the proposed action and related alternatives on the biological, physical and cultural environment. The 577-acre Army installation is being closed in accordance with the Defense Base Closure and Realignment Act of 1990. Only a 21.8-acre enclave, housing the McWhethy Army Reserve Center, will remain after the post closes.

The EIS analyzed three disposal alternatives: (1) the No Action Alternative, which entails maintaining the property in caretaker status after closure; (2) the Encumbered Disposal Alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the Unencumbered Disposal Alternative, which entails transferring the property to future owners with few or no Army-imposed limitations, or encumbrances, on the future use of the property. The preferred alternative is the Encumbered Disposal Alternative. The impacts of reuse were evaluated in terms of land use intensities. The Fitzsimons redevelopment Authority developed the reuse alternatives based on their Reuse Plan. The resource areas evaluated for potential impacts by the proposed action (disposal) and the secondary action (reuse) include: land use; climate; air quality; noise; geology, soils, and topography; water resources; infrastructure; regulated substances; biological resources and ecosystems; cultural resources; sociological environment; quality of life; installation agreements, and permits and regulatory authorizations. This Record of Decision allows the Army to initiate action to dispose of the excess property of the U.S. Army Garrison—Fitzsimons in accordance with the Fitzsimons Redevelopment Plan.

Copies: Copies of the Record of Decision may be obtained by contacting the U.S. Army Garrison—Fitzsimons, ATTN: MCHG–BC (Ms. Sue Errett), Building 290, Aurora, CO 80045–5000; by telephone (303) 361–3526; or by facsimile at (303) 361–4896.

Dated: March 27, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–8854 Filed 4–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 6, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 31, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension

Title: Annual Performance Report and Report to the Secretary Under the Infants and Toddlers with Disabilities Program (Part H, Individuals with Disabilities Education Act (IDEA))

Frequency: Annually

Affected Public: State, local or Tribal Gov't, SEAs or LEAs

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 855.

Abstract: The State Interagency Coordinating Council in each State is required to submit an Annual Report to the Secretary on the status of Early Intervention Program operated within the State for infants and toddlers with disabilities and their families. States are required to submit a performance report in accordance with CFR § 80.40. This collection serves both functions.

Office of Postsecondary Education

Type of Review: Revision
Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information
Frequency: Once every five years
Affected Public: Individuals or households
Annual Reporting and Recordkeeping Hour Burden:
Responses: 300,000.
Burden Hours: 75,000.
Abstract: This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

[FR Doc. 98–8870 Filed 4–3–98; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 98–01 and 98–02—Certification Notices—157]

Millennium Power Partners, L.P. and LSP Energy Limited Partnership Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Millennium Power Partners, L.P. and LSP Energy Limited Partnership have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

FE–C&E 98–01

Owner: Millennium Power Partners, L.P.
Operator: Millennium Power Partners, L.P.
Location: Charlton, MA.
Plant Configuration: Combined-cycle.
Capactiy: 360 megawatts.
Fuel: Natural gas.
Purchasing Entities: New England Power Pool.
In-Service Date: 3rd Quarter of 2000.

FE–C&E 98–02

Owner: LSP Energy Limited Partnership.
Operator: LSP Energy Limited Partnership.
Location: Batesville, Panola County, Mississippi.
Plant Configuration: Combined-cycle.
Capacity: 800 megawatts.
Fuel: Natural gas.
Purchasing Entities: Wholesale power purchasers.
In-Service Date: Summer of 2000.

Issued in Washington, D.C., March 26, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power systems, Office of Fossil Energy.

[FR Doc. 98–8936 Filed 4–3–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Sciences Advisory Committee.

DATES: Tuesday, May 26, 1998, 9:00 a.m. to 6:00 p.m. and Wednesday, May 27, 1998, 9:00 a.m. to 4:00 p.m.

ADDRESSES: Holiday Inn/Goshen Hall, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker III; Executive Assistant; Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4941

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of this meeting is to allow the full Committee to hear the report of its subcommittee that is reviewing the Fusion Materials Research Program, and to prepare a letter on the results of that review to the Department of Energy.

Tentative Agenda

Tuesday, May 26, 1998

9:00 a.m.—Opening Remarks
—Report from the Materials Research Program
—Discussion of the Report
5:30 p.m.—Public Comments
6:00 p.m.—Adjourned

Wednesday, May 27, 1998

9:00 a.m.—Further Discussion, as required
—Preparation of FESAC Letter to DOE
4:00 p.m.—Adjourned

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@mailgw.er.doe.gov (e-mail). Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, I–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on April 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–8935 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Thursday, May 14, 1998; 9:00 a.m. to 6:00 p.m.; and Friday, May 15, 1998; 8:30 a.m. to 3:30 p.m.

ADDRESSES: Lawrence Berkeley National Laboratory, 1 Cyclotron Rd., Bldg. 54, Perseverance Hall, Berkeley, CA 94720.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Diebold; Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; ER–22, GTN; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: (301) 903–4115

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice and guidance on a continuing basis with respect to the high energy physics research program

Tentative Agenda

Thursday, May 14, 1998 and Friday, May 15, 1998

Discussion of Department of Energy High Energy Physics Programs
Discussion of National Science Foundation Elementary Particle Physics Program
Discussion of HEP University Programs
Reports on and Discussion of HEP Program at Lawrence Berkeley National Laboratory
Reports on and Discussion of the Use of Computer Networks in High Energy Physics
Reports on and Discussion of U.S. LHC Activities
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation

The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on April 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–8937 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–41–001]

Hummon Corporation; Notice of Amendment to Petition for Adjustment and Request for Extension of Time

March 31, 1998.

Take notice that, on March 13, 1998, Hummon Corporation (Hummon) filed a supplement, in Docket No. SA98–41–001, amending its March 9, 1998 petition (in Docket No. SA98–41–000) for an adjustment of the Commission's refund procedures with respect to the Kansas ad valorem tax refunds claimed by Panhandle Eastern Pipe Line Company (Panhandle), in Panhandle's Statement of Refunds Due, filed in Docket No. RP98–40–000. The March 9 petition was filed on behalf of Hummon and the working interest owners (First Sellers) for whom Hummon operated. Hummon's March 13 amendment deletes Alan Sturm from the list of First Sellers [1] and updates the amount reported to be in dispute with Panhandle. Hummon's March 9 petition and March 13 amendment to the March 9 petition are on file with the Commission and open to public inspection.

Hummon's March 9 petition was filed in response to the Commission's September 10, 1997, order in Docket No. RP97–369–000 *et al.*,[2] on remand from the D.C. Circuit Court of Appeals,[3] which directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. In that petition, Hummon requested:

(1) A 90-day extension for making refunds, so First Sellers and Panhandle could resolve disputes over refund liability, or submit the unresolved disputes to the Commission for resolution;

(2) A 1-year deferral of payment on principal and interest attributable to royalties;

(3) That First Sellers be allowed to escrow—(a) disputed amounts, (b) principal and interest attributable to royalty refunds which have not been collected from royalty owners; (c) principal and interest on amounts attributable to production prior to October 4, 1983; and (d) interest on all other principal amounts claimed to be due by Panhandle; and

(4) That the Commission determine that Hummon is not a working interest owner or first seller of any of the production with respect to which the tax reimbursements were made and, therefore, that Hummon has no refund liability to Panhandle.

The March 9 petition stated that Panhandle's refund claim was for $11,440.19, and that this covered 100 percent of the Kansas ad valorem tax reimbursements, including interest through March 9, 1998. Hummon's March 13 amendment states that First Seller's proportionate share of the refund amount claimed by Panhandle in its Statement of Refunds Due is $6,472.57, of which $19.91 has been paid to Panhandle and $6,452.66 has been placed into escrow.

Any person desiring to answer Hummon's March 13 amendment should file such answer with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, on or before 15 days after the date of publication of this notice in the **Federal Register** in accordance with the Commission's Rules of Practice and

[1] The original list of First Sellers included—George C. Berryman, Donald M. Brod, Phyllis E. Brod Trust, Robert A. Clark, Floyd D. Crockett, Roy B. Henderson, George C. Hill, Byron E. Hummon, Jr., John L. Kiser, Willard J. Kiser, William Mowery Trust, Anne B. Porter Berryman, Alan Sturm and Arthur Vara, Jr.

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] Public Service Company of Colorado v. FERC, 91 F. 3d 1478 (D.C. Cir. 1996), cert. denied, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

Procedure (18 CFR 385.213, 385.215, 385.1101, and 385.1106).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8880 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1796–000]

Long Beach Generation LLC; Notice of Issuance of Order

April 1, 1998.

Long Beach Generation LLC (Long Beach) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Long Beach requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Long Beach. On March 26, 1998, the Commission issued an Order Accepting For Filing, In Part, And Denying, In Part, Without Prejudice, Proposed Market-Based (Order), in the above-docketed proceeding.

The Commission's March 26, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Long Beach should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Long Beach is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Long Beach, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Long Beach's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 27, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8955 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1767–000]

Tenaska Frontier Partners, Ltd.; Notice of Issuance of Order

April 1, 1998.

Tenaska Frontier Partners, Ltd. (Tenaska), an affiliate of Montana Power Company and Illinois Power Company, filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Tenaska requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Tenaska. On March 30, 1998, the Commission issued an Order Granting Waiver and Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's March 30, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G).

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Tenaska should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Tenaska is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Tenaska, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Tenaska's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 29, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8954 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2298–000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 30, 1998.

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

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2298–000]

Take notice that on March 25, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for New Energy Ventures, LLC, to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon New Energy Ventures, LLC.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Origen Power Corporation; Oklahoma Gas and Electric Company

[Docket No. ER98–2296–000]

Take notice that on March 25, 1998, Origen Power Corp., (OPC) and Oklahoma Gas and Electric Company on behalf of itself and its non-utility holding company parent, OGE Energy Corp. (Energy Corp.), (together, the

Petitioners) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization for OPC, which will be the owner of a natural gas-fired power plant (the Facility) located near Pryor, Oklahoma to make sales of capacity and energy from the Facility to OG&E upon consummation of the purchase by Energy Corp., of all of the issued and outstanding stock of the current owner of the Facility, Oklahoma Loan Acquisition Corp.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Origen Power Corp.; OGE Energy Resources, Inc.

[Docket No. ER97–4345–004]

Take notice that on March 25, 1998, Origen Power Corp. (OPC), and OGE Energy Resources, Inc. (OERI), respectively, submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity and energy at market-based rates, and a request for modification of an existing rate schedule. Following closing of the transaction described in the filing, OPC will be the owner of an approximately 128 MW cogeneration facility (Facility), located near Pryor, Oklahoma. OPC proposes to market power purchased by OPC from third parties and power generated by the Facility. OERI, a power marketer, is an affiliate of OPC which intends to enter into purchase and sale transactions with OPC if the Commission grants the requested relief.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison

[Docket Nos. ER98–1261–000 and ER97–2355–000 (consolidated)]

Take notice that on March 25, 1998, Southern California Edison Company (Edison), tendered for filing a revised Devers-Palo Verde 2 Surcharge in compliance with the Commission's order issued on February 25, 1998 (82 FERC ¶ 61,174 (1998)).

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2299–000]

Take notice that on March 25, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for New York Power Authority to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon New York Power Authority.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2300–000]

Take notice that on March 25, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Electric Clearinghouse, Inc., to purchase electric capacity and energy pursuant to negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Electric Clearinghouse, Inc.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service

[Docket No. ER98–2301–000]

Take notice that on March 25, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company (CL&P), and Holyoke Water Power Company, (including its wholly-owned subsidiary, Holyoke Power and Electric Company), a Sales Agreement to provide firm requirements service to the Town of Norwood Municipal Light Plant, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations.

NUSCO requests that the rate schedule become effective on April 1, 1998. NUSCO states that copies of the rate schedule have been mailed to the parties to the Agreement, and the affected state utility commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. USGen New England, Inc.

[Docket No. ER98–6–002]

Take notice that on March 25, 1998, USGen New England, Inc., submitted for filing, pursuant to the Commission's February 25, 1998, order in this proceeding, a compliance filing containing a revised code of conduct.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Polaris Electric Power Company, Inc.

[Docket No. ER98–1421–000]

Take notice that on March 25, 1998, Polaris Electric Power Company, Inc. (Polaris), filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to the direct ownership of Polaris.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–2306–000]

Take notice that on March 25, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 19, 1998, with Illinois Power Company (IPC) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds IPC as an eligible customer under the Tariff.

PP&L requests an effective date of March 25, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to IPC and to the Pennsylvania Public Utility Commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER98–2303–000]

Take notice that on March 25, 1998, Washington Water Power Company tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with The American Electric Power Service Corporation. WWP requests waiver of the prior notice requirement and requests an effective date of March 16, 1998.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Houston Lighting & Power Company

[Docket No. ER98–2304–000]

Take notice that on March 25, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with PG&E Energy Trading—Power

(PG&E Energy) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of March 25, 1998.

Copies of the filing were served on PG&E Energy and the Public Utility Commission of Texas.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Edgar Electric Cooperative Association

[Docket No. ER98–2305–000]

Take notice that on March 25, 1998, Edgar Electric Cooperative Association, a distribution rural electric cooperative organized under the laws of the State of Illinois and doing business as EnerStar Power Corp., petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates; the granting of certain blanket approvals; and the waiver of certain Commission Regulations.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2308–000]

Take notice that on March 25, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with VTEC Energy, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER98–2309–000]

Take notice that on March 25, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Cleveland Electric Illuminating Co. (CEI), dated May 13, 1995, providing for certain transmission services to CEI.

Copies of this filing were served upon CEI and the New York State Public Service Commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER98–2310–000]

Take notice that on March 25, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is North American Energy, Inc. The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is North American Energy, Inc.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER98–2311–000]

Take notice that on March 25, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with The Cincinnati Gas & Electric Company, PSI Energy, Inc. (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services) as agent for and on behalf of the Cinergy Operating Companies (Cinergy), and with Cinergy Capital & Trading, Inc., (CCT). Wisconsin Electric respectfully requests an effective date March 27, 1998.

Copies of the filing have been served on Cinergy and CCT, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corp.

[Docket No. ER98–2312–000]

Take notice that on March 25, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Toledo Edison Company (TEC), dated May 13, 1995, providing certain transmission services to TEC.

Copies of this filing were served upon TEC and the New York State Public Service Commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER98–2313–000]

Take notice that on March 25, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 20, 1998, with Duke Power (DP), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds DP as an eligible customer under the Tariff.

PP&L requests an effective date of March 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to DP and to the Pennsylvania Public Utility Commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–2314–000]

Take notice that on March 25, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 17, 1998, with Duke/Louis Dreyfus, L.L.C. (Duke), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Duke as an eligible customer under the Tariff.

PP&L requests an effective date of March 25, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Duke and to the Pennsylvania Public Utility Commission.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER98–2315–000]

Take notice that on March 25, 1998, New England Power Company (NEP), tendered for filing an amendment to its FERC Rate Schedule No. 438, an Interconnection and Support Agreement among NEP, its affiliate Massachusetts Electric Company and the Marblehead (Mass.) Municipal Light Department.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Salem Electric, Inc.

[Docket No. ER98–2316–000]

Take notice that on March 25, 1998, Salem Electric, Inc. (Salem Electric), petitioned the Commission for acceptance of Salem Electric's 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.

Salem Electric intends to engage in wholesale electric power and energy purchases and sales as a marketer. Salem Electric is not in the business of generating or transmitting electric power.

Comment date: April 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Columbia Energy Power Marketing Corporation

[Docket No. ER98–2327–000]

Take notice that on March 25, 1998, Columbia Energy Power Marketing Corporation tendered for filing a Notice of Succession advising the Commission that Columbia Power Marketing Corporation changed its name to Columbia Energy Power Marketing Corporation, effective March 2, 1998. In accordance with 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51, Columbia Energy Power Marketing Corporation adopted and ratified all applicable rate schedules filed with the Commission by Columbia Power Marketing Corporation.

Comment date: April 13, 1998, 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8956 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

March 31, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 349–054.

c. *Date Filed:* February 12, 1998.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* The project is located on the Tallapoosa River in Tallapoosa, Coosa and Elmore Counties, Alabama.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. James R. Schauer, 600 North 18th Street, PO Box 2641, Birmingham, AL 35291, (205) 257–1401.

i. *FERC Contact:* Steve Hocking (202) 219–2656.

j. *Comment Date:* May 27, 1998.

k. *Description of Amendment:* Alabama Power Company, licensee for the Martin Dam Project, filed an application to grant a request by Mr. Grant Sullivan (Sullivan) to exchange 32.26 acres of privately owned land (in one parcel) for 7.73 acres of project lands (in two parcels). The two parcels of project lands are classified as ''Natural Undeveloped'' in the project's recreation plan. The exchange would enable Sullivan to construct a subdivision on the currently classified ''Natural Undeveloped'' project lands and other lands adjacent to Lake Martin (waterfront housing). All three parcels are located in sections 18 and 19, Township 20 North, Range 22 East at Lake Martin, Tallapoosa County Alabama.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8877 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission (Minor License)

March 31, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 2487–006.

c. *Date Filed:* December 10, 1997.

d. *Applicant:* John M. Skorupski.

e. *Name of Project:* Hoosick Falls Project.

f. *Location:* On the Hoosic River in Rensselaer County, near Hoosick, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John M. Skorupski, 71 River Road, Hoosick Falls, NY 12090, (518) 686–0062;

Douglas C. Clark, PE Clark Engineering & Surveying, P.C., 658 Route 20, P.O. Box 730, New Lebanon, NY 12125, (518) 794–8613.

i. *FERC Contact:* Richard L. Takacs (202) 219–2840.

j. *Deadline Date:* 60 days from the filing date shown in paragraph (c).

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) an existing 16-foot-high and 149.5-foot-long dam; (2) an existing 16-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 830 kW; (4) a 500-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,700 MWh, for the project.

m. *Purpose of Project:* All project energy generated would be sold to commercial and residential customers within the Applicant's own regional transmission and distribution system.

n. *This notice also consists of the following standard paragraphs:* B1, and E.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1371. A copy is also available for inspection and reproduction at Clark Engineering & Surverying. P.C. 658 Route 20, P.O. Box 730, New Lebanon, NY 12125, (518) 794–8613.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only these who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be receive on or before the specified deadline date for the particular application.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Licensing & Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protect or motion to intervene must be served upon each representative of the application specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8878 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption

March 31, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 3797–003.

c. *Date filed:* March 10, 1998.

d. *Applicant:* City of La Habra.

e. *Name of Project:* Lambert Road.

f. *Location:* On the water supply line of the City of La Habra in Orange County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Rich Moody, City of La Habra, 201 E. La Habra Boulevard, P.O. Box 337, La Habra, CA 90633–0337, (562) 905–9700.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* May 12, 1998.

k. *Description of Filing:* The exemptee requests to surrender the exemption for the Lambert Road Project.

l. This notice also consists of the following standard paragraphs: B, C2 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intevene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST'' or ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Any motion to intervene must also be served upon each representative of the applicant specified in the particular notice.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8879 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydropower Licensing Public Outreach Meeting; Portland, ME

March 31, 1998.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Portland, Maine on Thursday, April 23, 1998. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 pm.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Maine, New Hampshire, Connecticut, and Massachusetts whose licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meeting.

The location of the Outreach Meeting is: The Marriott, 200 Sable Oaks Drive, South Portland, ME 04106, (207)871–8000, (207)871–7971 *fax.

If you plan to attend, notify Ron McKitrick, Eastern Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2783 or Theresa Gibson, (202) 219–2793.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8881 Filed 4–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Rate Order No. WAPA–80

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–80 and Rate Schedules L–NT1, L–FPT1, N–FPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6, placing formula rates into effect on an interim basis for firm and non-firm transmission on the Western Area Power Administration Loveland Area Projects (LAP) transmission system and for ancillary services for the Western Area Colorado Missouri control area (WACM). These schedules supersede Rate Schedules LT–3 and LT–4.

The charges for network and point-to-point transmission service and energy imbalance service will be implemented in three steps, between April 1, 1998, and October 1, 1999. The charges for the other five ancillary services will be implemented in the first step. Each step and subsequent annual recalculation will be based on updated financial data and loads. Network transmission service charges will be based on the Transmission Customer's load-ratio share of the annual revenue requirement for transmission. Point-to-point transmission service will be based on monthly reserved capacity on the transmission system. The charges for ancillary services will be based on the costs of the WACM.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7442, or e-mail (dpayton@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Rate Order No. WAPA–80, confirming, approving, and placing the LAP network, firm point-to-point, and non-firm point-to-point transmission, and the new ancillary services formula rates into effect on an interim basis, is issued. Rate Order No. WAPA–80 was prepared pursuant to Delegation Order No. 0204–108, existing DOE procedures for public participation in power rate adjustments in 10 CFR Part 903, and procedures for approving Power Marketing Administration rates by FERC in 18 CFR 300. The new Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: March 23, 1998.

Elizabeth A. Moler,

Deputy Secretary.

In the Matter of: Western Area Power Administration, Rate Adjustment for Loveland Area Projects Transmission and Ancillary Services

April 1, 1998.

Order Confirming, Approving, and Placing the Loveland Area Projects Transmission and Ancillary Service Formula Rates Into Effect on an Interim Basis

These transmission and ancillary service formula rates are established pursuant to Section 302 of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated: (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Existing DOE procedures for public participation in power rate adjustments are found in 10 CFR Part 903. Procedures for approving Power Marketing Administration rates by FERC are found in 18 CFR Part 300.

Acronyms/Terms and Definitions

As used in this rate order, the following acronyms/terms and definitions apply:

Acronym/Term Definition

$/kW-month: Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).

12 cp: Rolling 12-month coincident peak average.

A&GE: Administrative and general expense.

C&RE: Conservation and Renewable Energy.

CME: Capitalized movable equipment.

CRSP: Colorado River Storage Project.

Customer Brochure: ''Loveland Area Projects Customer Brochure: Proposed Rates for Transmission and Ancillary Services'' prepared in September 1997 by the Rocky Mountain Customer

Service Region for public distribution explaining the background and purpose of this rate adjustment proposal.

DOE: U.S. Department of Energy.

DOE Order RA 6120.2: An order addressing power marketing administration financial reporting, used in determining revenue requirements for rate development.

Federal Customers: Loveland Area Projects (LAP) customers taking delivery of long-term firm service under Firm Electric Service Contracts, and Project Use Power Customers.

FERC: Federal Energy Regulatory Commission.

FERC Order No. 888: FERC Order Nos. 888, 888–A, 888–B, and 888–C unless otherwise noted.

Firm Electric Service Contract: Contracts for the sale of long-term firm LAP Federal energy and capacity, pursuant to the Post-1989 General Power Marketing and Allocation Criteria (Marketing Plan).

FY: Fiscal Year.

kW: Kilowatt; 1,000 watts.

kWh: Kilowatt-hour; the common unit of electric energy, equal to one kW taken for a period of 1 hour.

kW-month: Unit of electric capacity, equal to the maximum of kW taken during 1 month.

LAP: Loveland Area Projects.

LAP Transmission System Total Load: Average 12-cp monthly system peak for network transmission service, average 12-cp monthly entitlements of Federal Customers, and reserved capacity for all firm point-to-point transmission service.

Load ratio share: Network Transmission Customer's hourly load (including its designated network load not physically interconnected with Western) coincident with Western's monthly transmission system peak.

Long-term firm point-to-point transmission service: Annual firm point-to-point transmission service reservation with 12 consecutive equal monthly amounts.

mill: Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent.

mills/kWh: Mills per kilowatt-hour.

Monthly entitlements: Maximum capacity to be delivered each month under Firm Electric Service Contracts. Each monthly entitlement is a percentage of the seasonal contract-rate-of-delivery, based on 90-percent hydrologic probability established in the Marketing Plan.

MW: Megawatt; equal to 1,000 kW or 1,000,000 watts.

NEPA: National Environmental Policy Act of 1969.

NPPD: Nebraska Public Power District.

O&M: Operation and maintenance.

P–SMBP: Pick-Sloan Missouri Basin Program.

P–SMBP–WD: Pick-Sloan Missouri Basin Program-Western Division.

PMOC: Power Marketing and Operations Complex.

Post-1989 General Power Marketing and Allocation Criteria: Criteria for the sale of energy with capacity from the P–SMBP–WD and the Fryingpan-Arkansas Project by Criteria: the RMR.

Provisional Rate Schedule: Rate schedule approved on an interim basis by the Deputy Secretary of the DOE.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

RMR: The Rocky Mountain Customer Service Region; Western's office in Loveland, Colorado.

Service agreement: The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and Western for service under the Tariff.

SEPA: Southeastern Power Administration.

Short-term firm point-to-point transmission service: Firm point-to-point transmission service with service of less duration than 12 consecutive monthly service amounts.

Supporting documentation: Work papers which support the rate proposal.

Tariff: Western Area Power Administration, Open Access Transmission Service Tariff, Docket No. NJ–98–1–000.

Transmission Customer: The RMR customer taking network or point-to-point transmission service.

WACM: Western Area Colorado Missouri control area.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

The provisional formula rates will become effective on an interim basis on the first day of the first full billing period beginning on or after April 1, 1998, and will be in effect pending FERC's approval of them or substitute formula rates on a final basis through March 31, 2003, or until superseded. These formula rates will be applied under existing transmission contracts and Western's Open Access Transmission Service Tariff (Tariff) and conform with the spirit and intent of the FERC Order No. 888. The Rocky Mountain Customer Service Region (RMR) will replace Schedules 1 through 8 and Attachment H of Western's Tariff with these rate schedules for service on the Loveland Area Projects (LAP) system.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these formula rates and schedules. The provisional firm transmission rate represents an increase of more than 1 percent in total LAP transmission revenues; therefore, it is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1).

The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. During the spring of 1997, RMR representatives met informally with individual LAP customers to explain the need for a rate adjustment.

2. RMR published a **Federal Register** notice on September 19, 1997 (62 FR 49218), officially announcing the proposed transmission and ancillary services rates adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and outlining procedures for public participation.

3. On September 25, 1997, RMR mailed a copy of the ''Loveland Area Projects Customer Brochure: Proposed Rates for Transmission and Ancillary Services'' to all LAP Transmission Customers and other interested parties.

4. RMR held a public information forum on October 23, 1997, in Denver, Colorado. Western representatives explained the need for the rate adjustment in greater detail and answered questions.

5. RMR held a comment forum on November 18, 1997, in Denver, Colorado, to provide the public an opportunity to comment for the record. Four individuals commented at this forum.

6. Seven commentors submitted letters during the 90-day consultation and comment period. The consultation and comment period ended on December 18, 1997. All comments have been considered in the preparation of this Rate Order.

Comments

Representatives of the following organizations made oral comments:

Platte River Power Authority, Colorado, on behalf of Loveland Area Customer Association

Colorado Springs Utilities (CSU), Colorado

Kansas Electric Power Cooperative, Inc., Kansas
New Century Energies, Texas, on behalf of Public Service Company of Colorado, Colorado, and Cheyenne Light, Fuel and Power Company, Wyoming

The following organizations submitted written comments:

Arkansas River Power Authority, Colorado
Colorado Springs Utilities, Colorado
Loveland Area Customer Association, Colorado
Nebraska Public Power District (NPPD), Nebraska
Platte River Power Authority, Colorado
New Century Energies, Texas
Tri-State Generation and Transmission Association, Inc. (Tri-State), Colorado

Project Description

RMR offers transmission service on LAP transmission facilities, which include transmission lines, substations, communication equipment, and related facilities. LAP is comprised of two power projects: the Pick-Sloan Missouri Basin Program-Western Division (P–SMBP–WD) and the Fryingpan-Arkansas Project (Fryingpan-Arkansas). The two projects were integrated for operational and marketing purposes in 1989. LAP serves Federal and Transmission Customers in a four-state area, over a transmission system of approximately 3,485 miles (5,607 circuit kilometers) and 80 substations.

Western will offer ancillary services from the Western Area Colorado Missouri control area (WACM) resources, which represent a combination of some Colorado River Storage Project (CRSP) generation resources and all of the LAP generation resources.

P–SMBP–WD

The initial stages of the Missouri River Basin Project were authorized by Section 9 of the Flood Control Act of 1944 (58 Stat. 887, 891, Pub. L. 534, 78th Congress, 2nd session). It was later renamed the Pick-Sloan Missouri Basin Program (P–SMBP). The P–SMBP encompasses a comprehensive program, with the following authorized functions: flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The Colorado-Big Thompson, Kendrick, Riverton, and Shoshone Projects were administratively combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the ''Integrated Projects'' of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970.

The P–SMBP–WD and the Integrated Projects include 19 powerplants. There are six powerplants in the P–SMBP–WD: Glendo, Kortes, and Fremont Canyon Powerplants on the North Platte River; Boysen and Pilot Butte on the Wind River; and Yellowtail Powerplant on the Big Horn River.

In the Colorado-Big Thompson there are also six powerplants. The Green Mountain Powerplant on the Blue River is on the West Slope of the Rocky Mountains. The five remaining powerplants are on the East Slope of the Continental Divide: Marys Lake, Estes, Pole Hill, Flatiron, and Big Thompson.

The Kendrick Project has two power production facilities: Alcova and Seminoe Powerplants. Power production facilities in the Shoshone Project are Shoshone, Buffalo Bill, Heart Mountain, and Spirit Mountain Powerplants. The only production facility in the North Platte Project is the Guernsey Powerplant.

Fryingpan-Arkansas Project

The Fryingpan-Arkansas is a transmountain diversion project in central and southeastern Colorado, which was authorized by the Act of August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of October 27, 1974, Pub. L. 93–493, 88 Stat. 1487, 1497). The Fryingpan-Arkansas diverts water from the Fryingpan River and other tributaries of the Roaring Fork River to the Arkansas River on the East Slope of the Continental Divide. The Fryingpan and Roaring Fork Rivers are part of the Colorado River Basin on the West Slope of the Rocky Mountains. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation, municipal and industrial water supplies, and hydroelectric power production. Flood control, fish and wildlife enhancement, and recreation are other important purposes of the Fryingpan-Arkansas. The only generating facility in the Fryingpan-Arkansas Project is the Mt. Elbert Pumped-Storage Powerplant on the East Slope of the Rocky Mountains.

Colorado-River Storage Project

The CRSP was authorized by the Colorado River Storage Project Act, ch. 203, 70 Stat. 105, on April 11, 1956. The CRSP provides for the comprehensive development of the Upper Colorado River Basin (Upper Basin). It furnishes the long-term regulatory storage needed to allow states in the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) to meet their water delivery obligations to the states of the Lower Basin (Arizona, California, and Nevada) and still use the water apportioned to them by the Colorado River Compact of 1922. The part of the CRSP in WACM is the territory north of Shiprock, New Mexico. The CRSP hydroelectric facilities providing ancillary services for WACM are Aspinall (formerly Curecanti) and part of Glen Canyon. As of April 1, 1998, the southern portion of the CRSP will be operated by Western's Desert Southwest Customer Service Region in Phoenix, Arizona.

LAP Transmission Service

RMR prepared a transmission service rate study based on cost of service for the LAP transmission system. RMR is seeking approval of formula rates for calculation of point-to-point transmission rates and the network transmission service revenue requirement. These formulas will be applied annually. Transmission service for delivery of LAP long-term firm Federal power to Federal Customers will continue to be bundled in their firm power rate under existing contracts which expire in 2024. The transmission rates include the cost of Scheduling, System Control, and Dispatch Service.

The existing LAP transmission rate of $1.88/kW-month, placed into effect under Rate Schedule L–T3 in 1994, is no longer sufficient to recover annual costs (including interest expense) and capital requirements. Although the cost basis for the transmission rates has changed since 1994, the primary reason for a rate adjustment is the reassessment of the load data. A detailed review of load and meter data has determined that the loads used in the 1994 analysis (1,957,882 kW) were significantly in excess of actual system use (1,126,263 kW) and were not billable under the terms of LAP contracts.

About 500 MW of the difference is over-projections of actual usage of the transmission service. Approximately 200 MW is due to the use of a non-coincident annual peak in the 1994 rate analysis, as opposed to the use of the FERC-endorsed 12-consecutive peak (12-cp) method in the provisional rates. About 100 MW for an existing contract that is billed at a discounted rate was excluded from the present rate denominator and included as a revenue credit. In combination, these factors result in approximately 800 MW of reduced load on the LAP transmission

system, with a corresponding increase in transmission rates.

RMR will offer existing Transmission Customers the opportunity to convert their existing contracts to service agreements under Western's Tariff. The customer will designate network or point-to-point transmission service and applicable ancillary services. The earliest that an existing transmission contract can be converted under the Tariff and the Provisional Rate Schedules is April 1, 1998.

For the formula rates, RMR assumed that all existing contracts that are based on capacity or energy transmitted will take network transmission service, and that customers which currently reserve capacity for transmission service will take point-to-point transmission service. If an existing Transmission Customer elects to retain its transmission contract, transmission service will continue under the terms of the existing contract, but under the Provisional Rate Schedules (L–NT1, L–FPT1, and L–NFPT1 for transmission, and L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 for ancillary services). These Provisional Rate Schedules will supersede the rate schedules in the existing contracts. If an existing Transmission Customer is billed on an energy (rather than capacity) basis, the Provisional Rate Schedules stipulate that the rate per capacity unit will be converted to a rate per energy unit, based on the individual Transmission Customer's load factor.

RMR recognizes the impact that the increase in cost for transmission service from $1.88/kW-month to $3.19/kW-month may have on its customers. RMR is proposing a three-step implementation plan for the transmission rate adjustment in an attempt to mitigate these impacts. The implementation dates and basis for the calculation for each of the three steps are described below. The starting point for the calculation is an estimate of the third-step rate, based on Fiscal Year (FY) 1996 financial data and 1995 load data. In subsequent steps, the third-step rate will be recalculated based on the formula rate and updated financial and load data.

Step 1—April 1, 1998

The first-step point-to-point rate is the existing rate ($1.88/kW-month) plus one-third of the difference between the existing rate and the estimated third-step rate. The network transmission service revenue requirement is the first-step point-to-point rate multiplied by the LAP Transmission System Total Load.

Step 2—October 1, 1998

The second-step point-to-point rate will be the existing rate ($1.88/kW-month) plus two-thirds of the difference between the existing rate and the recalculated third-step rate. The third-step rate will be recalculated, following the formula rate, using FY 1997 financial and load data.

Step 3—October 1, 1999

The third-step point-to-point transmission service rate and network transmission service revenue requirement will be recalculated, following the formula rates and FY 1998 financial and load data.

The rates will subsequently be recalculated every year, effective October 1, based on the approved formula rates and updated financial and load data. RMR will provide customer notice of changes in rates no later than July 1 of each year.

Ancillary Services

RMR will offer the six ancillary services defined by FERC to all customers. The six ancillary services are: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service (VAR Support); (3) Regulation and Frequency Response Service (Regulation); (4) Energy Imbalance Service; (5) Spinning Reserves; and (6) Supplemental Reserves. The ancillary services formula rates are designed to recover only the costs incurred for providing the service(s). The rates for ancillary services are based on WACM control area costs, per FERC.

RMR will implement the Energy Imbalance Service bandwidths simultaneously with the transmission service rates to allow for a transition period, whereby, customers may improve their equipment and revise their scheduling practices. The implementation schedule will be:

April 1, 1998—6 percent bandwidth

October 1, 1998—5 percent bandwidth

October 1, 1999—3 percent bandwidth

Comparison of Existing and Provisional Rates for Transmission and Ancillary Services

The following is a comparison of existing rates, step-one rates, and an estimate of the step-three rates under the provisional formula rates and using FY 1996 data. Rates for step-two and three will be recalculated based on updated financial and load data prior to implementation. Subsequently, these rates will be updated annually based on approved formula rates.

COMPARISON OF EXISTING, STEP-ONE, AND ESTIMATED STEP-THREE RATES

Class of service	Existing rate schedule and rate	Rate schedule and step-one rates April 1, 1998	Rate schedule and estimated step-three rates [1]
Firm Transmission	LT–3	L–NT1 or L–FPT1, and L–AS1 thr. 6.	L-NT1 or L–FPT1, and L–AS1 thr. 6.
	$1.88/kW-mo	See applicable classes below. [2]	See applicable classes below. [2]
Network Transmission	N/A	L–NT1	L–NT1
		Load ratio share of 1/12 of the revenue requirement of $31,555,162 [3].	Load ratio share of 1/12 of the revenue requirement of $43,153,308 [3]
Firm Point-to-Point Transmission	N/A	L–FPT1	L–FPT1
		$2.32/kW-mo [3]	$3.19/kW-mo [3]
Non-firm Point-to-Point Transmission.	LT–4	L–NFPT1	L–NFPT1
	2.6 mills/kWh	Maximum of 3.33 mills/kWh	To be calculated October 1, 1999.
Scheduling, System Control, and Dispatch.	N/A	L–AS1	L–AS1
		$25.71 per schedule per day for non-transmission customers.	To be calculated October 1, 1999.
Reactive Supply and Voltage Control from Generation Sources.	N/A	L–AS2	L–AS2
		$0.112/kW–mo	To be calculated October 1, 1999.
Regulation and Frequency Response.	N/A	L–AS3	L–AS3
		$0.147/kW–mo	To be calculated October 1, 1999.
Energy Imbalance	N/A	L–AS4	L–AS4

COMPARISON OF EXISTING, STEP-ONE, AND ESTIMATED STEP-THREE RATES—Continued

Class of service	Existing rate schedule and rate	Rate schedule and step-one rates April 1, 1998	Rate schedule and estimated step-three rates [1]
		For negative excursions outside of 6% bandwidth (2 MW minimum) and occurring more than 5 times per month, RMR reserves the right to charge 100 mills/kWh.	For negative excursions outside of 3% bandwidth (2 MW minimum) and occurring more than 5 times per month, RMR reserves the right to charge 100 mills/kWh.
		Positive excursions outside the bandwidth may be credited to the customer within 30 days for 50 % of the regional average monthly price for non-firm purchases.[4].	Positive excursions outside the bandwidth may be credited to the customer within 30 days for 50 % of the regional average monthly price for non-firm purchases.[4]
Spinning/Supplemental Reserves	N/A	L–AS5 and 6	L–AS5 and 6
		Long-term Reserves are not available from WACM.	Long-term Reserves are not available from WACM.
		Reserves will be provided on a pass-through cost.	Reserves will be provided on a pass-through cost.

[1] To be recalculated October 1, 1999.
[2] Rate Schedule stipulates that if an existing Transmission Customer is billed on an energy basis, the rate per capacity unit will be converted to a rate per energy unit, based on individual customer's load factor.
[3] If a Transmission Customer requires use of LAP subtransmission facilities for delivery of non-Federal energy, a specific facility use charge will be assessed.
[4] During times when over deliveries would impinge on WACM operations, RMR reserves the right to eliminate credits.

Certification of Rates

Western's Acting Administrator has certified that the LAP transmission and ancillary services rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The formula rates have been developed in accordance with agency administrative policies and applicable laws.

LAP Transmission Service Discussion

The charges for network and point-to-point transmission service will be implemented in three steps between April 1, 1998, and October 1, 1999. Each step will be recalculated based on the updated financial data and loads. Network service charges will be based on the Transmission Customer's load-ratio share of the annual revenue requirement for transmission. Point-to-point service will be based on reserved capacity on the transmission system.

Annual Transmission Revenue Requirement: The Annual Transmission Revenue Requirement will be applicable to both network and point-to-point transmission service.

The Annual Transmission Revenue Requirement is the Annual Transmission Cost, adjusted for revenue credits and costs associated with expenses which expand the capacity available for transmission. The formula is:

$$\text{Annual Transmission Revenue Requirement} = \text{Annual Transmission Cost} + \text{Transmission Expenses Which Increase Transmission System Capacity} - \text{Miscellaneous Revenue Credits} - \text{Revenue Credit For Existing Contracts}$$

Following is an estimate of the third-step revenue requirement, using FY 1996 data. This revenue requirement will be recalculated every October.

$\$43,153,308 = \$44,669,889 + \$0 - \$837,908 - \$678,671$

The Transmission Expenses Which Increase Transmission System Capacity will include any future credits paid to Transmission Customers from augmentation of the system. The credits will be addressed in the individual service agreements, and appropriate adjustments will be made in subsequent rate calculations. Western will evaluate these requests in accordance with guidance in FERC Order No. 888–A, Section IV.G.1.g: ''* * * for a customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid.''

Miscellaneous Revenue Credits may include, but will not be limited to non-firm, discounted firm, and short-term firm transmission sales; Scheduling, System Control, and Dispatch Service; or facility charges for transmission facility investments included in the revenue requirement. The non-firm point-to-point transmission service credit is estimated to be $788,064, based on the non-firm transmission sales made on the LAP transmission system during the time period of July 1996 to June 1997. Credits for scheduling service are estimated to be $19,540. Credits for facility charges are $30,304.

The Revenue Credit For Existing Transmission Contracts includes the transmission revenue received from PacifiCorp under Contract No. 14–06–400–2437. The loads served under this contract were excluded from the total system load. This contract is a 1-mill reciprocal agreement that requires a 3-year notification for cancellation. Western gave the required 3-year notice to PacifiCorp in May 1997. This revenue credit shall be included in the revenue requirement calculation until such time as the contract terminates. At that time, the loads will be added to the LAP Transmission System Total Load for rate determination.

The Annual Transmission Cost is the product of the Annual Fixed Charge Rate and the Net Investment Cost for Transmission Facilities. The formula is:

Annual Transmission Cost = Annual Fixed Charge Rate x Net Investment Cost for Transmission Facilities

This formula applied to FY 1996 data is:

$44,669,889 = 19.194%* x $232,731,025

The Net Investment Cost for Transmission Facilities was determined by an analysis of the LAP transmission system. Each LAP facility was identified by function: transmission, subtransmission, distribution, or generation-related. Only the investment costs of the facilities identified as ''transmission'' were used in developing the proposed transmission rates. The investment costs of facilities identified as ''subtransmission'' and ''distribution'' were allocated to LAP Federal Customers. The LAP subtransmission system is used primarily for delivery of Federal power to Federal Customers. If a Transmission Customer requires the use of the subtransmission system, an additional facility-use charge will be assessed. All costs of Fryingpan-Arkansas were considered generation-related; and therefore, included with other generated-related cost in the revenue requirement for ancillary services.

The facilities identified as performing the function of transmission include all transmission lines that are normally operated in a continuously-looped manner and the associated substations and switchyard facilities. In the LAP transmission system, these are primarily the 115-kV and 230-kV transmission lines. In addition, a portion of the communication and maintenance facilities was included in the investment costs for transmission. The total investment cost for transmission facilities, as of September 30, 1996, is $304,913,006. The allowance for depreciation on these facilities is $72,181,981, yielding a net investment cost of $232,731,025.

The Annual Fixed Charge Rate includes operation and maintenance (O&M) expenses, administrative and general expenses (A&GE), depreciation expenses, and interest expenses. The formula is:

$$\text{Annual Fixed Charge Rate} = \frac{\text{Annual Operation and Maintenance Expenses} + \text{Annual Administrative and General Expenses} + \text{Annual Depreciation Expenses}}{\text{Net Investment}} + \frac{\text{Annual Interest Expenses}}{\text{Unpaid Balance}}$$

This formula applied to FY 1996 data is:

19.194% = 6.003% + 1.647% + 3.084% + 8.460%

The source for the annual O&M, A&GE, depreciation, and interest expenses is the *Results of Operations for the Rocky Mountain Customer Service Region—Pick-Sloan Missouri Basin*. The source for the unpaid balance is the amount reported in the *Historical Financial Document in Support of the Power Repayment Study for the Pick-Sloan Missouri Basin Program*.

Transmission System Load: The LAP Transmission System Total Load is the average 12-cp monthly system peak for network transmission service, the 12-cp monthly entitlements for Federal Customers, and the reserved capacity for all firm point-to-point transmission service.

The LAP Transmission System Total Load is calculated as follows, based upon 1995 data and known and measurable charges:

Federal Customers	604,505 kW
Network Transmission Customers	241,991 kW
Subtotal	819,496 kW
Point-to-Point Reserved Capacity	306,767 kW
LAP Transmission System Total Load	1,126,263 kW

This load was derived as follows:

- Obtained hourly individual revenue meter readings for delivery points on the LAP transmission system. This included all delivery points in the Firm Electric Service Contracts for Federal power, auxiliary power from a non-Federal source, project use and special customers, and third-party wheeling delivery points.
- Subtracted the meter readings for point-to-point Transmission Customers to determine the network transmission service load.
- Added the reserved capacity for point-to-point Transmission Customers to determine the LAP Transmission System Total Load.

*Actual percentage carried out to five decimal places.

Network Transmission Service: The monthly charge for network transmission service is the product of the Transmission Customer's load-ratio share times one-twelfth of the Annual Transmission Revenue Requirement. The customer's load-ratio share is the ratio of its network transmission load to the LAP Transmission System Total Load, which will be calculated on a rolling 12-cp basis.

The customer's network load will be derived as follows:

- Identify the LAP transmission system peak hour for each month.
- Calculate the total delivery to each individual Network Transmission Customer for the 12 monthly peak hours.
- Identify the part of the total delivery associated with each customer's monthly LAP monthly entitlement.
- Identify the network delivery during each of the 12 monthly peaks (total delivery minus monthly entitlement for delivery of Federal power).
- Sum the 12 monthly peaks and divide by 12 months to derive the 12 cp for each Network Transmission Customer.

Firm Point-to-Point Transmission Service: The proposed rate for firm point-to-point transmission service is the Annual Transmission Revenue Requirement, divided by the LAP Transmission System Total Load. Firm

point-to-point transmission service is available for a period of 1 day or longer.

The formula for the proposed rate is as follows:

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{LAP Transmission System Total Load}}$$

Following is an estimate of the third-step rate, using FY 1996 data. This rate will be recalculated every October.

$$\$3.19/\text{kW-mo} = \frac{\$43,153,308}{1,126,263\ \text{kW}} \div 12$$

Non-Firm Point-to-Point Transmission Service: Non-firm transmission service is available for periods ranging from 1 hour to 1 month. The rate for non-firm transmission service may be discounted based on market conditions, but will never be higher than the firm point-to-point transmission rate, converted to an energy equivalent at 100 percent load factor. The formula for the non-firm transmission service rate is:

$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Based on the Firm Point-to-Point Transmission Rate, an estimate of the maximum Non-Firm Point-to-Point Transmission Rate for the third step is:

Monthly delivery: $3.19/kW of reserved capacity per month
Weekly delivery: $0.74/kW of reserved capacity per week
Daily delivery: $0.11/kW of reserved capacity per day
Hourly delivery: 4.58 mills/kWh

Transmission Service Comments

The following comments were received during the public comment period. RMR paraphrased and combined comments when it did not affect the meaning. RMR's response follows each comment. Changes were made in the formula rates and calculations as a result of the comments noted.

Comment: In order to avoid any confusion, Western may wish to clarify that when using the term ''existing contracts'' it is referring solely to transmission contracts and is not suggesting that the unbundling provision of FERC Order No. 888 is applicable to the statutory obligations of Western.

Response: RMR agrees and has made this change in the Rate Order to avoid confusion.

Comment: One commentor is concerned that RMR has designed a single transmission service rate to apply to existing agreements which have drastically varying billing parameters. Historically, this practice of billing non-standard agreements under a single rate schedule has resulted in each Transmission Customer effectively paying a different charge per kW of annual transmission capacity reserved, with the customers being billed on annual reserved capacity paying the highest charge. On pages 10–11 of the Customer Brochure, RMR proposes to continue this inequitable treatment by billing these existing agreements and any new service provided under Western's Tariff under the same proposed rate schedule. In order to avoid under-recovery of revenue requirements, RMR has essentially allocated cost responsibility to each of its existing transmission arrangements on the basis of the disparate billing parameters specified in these agreements and ignored the annual transmission capacity reserved under these arrangements. This approach is inequitable and inconsistent with the intent of FERC Order No. 888 and causes Transmission Customers billed on annual reserved capacity to subsidize other customers on the LAP system. One of the fundamental principles established in FERC Order No. 888 is that all Transmission Customers should pay, on a comparable basis, for the full amount of the transmission capacity they reserve and/or use.

Response: RMR agrees with the commentor that the existing LAP transmission rate applied to the existing transmission agreements has resulted in Transmission Customers effectively paying different charges per kW of annual transmission capacity reserved and/or used. RMR also recognizes that because the existing LAP transmission rate was based on a projected denominator, the existing LAP rate results in Federal Customers paying about $6.9 million annually more than their comparable share of the LAP transmission costs due to unbillable projections.

RMR will correct this disparity in charging. RMR developed the formula rates under the assumption that all existing Transmission Customers will switch to service agreements under Western's Tariff. These service agreements will eliminate the disparity that currently exists.

RMR has also taken steps to eliminate the disparity even if some Transmission Customers elect to retain their existing contracts. With the exception of Contract No. 14–60–400–2437 with PacifiCorp, LAP transmission rate adjustments are implemented by changing the rate schedules which are attached to the contracts. As stated on pages 10–11 of the Customer Brochure, if an existing customer elects to retain its existing transmission contract, transmission service will continue under the conditions of the existing contract, but under the Provisional Rate Schedules. The Provisional Rate Schedules stipulate that if an existing Transmission Customer is billed on an energy (rather than capacity) basis, the rate per capacity unit will be converted to a rate per energy unit, based on the

individual Transmission Customer's load factor. This stipulation and the use of 12 cp for both network and point-to-point transmission service will result in all customers (billed on capacity usage, energy usage, or reserved capacity) paying the same rate per capacity unit.

To avoid over/under recovery, RMR has developed the rate denominator (load) based on the same amount as the projected billing determinant, assuming all customers switch to service agreements. If necessary, the rate denominator will be adjusted for Step Two of the rate adjustment to reflect the appropriate load for any Transmission Customer that does not switch to a service agreement; e.g., if a customer elects to retain its existing contract and is, therefore, billed on non-coincidental peak capacity, or on an energy basis, the appropriate billing determinant will be substituted in the rate denominator. Therefore, Step One will also serve as a transition period to align all customers on a comparable basis, with no risk of over collecting.

During Step One and Step Two of the transition period, Transmission Customers will actually be paying less than their full share of transmission, with the Federal Customers making up the difference. By the end of the Step Three, equitability between Federal Customers and Transmission Customers will be achieved.

Comment: Several commentors support RMR's intent to continue to provide bundled transmission service in the firm electric service rate. One commentor states, ''The Flood Control Construction Act of 1944, which authorized the Missouri River Basin Project, required that the rate schedules be calculated with 'regard to the recovery * * * of the costs of producing and transmitting' the electric energy generated by the hydro powerplants authorized. This is a statutory prescription of bundled service.''

Response: LAP firm power rates were last adjusted in 1994, following the public process as described in 10 CFR 903. These rates were developed, consistent with the Post-1989 General Power Marketing Plan and Allocation Criteria (Marketing Plan), which established the capacity and energy available to market under Firm Electric Service Contracts. The Firm Electric Service Contracts expire in 2024.

Transmission will remain bundled in RMR's firm power rate and contracts. RMR's intent to continue to provide this service as a bundled product is consistent with FERC Order No. 888, Section IV.G.2.(a) which does not require that transmission service for bundled native load be taken under the FERC Pro Forma.

Comment: RMR has improperly designated existing transmission arrangements as network transmission service. RMR assumes that the existing bundled transmission service, included with firm preference power sales, and the existing firm transmission service, provided to certain Preference Power Customers for delivery of auxiliary power supplies in addition to RMR's scheduled sale, qualifies for rate treatment as network transmission service loads. Such rate treatment is improper because:

(1) These existing, partial requirements transmission arrangements do not meet the FERC's definition of, or requirements for, network loads, as discussed in FERC Order No. 888–A and the FERC Pro Forma, and

(2) Such treatment ignores the existing contractual arrangements that reserve a specific, and in most cases, a limited amount of transmission capacity for these deliveries.

The commentor states that the full requirements transmission deliveries associated with LAP project and special use sales are the only existing transmission service deliveries on LAP transmission system which currently qualify as network loads. LAP preference power sales are prescheduled deliveries with contractual limits that, by design, are intended to serve only a portion of the customer's load requirements.

The commentor quotes the definition of network load in the FERC Pro Forma, Section 1.22, and quotes Section IV.G.1.c.(3) and (4) of FERC Order No. 888–A in support of its position. To avoid duplicating the transmission charges, the commentor recommends RMR follow the guidelines in Section IV.G.1.c.(4).

Response: RMR has properly designated existing transmission arrangements as network transmission service. The definition of network load in the FERC Pro Forma, Section 1.22, states, ''A Network Customer may elect to designate less than its total load as network load but may not designate only part of the load at a discrete point of delivery.''

The Marketing Plan and the existing Firm Electric Service Contracts (implementing Western's statutory obligations to market Federal power) establish RMR's contractual rights for delivery of Federal long-term firm capacity and energy to electric service and project-use customers. RMR is the Transmission Customer for delivery of all long-term firm electric service.

RMR, as a Transmission Customer, has designated its entire load at the points of delivery in the Firm Electric Service Contracts as network-type service. The remaining load at each discrete point of delivery is served under a separate transmission service agreement. It is anticipated that each Transmission Customer will take service for its entire load at each discrete point of delivery in a Network Integration Service Agreement. The entire load at each discrete point will be served by network-type service.

RMR is following an alternative offered in FERC Order No. 888–A, Section IV.G.1.c.(4), to avoid double payments for transmission service. This Section states, ''The Network Customer then has two options: pursue negotiations with the transmission provider to obtain a credit on its network service bill for any separate transmission arrangements . . . in recognition of the network transmission now being provided and paid for under the tariff.''

Federal Customers will continue to pay a bundled firm power rate under their Firm Electric Service Contract. A Network Transmission Customer's network service bill will include a credit for the load designated by RMR as Firm Electric Service, and the customer will only pay network transmission service for the remainder of its loads, thereby, eliminating any duplicate charge.

Without this arrangement, LAP Transmission Customers would be precluded from receiving network transmission service, which would not allow them the comparable use of the system that RMR and others enjoy.

FERC approved a similar crediting arrangement in a ruling on a *Duke Power Company* (Duke) Case, Docket No. ER 97–2398–000, 81 FERC 61010. In this case, FERC ruled that a portion of the customers' load could be met by the Southeastern Power Administration (SEPA) allocation (which is a network transmission service) and a portion could be served under Duke's bundled service, which is of a network nature. The entire load would be served on a network basis. Payment would be made to Duke by SEPA for the SEPA Preference Customers' allocation and by the Preference Customers for the remainder of their loads. Without such arrangements, all Preference Customers of Federal power marketing administrations would be precluded from receiving network transmission service for their auxiliary supply.

Comment: In support of the above comment, the commentor states that most of the existing auxiliary

transmission agreements include provisions that require RMR to make a 4-year commitment to reserve a specific amount of transmission capacity.

Response: The commentor has misinterpreted RMR's auxiliary transmission contracts. RMR's existing network-type Transmission Customers pay only for the transmission service used, not for a firm reservation, as implied by the commentor. RMR's existing network-type transmission contracts include estimates of the amount of transmission capacity required by the customer for service over and above the capacity provided under the Firm Electric Service Contracts. This estimate is similar to the 10-year forecast required in the Application for Network Integration Service, which is updated annually by the Network Transmission Customer for use in transmission planning. Also, RMR retains the right to resell any capacity not used by the Network Transmission Customer.

Comment: RMR's proposed capacity obligation is drastically understated. The commentor gives eight reasons for this statement. Each reason is addressed separately below:

Reason 1: It was the commentor's understanding that the LAP hydrogeneration resources are required, by statute, to generate at their full capacity and make every effort to avoid letting water from the reservoir bypass the generators during high water/heavy runoff conditions. RMR is then obligated to sell this excess generation output. If this understanding is accurate, then RMR should include the full output capacity of these resources as a firm reservation on the LAP transmission system, as it did in the March 1993 transmission rate study to insure that transmission capacity is available to accommodate such required generation.

Response: The commentor's understanding is inaccurate. RMR is not required to generate at full capacity. The full operating capacity of the hydrogenerators is not a valid indicator of RMR's use of the LAP transmission system. The maximum transmission capacity available to RMR for delivery of firm electric service is the total capacity under contract in the Firm Electric Service Contracts.

If high hydro conditions do occur, and the water cannot be stored in the reservoirs, RMR offers available seasonal energy first to existing Federal Customers to increase the load factor associated with their contract rate of delivery, per Section V.D.2.b. of the Marketing Plan. Any surpluses not marketed to Federal Customers will be marketed by a Western merchant function and will require point-to-point transmission under Western's Tariff. These non-firm sales on the transmission system are reflected as a revenue credit to the firm transmission revenue requirement; thereby, reducing the obligation of the other users of the system.

RMR did not use the full output capacity of its hydro resources in its 1993 transmission rate study. RMR used the P–SMBP–WD operating plant capacity at the 90-percent hydrologic probability of exceedance of 761,500 kW, which was established in the Marketing Plan. The 761,500 kW includes reserves and required maintenance which are not included in the marketable capacity.

The rate denominator should only include the amounts that are marketed and hence can be billed. Therefore, RMR included only the monthly capacities marketed under the Firm Electric Service Contracts in the rate denominator for the formula rates. These marketed capacities are the monthly capacity entitlements. It is assumed that these capacity entitlements are always used for peak monthly deliveries of firm Federal power.

Reason 2: RMR does not recognize a separate transmission obligation for the Town of Julesburg, Colorado, which established its own arrangements for firm, auxiliary transmission service with RMR under Contract No. 96–RMR–914, dated November 15, 1996.

Response: RMR agrees and has corrected the denominator to account for network transmission service to the Town of Julesburg of 1,272 kW (12 cp).

Reason 3: RMR did not recognize the October 2, 1997, revision to Exhibit B of Contract No. 88–LAO–376 with Public Service Company of Colorado (PSCo).

Response: This Exhibit B revision was made after the publication of the Customer Brochure in September 1997. RMR has subsequently changed the denominator (from 180,320 to 195,638 kW) to account for the FY 1998 reserved capacity for PSCo.

Reason 4: Several of the auxiliary transmission service agreements provide for the transmission of pumped-storage return energy, but it is not clear whether such off-peak, point-to-point transmission service is provided on a firm or non-firm basis. To the extent that such service is non-firm and the sum of the customer's firm and non-firm service deliveries never exceed the customer's firm capacity reservation, it is appropriate for RMR to provide such non-firm service without an additional charge or reservation.

Response: This network-type service is for serving network load, specifically the return of pumped-storage energy, from network resources. The transmission of pumped-storage return energy is always off-peak and, hence, does not add to the customer's usage on the system monthly peak.

Reason 5: RMR and PacifiCorp have a reciprocal obligation, under Contract No. 14–06–400–2437, to provide firm transmission service for each other at a discounted rate of 1 mill per kWh delivered. The agreement provides for a 3-year notice to terminate these arrangements, but Western did not provide such notice to PacifiCorp until May 1997. Instead of including this PacifiCorp transmission reservation (152,750 kW) in the LAP capacity obligation calculation, RMR proposes to include the test period discounted transmission revenue from this agreement as a credit to the LAP transmission revenue requirement. Under this reciprocal arrangement, Western and PacifiCorp provide discounted firm transmission service for each other that exclusively benefits the generation/power merchant functions within these organizations. Long-term, firm Transmission Customers of the LAP system are not offered similar discounted rates. Western has received less than full transmission compensation from PacifiCorp in exchange for wheeling arrangements on the PacifiCorp system which benefits Western's generation marketing efforts.

Response: This is an existing contract, which the Federal Government arranged in good faith over 20 years ago at a regionally standard rate of 1 mill/kWh. This contract did not include a provision for adjusting the rate schedule. Over the years, PacifiCorp's use of the RMR system has increased, and RMR's use of PacifiCorp's system has remained relatively constant.

The commentor has contended that RMR has benefited from the reciprocal arrangement. However, the loss of revenue to RMR has far outweighed the benefit to RMR under this contract. This contract does not exclusively benefit RMR's generation/merchant function. In 1998, PacifiCorp will provide only 12,500 kW of transmission capacity for RMR, and RMR will provide 164,500 kW of transmission capacity for PacifiCorp. RMR receives a benefit of about $230,000 per year (if RMR were to pay PacifiCorp's wheeling rate of $24.30/kW/year in place of the 1 mill/kWh). RMR is annually foregoing over $3.0 million, assuming PacifiCorp takes network transmission service. Therefore, RMR included a revenue credit in the rate design, to reflect

transmission payment from PacifiCorp at a rate less than the embedded costs and excluded the loads from the denominator.

Consistent with RMR's effort to align all Transmission Customers on a comparable basis, Western has given PacifiCorp the required advance notice that this contract will be terminated in May 2000. PacifiCorp will then be required to pay the transmission rate based on embedded costs, and the loads will be added to the denominator.

Reason 6: RMR included the summer and winter monthly reservations for NPPD under Contract No. 87–LAO–200. RMR's proposed rate treatment of this transmission obligation has the effect of discriminating against Transmission Customers that purchase long-term, firm point-to-point transmission service on the basis of an annual capacity reservation and whose load patterns could be exactly like that of NPPD.

Response: It appears the commentor assumed that the NPPD contract is a long-term point-to-point contract. RMR recognizes that long-term point-to-point service is for 12 equal monthly reservations; however, NPPD has an existing contract for a seasonal reservation, and RMR must honor it for the remainder of its term. Future service agreements for unequal monthly reservations (like the service provided to NPPD) will be considered short-term point-to-point. Revenue from future short-term point-to-point service agreements will be treated as a revenue credit, and the load will be excluded from the denominator; thereby, not affecting long-term Transmission Customers.

It is anticipated that NPPD will retain its existing transmission contract; therefore, the monthly reservations for which it will pay the point-to-point rate were included in the rate denominator. Thereby, the rate design is consistent with the billing amounts in the contract and no over/under recovery will occur.

Reason 7: RMR has understated the total capacity reservation for Municipal Energy Agency of Nebraska (MEAN). Under Contract No. 89–LAO–487, Exhibit A, RMR has a firm obligation to transmit up to 1,934 kW of power and energy. Likewise, under Exhibit B, RMR is separately obligated to transmit up to 22,156 kW. It is not clear why RMR's calculation includes only the obligation in Exhibit B, but it appears that RMR has understated the total capacity reservation.

Response: MEAN has indicated that they will elect to take network transmission service. The 12 cp for MEAN has been added under network load in the rate denominator. The issue raised by the commentor, therefore, is no longer applicable.

Reason 8: RMR has a firm obligation to transmit up to 103,000 kW of power and energy for the Rocky Mountain Generation Cooperative, Inc. (RMGC). RMR's calculation shows a slightly different amount.

Response: RMGC has a firm transmission capacity reservation for 100,000 kW, to Sidney, Nebraska, which RMR included as point-to-point service. RMGC also received firm transmission service to the Town of Basin, Wyoming, and paid for the maximum service received, which is estimated by RMGC as 3,000 kW. RMR included this 12-cp load of 2,583 kW as network transmission service.

As of January 1998, transmission service from the Town of Basin was deleted from the RMGC contract and added to the Tri-State transmission agreement. RMR has made this adjustment in the rate denominator.

Comment: One commentor supports RMR's approach to pricing firm point-to-point service, which cannot be discounted, and pricing non-firm service on a maximum basis, which can then be discounted.

Response: Although RMR does not anticipate offering discounted firm point-to-point service over the LAP transmission system, Western's Tariff does allow for discounting of firm and non-firm point-to-point service, consistent with the FERC Pro Forma.

Comment: One commentor suggests that credits for augmentation facilities be included in the individual Network Integration Service Agreement for the specific customer and not be a part of the initial rate making process. Subsequent annual revisions of the transmission service rates should take augmentation credits into account in the calculation of the new rate. On the same topic, another commentor suggested that RMR work with a group of customers to define augmentation and establish criteria for determining when and where augmentation exists on the LAP transmission system. The resulting definitions and objective criteria can then be applied to instances in which augmentation is claimed. This process should occur in a manner which allows input from all affected Federal Customers. A third commentor opposes RMR granting augmentation credits unless it can be demonstrated that non-Federal transmission facilities were necessary to deliver the firm electric service to Preference Customers.

Response: In accordance with FERC Order No. 888, credits for customer-owned facilities are best resolved on a fact-specific, case-by-case basis. We agree that credits will be addressed in the individual Network Integration Service Agreement, and appropriate adjustments may be made in subsequent rate calculations. If customers feel that augmentation credits are warranted, they should submit a written request with sufficient data to support their claim. RMR will evaluate such requests, with input from all affected parties, in accordance with guidance in FERC Order No. 888–A, Section IV.G.1.g: ''* * * for a customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid.''

Comment: In RMR's cost of capital determinations, it applies the composite interest rate on outstanding debt to the entire net plant investment, rather than just to the unpaid component of the net investment. By doing so, it creates an ongoing financing cost for the principal component of the net investment that has already been paid back to the U.S. Treasury. Since there is no cost associated with the repaid principal component and since these governmental entities have no equity owners that have invested capital, such treatment is improper and overstates the true cost of capital.

Response: Although the revenue requirement includes interest charges on the entire amount of undepreciated plant, no ongoing finance charge is being created through its calculation. The methodology merely ensures that transmission users pay finance charges related to the plant they use. These finance charges are reduced over time by the amount of plant investment removed to accumulated depreciation or retirements. As these investments reduce in value, so do the financing charges associated with them.

By applying an interest component to plant that has already been paid but not yet depreciated, RMR is recognizing prepayments made by Federal Customers and revenues from surplus generation sales that have been applied against outstanding transmission debt. Western's repayment of these investments is governed by DOE Order RA 6120.2, which prescribes repayment of revenues to the highest interest-bearing project investments first, regardless of whether they are related to transmission or generation. This makes it possible for principal to be significantly reduced on transmission debt without payment by transmission users. If the interest component is not applied to net plant, the Transmission

Customers would not pay their share of the interest expense.

Western revenues repay projects whose resources are entirely hydro; therefore, average water is used to forecast repayment revenues. This means that some years will have high-energy sales that can be used to prepay debt in anticipation of drought conditions, such as those from 1988 through 1993, when revenues were insufficient to meet LAP's repayment obligations. These prepayments act as stabilizing factors during the ebb and flow of hydrologic cycles to ensure repayment of project obligations. RMR's transmission rates have never included charges for interest deficits, O&M deficits, or purchase power arising from poor water years. RMR believed that these expenses were related to insufficient energy to meet its obligations, and the associated costs were incorporated in the firm power rate. It would be inappropriate for Transmission Customers to share the benefit of good water, but none of the costs of poor water.

Comment: Revenues derived from third-party transmission service transactions should be accounted for in future repayment.

Response: In accordance with the DOE Order RA 6120.2, all transmission revenues are credited to the P–SMBP power repayment study, including an estimate of future revenues to reflect this transmission rate adjustment.

Comment: A commentor has taken issue with the way that RMR has functionally allocated the LAP microwave communications system and the Power Marketing and Operations Complex (PMOC). By functionally allocating the investment of these two facilities on the basis of LAP plant investment, which includes almost no generation-related plant, RMR understates the amount of service provided to the generation/power merchant function by assigning a disproportionately large amount of the annual cost of these items to transmission. The commentor recommends including the net plant investment costs of Reclamation in calculating the functional allocation of RMR's costs.

Response: Although Western and Reclamation are both agencies of the Federal Government, they function as distinct and separate entities, both financially and functionally. On December 21, 1977, under Section 302 of the Department of Energy Organization Act, Congress established Western, whose primary responsibility is power marketing and transmission of the Federal generation resource. These transferred responsibilities were previously held by Reclamation, who continues to own, operate, and maintain the generation resources for the Federal Government.

With regard to the commentor's issue concerning the microwave communications allocation, Reclamation owns, operates, and maintains its own Supervisory Communications and Data Acquisition (SCADA) system for microwave communications, none of which is included in the transmission rate. The cost of Reclamation's SCADA facilities are in the RMR's calculations for the generation based ancillary services. RMR's SCADA and microwave communications system is designed, operated, and maintained by RMR personnel primarily for transmission system use. Therefore, RMR asserts that its allocation of SCADA and microwave communications costs on the basis of LAP investment is proper.

With regard to the PMOC, RMR revisited its computation for functionally allocating the PMOC costs. RMR's methodology for this review was an analysis of PMOC office space, and specifically, what percentage of the office space is occupied by personnel that support the generation function. RMR found that based on space occupied in the PMOC by generation-dedicated employees, the amount of the PMOC to be functionally allocated to generation should be 2.928 percent, rather than the 3.669 percent derived from investment costs. Reallocation of the PMOC to accommodate this .741 percentage difference increases the amount allocated to transmission by $176,080. This is insignificant when contrasted against the total transmission allocation of $304,913,006. Given the relatively insignificant amounts and immaterial rate impacts, RMR maintains that its original allocation of the PMOC building costs based on LAP plant investment is reasonable.

Comment: One commentor also feels that RMR should use cost-tracking allocators to functionally assign expenses, rather than allocating on the basis of the LAP net investment. Specific FERC accounts should be functionally allocated on the basis of what function they benefit. A&GE expenses associated with field-type offices that provide multi-function services should be functionally allocated using a basis that fully recognizes the generation/power merchant function performed at these offices. The commentor points out that certain O&M expense items, specifically the Conservation and Renewable Energy (C&RE) Expense and the Power Marketing and Generation Power Resources Planning Expense, should be entirely excluded from the transmission revenue requirement and assigned specifically to the generation/power merchant function at RMR.

Response: As previously stated, Western's primary responsibility is the power marketing and transmission of the Federal generation resource. RMR provides only incidental generation support. Reclamation owns, operates, and maintains the generation resource for the Federal Government. Reclamation costs have not been included in the transmission revenue requirements.

Western undertook a line item analysis of the O&M costs. Western agrees with the commentor that the cost of C&RE could be completely assigned to the generation function. Adjustments could be made to the line items for Power Users Account and Collection Expenses and Power Marketing and Generation Power Resources Planning Expenses, which would increase the 3.669 percent allocated to generation. However, these three adjustments amount to a decrease in the O&M allocated to transmission by $317,455, which would reduce the fixed charges for transmission by less than 0.1 percent. Given the relatively insignificant amounts and immaterial rate impacts, RMR will continue to functionally allocate the LAP O&M and A&GE costs based upon plant investment costs. RMR reiterates that Western staff do not perform significant generation activity.

During RMR's review of the O&M costs, an extensive reexamination of those costs was undertaken and a determination was made that the Mt. Elbert Powerplant O&M was classified inappropriately in the original calculations. The original calculations assumed that Mt. Elbert was only used for the provision of firm power; in fact, Mt. Elbert is actually used to provide a material amount of Regulation and Frequency Response Service and Reserves support. Therefore, RMR's costs for the O&M of Mt. Elbert, which were originally allocated to LAP Federal Customers, are now being included in the Annual Fixed Charge Rate for Generation. This adjustment increases the generation O&M costs by $3 million, the addition of which yielded no impact to the ancillary service rates.

Comment: RMR included in the transmission revenue requirement the charges it pays to NPPD for transmission service under Contract No. 87–LAO–200. The transmission service from NPPD provides no long-term, firm transmission capacity to RMR beyond

that which is required and reserved to serve RMR's firm generation service loads located in southern Nebraska and northern Kansas and which are captive to the NPPD transmission system. Consequently, the long-term firm Transmission Customer on the LAP transmission system can derive no benefit from this wheeling arrangement. To be consistent with the functional unbundling requirements, this wheeling arrangement should belong to the generation/power merchant function.

Response: RMR agrees and has eliminated this item from the numerator of the rate design calculation.

Comment: RMR transmission rate proposal does not include any revenue credit for the lease of facilities that have been included in the functionalized LAP transmission plant investment.

Response: RMR reviewed all revenue from rental of facilities, which are included in the transmission plant investment. Such revenues are about $30,000, annually. These revenues have been included as a revenue credit in the numerator.

Comment: One commentor supports separating the cost of subtransmission facilities from the transmission rate. Clearly these facilities are not part of the bulk supply system, but are used to serve local loads, and, therefore, should be paid for separately.

Response: RMR agrees and assigned the subtransmission to the Federal Customers. The subtransmission system is used primarily for delivery of Federal power to the Federal Customers. If a Transmission Customer requires the use of the subtransmission system, an additional facility-use charge will be assessed.

Comment: The primary reason for the increase in the transmission rate was due to a change in the denominator. One customer recognized that a large portion of this change was because some customers included their Federal load in the transmission load projections they provided to Western for the 1993 transmission rate. This overstated the denominator. This commentor suggested that when submitting to FERC, RMR should include data showing how the loads change by customer.

Response: The suggested information has been provided in the supporting data to this Rate Order. The transmission rate has been understated since 1994. Western has corrected the rate so that the transmission revenue requirement will be collected.

Comment: One commentor supports RMR keeping its firm power rate bundled, but is concerned that RMR may not meet the comparability requirements of FERC Order No. 888 because it does not charge itself for transmission service, including all wholesale power deliveries to Preference Customers, the same rate as it will charge others for use of the transmission system.

Response: Firm Federal power is transmitted as a network-type service under existing bundled Firm Electric Service Contracts, and not under Western's Tariff. RMR uses whatever power or transmission is required to meet its Firm Electric Service Contract commitments, like network transmission service.

RMR believes that it meets the comparability requirement of FERC Order No. 888. In FERC Order No. 888–A, Section IV.C.b., it is clarified that the transmission provider must ''take service'' under its own tariff for third-party sales for comparability. RMR's merchant function will take service under Western's Tariff and point-to-point rates for any third-party sales.

FERC Order No. 888–A recognizes that existing contracts will not necessarily be at the same rate as the transmission service offered under the Tariff. However, the service can still be considered comparable. RMR has shown in its rate design for this Rate Order that the calculation of transmission costs for delivery to Federal Customers is on the same basis as for other firm Transmission Customers.

Comment: Several commentors support RMR's phased-in approach to reach its required transmission rate level, as a means to mitigate the rate shock associated with the large rate increase.

Response: RMR proposed a three-step approach to implement the transmission rate increase between April 1, 1998, and October 1, 1999.

Comment: The commentor commended Western for its thoughtful approach in developing the proposed transmission rates and the thorough public process associated with encouraging comment from affected parties and interested members of the public.

Response: RMR appreciates the input from its customers during the public process.

Ancillary Services Discussion

Six ancillary services will be offered by WACM; two of which are required to be purchased by the LAP Transmission Customer. These two are: (1) Scheduling, System Control, and Dispatch Service, and (2) VAR Support. The remaining four ancillary services—Regulation, Energy Imbalance Service, Spinning Reserves, and Supplemental Reserves—will also be offered, but are subject to availability.

Sales of Regulation, Energy Imbalance Service, Spinning Reserves, and Supplemental Reserves may be limited since Western has allocated its power resources to preference entities under long-term commitments. If WACM is unable to provide these services from its own resources, an offer will be made to purchase the services and pass through these costs to the customer, including an administrative charge.

The formula rates for ancillary services will be based on the costs of WACM control area and are designed to recover only the costs associated with providing the service(s).

The WACM, as of April 1, 1998, will have a single control office, combining the offices that formerly controlled the Western Area Upper Colorado control area (WAUC) and the Western Area Lower Missouri control area (WALM). WACM Federal power resources consist of all the LAP Federal power resources and a portion of the Salt Lake City Area-Integrated Projects (SLCA–IP) Federal power resources.

Scheduling, System Control, and Dispatch Service: The costs for providing Scheduling, System Control, and Dispatch Service for Transmission Customers are included in the appropriate transmission service rates. This service can be provided only by the control area operator in which the transmission facilities are located. The formula rates will be applied to all schedules for WACM non-transmission customers.

The formula rate for Scheduling, System Control, and Dispatch is based on the annual cost of all personnel and related cost involved in providing the service for WACM. The annual cost is divided by the number of schedules per year to derive a ''rate per schedule'' applied per day. RMR's definition of a ''schedule'' is a specific request for energy or transmission through, within, into, or out of WACM, per day. The entity requesting the schedule is generally the entity responsible for the scheduling charge, unless other arrangements are made.

RMR will accept any reasonable number of schedule changes over the course of a day, without any additional charge, so that entities trying to follow their loads closely may do so without penalty.

Based on FY 1996 data, the rate for WACM, effective April 1, 1998, will be $25.71 per schedule per day.

Reactive Supply and Voltage Control Service from Generation Sources: The formula rate for VAR Support is based upon Reclamation's net generation plant

investment in WACM. Annual Fixed Charge Rates based on annual generation-related O&M, A&GE, depreciation, and interest expenses for LAP and for SLCA–IP are applied to Reclamation's net generation plant investment to calculate annualized costs. The percentage of WACM generation capacity that is utilized for VAR Support is then identified. This percentage is applied to the annualized costs for LAP and SLCA–IP, and those results summed to derive the annual revenue requirement for VAR Support for WACM. The annual revenue requirement is then divided by the WACM 12-cp load being provided VAR Support, to yield a $/kW-year rate, which is divided by 12 months to yield a kW-month rate. Based upon FY 1996 data, the WACM rate for VAR Support is $0.112/kW-month.

Credit may be given to those customers with generators in the control area providing WACM with VAR Support. Any crediting arrangement must be documented in the customers' service agreements.

Regulation and Frequency Response Service: The formula rate for Regulation is based upon the annualized cost of Reclamation's net plant investment for regulating plants in WACM (the investment costs for SLCA–IP regulating plants that will provide Regulation in the Western Area Lower Colorado control area were not included). The net investment costs were included for only those plants that are able to provide regulating service—run-of-the-river plants were excluded because regulation control is not possible from those plants. The same Annual Fixed Charge Rates used in the VAR Support formula were used to convert the LAP and SLCA–IP net plant investments to annual costs for Regulation. The annual costs are divided by the nameplate capacity of the applicable plants to yield an average cost per kilowatt for LAP and SLCA–IP.

The amount of capacity used to provide Regulation service is identified. For LAP, one-half of the percentage of the resource used to provide Regulation is multiplied by the load in the control area requiring Regulation. For SLCA–IP, historical operational experience shows that the amount of capacity provided for the SLCA–IP load is 40 MW. The April 1, 1998, division of the SLCA–IP load into two control areas, discussed previously, has been determined to represent a 50/50 split of the load, and therefore, the capacity amount applicable to the WACM from SLCA–IP is 20 MW.

The average cost per kilowatt for LAP and SLCA–IP is then multiplied by the appropriate amounts of capacity providing Regulation, to yield the annual revenue requirements for Regulation. The annual revenue requirements are then summed and divided by the load in the control area requiring Regulation service. This yields a rate per kW-year, which is divided by 12 months to calculate a rate per kW-month. Based upon FY 1996 data, the WACM rate for Regulation is $0.147/kW-month.

Federal Customers will receive a credit for Regulation on their power bill if they receive Regulation from another source, or self-supply it for their own load. Credit will also be given to those customers who provide WACM with Regulation. These types of crediting arrangements must be documented in the Transmission Customers' service agreements.

Energy Imbalance Service: FERC established guidelines for Energy Imbalance Service of +/−1.5 percent hourly deviation (3 percent bandwidth) with a 2 MW minimum deviation, as in their view, anything more or less than that could affect the reliability of the system. RMR established the 3 percent bandwidth for Energy Imbalance Service to be consistent with FERC.

RMR recognizes that metering inadequacies, revision of scheduling practices, and unit control problems may initially hinder a customer's ability to meet the 3 percent bandwidth. Therefore, RMR is phasing in the Energy Imbalance Service bandwidth simultaneously with the transmission service rate to allow a transition period; whereby, customers may improve their equipment and scheduling practices. Effective April 1, 1998, the bandwidth will be set at 6 percent (+/−3 percent deviation); effective October 1, 1998, the bandwidth will drop to 5 percent (+/−2.5 percent); and effective October 1, 1999, the bandwidth will be in compliance with the FERC-endorsed bandwidth of 3 percent (+/−1.5 percent). Deviation accounting will be completed monthly on an hour-to-hour basis.

RMR reserves the right to assess negative excursions (under deliveries) outside the bandwidth and occurring more than five times per month, a penalty charge of 100 mills/kWh.

During normal water conditions, any positive excursions (over deliveries) outside the bandwidth will be credited on the customer's bill, lagged by 1 month. The credit will be 50 percent of the regional average monthly price for non-firm purchases, provided that these over deliveries do not impinge on WACM operations. For example, during times of high water conditions, RMR will reserve the right to eliminate any credits for over deliveries.

Spinning/Supplemental Reserves: Based upon the Post-1999 Resource Study (July 1995), WACM has no long-term Reserves available beyond its own internal requirements.

An offer will be made to purchase Reserves for a customer and pass through that cost, plus an amount for administration.

When Reserves are called on for Emergency Use, RMR will assess a charge for energy used, at the greater of 30 mills/kWh or the prevailing market energy rate in the region. The customer would be responsible for providing the transmission to get the Reserves to its destination.

Ancillary Services Comments

RMR received written comments concerning the ancillary services during the public comment and consultation period. These comments have been paraphrased where appropriate, without compromising the meaning of the comment. Certain comments were duplicative in nature, and were combined. RMR's response follows each comment.

Comment: A commentor believes that the load determinants for Regulation and VAR Support, as referenced on page 38 of the Customer Brochure, are understated for the following reasons.

For VAR Support, RMR has not accounted for Missouri Basin Power Pool, Tri-State, and CSU generation within the WALM control area. Likewise, RMR has not accounted for Craig, Nucla, Qualifying Facilities, small hydro, and other western Colorado generation that will be located in WACM.

Since VAR Support is a required service, why did RMR remove Black Hills Power and Light's (Black Hills) load from the denominator?

For Regulation, RMR has not accounted for all PacifiCorp, Tri-State, municipal, and Rural Electric Association (REA) loads located in the WALM control area. Likewise, RMR has not accounted for any non-Federal, western Colorado, Tri-State, municipal and REA loads located in WACM.

Response: Page 38 of RMR's Customer Brochure incorrectly identified ''Tri-State Direct (in WALM)'' with a number that was actually representative of cumulative ''other'' load in WACM. RMR did, in fact, include the loads that the commentor believes were omitted; i.e., Missouri Basin Power Pool, Tri-State, CSU, PacifiCorp, municipal, and REA. RMR also accounted for the western Colorado generation that will be located in WACM.

Based upon this commentor's statements, however, Western revisited and reconfirmed the load denominator for both VAR Support and Regulation service for the ''other'' load in the control area, and has refined them to be 1,047,979 kW for Regulation and 1,538,608 kW for VAR Support, as contrasted with the loads in the Customer Brochure of 1,407,917 kW for Regulation and 1,437,638 kW for VAR Support.

Black Hills' load was omitted from the VAR Support service load as they cannot receive this service from a WACM generation source. Load data for Black Hills were accounted for as part of the Regulation load, as they are in WACM's control area and RMR has a specific contract with Black Hills to provide them Regulation service. RMR also reassessed the 277 MW included in the Regulation load for Black Hills as RMR does not provide Regulation for Black Hill's total load. Based upon bills submitted in 1997, the average amount of load that RMR regulates for Black Hills is 89 MW. In conjunction with this adjustment to Black Hill's Regulation load, RMR included a $90,000 revenue credit for the existing contract for Regulation service.

Comment: A commentor is concerned about the narrow bandwidth (+/-1.5 percent) allowed for deviation from scheduled transactions, maintaining that it will be extremely difficult to stay within this bandwidth because of limitations and errors in metering, scheduling practices, and unit control.

This same commentor also requests that generating entities within the control area also be given the opportunity to participate with Western in the provision of Energy Imbalance Service, rather than merely taking the service from RMR as the control area operator.

Response: FERC has established guidelines for Energy Imbalance Service of +/-1.5 percent deviation (or 3 percent bandwidth), as in their view, anything more or less than that could affect the reliability of the system. RMR established a bandwidth for Energy Imbalance Service to be consistent with FERC and with what the industry has been using as a standard.

RMR points out to its customers that FERC did establish a larger minimum deviation of 2 megawatts (MW) in an attempt to meet the needs of smaller customers. This minimum allows Transmission Customers with load less than 133 MW to have more flexibility in the bandwidth.

However, RMR does recognize that some of its customers may construe the 3 percent bandwidth as too narrow, from the perspective that there are currently limitations in metering, scheduling practices, and unit control. Therefore, RMR is phasing in the Energy Imbalance Service bandwidth simultaneously with the transmission service rate to allow a transition period; whereby, customers may improve their equipment and revise their scheduling practices. Effective April 1, 1998, the bandwidth will be set at 6 percent (+/-3 percent deviation); effective October 1, 1998, the percentage bandwidth will drop to 5 percent (+/-2.5 percent deviation); and effective October 1, 1999, the percentage bandwidth will be in compliance with the FERC-endorsed bandwidth of 3 percent (+/-1.5 percent deviation).

Regarding participation in the provision of Energy Imbalance Service by others in WACM, RMR asks that any proposals submitted to RMR demonstrate the benefits to the control area in terms of Energy Imbalance Service (deviation, inadvertent flow, and losses), and reliability for operation of the control area.

Comment: A commentor recommends that the provision limiting schedule changes be eliminated. They also recommend a more rigorous definition of the term ''schedule'' as it is applied in this rate. The commentor noted that it may be worthwhile to consider an exhibit to the service agreement that would identify billable schedules.

Response: In its initial rate design, RMR developed its Scheduling, System Control, and Dispatch Service rate and limited the number of schedule changes to five times per day before any additional scheduling charge would be assessed. Schedule changes equate to the use of personnel and associated cost, and RMR was trying to both accommodate the customer and recover the cost of doing business.

However, RMR has recognized that any limit on the number of schedule changes per day may penalize entities trying to follow their loads closely. Therefore, RMR will accept any reasonable number of schedule changes over the course of the day without additional charges.

RMR's definition of a ''schedule'' is a specific request for energy or transmission through, into, within, or out of WACM, per day. The entity requesting the schedule is generally the entity responsible for the scheduling charge, unless other arrangements are made.

The comment concerning inclusion of an exhibit to the individual service agreements is outside the rate adjustment process; however, RMR will consider the inclusion of this exhibit to the individual service agreements identifying billable schedules.

Comment: A commentor asks that RMR and Upper Great Plains Region (UGPR) be consistent on policy for Energy Imbalance Service.

Response: RMR and UGPR are separate regional offices of Western within separate control areas, and as such, have disparate operational requirements. Additionally, the UGPR operates with basically one drainage basin, while LAP has five basins within its operational control.

LAP's five basins allow for greater operational flexibility than UGPR's main-stem system; e.g., during high water conditions, WACM would be less likely to be forced to spill and potentially lose energy. RMR has indicated that it would credit the customer for 50 percent of the regional average monthly price for non-firm purchases in a scheduled over delivery; however, RMR will reserve the right to eliminate credits during times when over deliveries would impinge upon WACM operations. RMR has revised its Energy Imbalance Service rate language accordingly.

Comment: A commentor expresses concern that care be taken to see that all revenues for ancillary services are credited back to the firm electric service rate.

Response: Western is developing procedures for proper accounting classification of Open Access Transmission revenues. RMR will assure that all revenues, including ancillary services, are incorporated in the P–SMBP Power Repayment Study, and revenues will be applied pursuant to DOE Order No. RA 6120.2.

Comment: A commentor wants to ensure that RMR views the ancillary services as an integral component of the Federal Government's power allocation. It is the commentor's position that the provision of any generation-related ancillary services which interfere with the statutory obligations of Western to dedicate its generation resources to Federal Customers is statutorily prohibited. Specifically, concerning Regulation and Reserves, Western should limit itself to providing these services to non-Federal customers only after first offering the resource to its Federal Customers. Otherwise, Western should limit the offer of these services to the brokering of ancillary services from third-party providers. Further, concerning Reserves and the selling of short-term Reserves when available, Western should affirm that if and when such Reserves are available on a short-term basis, they will be offered to Federal Customers first.

Response: Western views the ancillary services as an integral component of the Federal Government's power allocation and is not changing this viewpoint with the advent of FERC Order No. 888. Western will not take any actions that would compromise its ability to meet its contractual obligations to its Federal Customers. RMR will continue to provide all of the services so designated as approved in the Marketing Plan.

While ancillary services were not specifically defined or offered in the Marketing Plan, those services are presumed to be included in the allocation and delivery of RMR's firm power resource. RMR has fully allocated all firm resources through the Marketing Plan and currently provides all of the required ancillary services for the Federal Customers.

As stated previously, the RMR Post-1999 Resource Study ascertained that there are no long-term Reserves available from WACM resources beyond WACM internal requirements. Historically, when Western has had non-firm, short-term, or surplus resources available for sale, they have been sold on the open market. RMR has offered surplus energy first to those with Firm Electric Service Contracts, but it is an option that surplus energy be sold on the open market, as Western's UGPR and Colorado River Storage Project Customer Service Center have done. The Marketing Plan allows the sale of non-firm, short-term, or surplus resources in Section B.3.c., Marketing Considerations.

RMR has engaged in the marketing of ancillary services prior to this filing, as evidenced by RMR's provision of interconnected operation service (shaping and storage service) for RMGC, and RMR's provision of Regulation service for Black Hills. These products have been offered to both preference and non-preference customers.

Comment: A commentor applauded RMR's stance that only the ancillary services that are surplus to those required to meet Western's statutory requirements would be offered for sale. The commentor agreed with RMR's position regarding the purchase and pass through of costs for ancillary services, when not available from a control area resource.

Response: RMR appreciates the comment.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the LAP transmission rate and ancillary service rate adjustment is related to non-regulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Since the LAP transmission rates and ancillary service rates are of limited applicability, no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to Federal Energy Regulatory Commission

The formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy, I confirm, approve, and place into effect on an interim basis, effective April 1, 1998, formula rates for transmission and ancillary service under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6. These schedules, in total, supersede Rate Schedules L–T3 and L–T4. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute formula rates on a final basis through March 31, 2003.

Dated: March 23, 1998.

Elizabeth A. Moler,

Deputy Secretary.

Rocky Mountain Region, Loveland Area Projects—Rate Schedule L–AS1 (Supersedes L–T3) Schedule 1 to Tariff April 1, 1998

Scheduling, System Control, and Dispatch Service

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Colorado Missouri control area (WACM). The charges for Scheduling, System Control, and Dispatch Service are to be based on the rate referred to below. The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The rate will be applied to all schedules for WACM non-transmission customers. The Rocky Mountain Region (RMR) will accept any reasonable number of schedule changes over the course of the day without any additional charge.

The Loveland Area Projects charges for Scheduling, System Control, and Dispatch Service may be modified upon written notice to the customer. Any change to the charges for the Scheduling, System Control, and Dispatch Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. RMR shall charge the non-transmission customer in accordance with the rate then in effect.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

$$\text{Cost per Schedule} = \frac{\text{Annual Cost of Scheduling and Dispatch Personnel, and Related Costs}}{\text{Number of Schedules per Year}}$$

* * * * *

Rate

The rate to be in effect April 1, 1998, through September 30, 1998, is $25.71 per schedule per day. This rate is based on the above formula and on FY 1996 data. A recalculated rate will go into effect every October based on the above formula and data.

Rate Schedule L–AS2 (Supersedes L–T3 and L–T4) Schedule 2 to Tariff April 1, 1998

Reactive Supply and Voltage Control from Generation Sources Service

Applicable

In order to maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Colorado Missouri control area (WACM) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service (VAR Support) must be provided for each transaction on the transmission facilities. The amount of VAR Support that must be supplied with respect to the Customer's (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission systems within the WACM) transaction will be determined based on the VAR Support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by WACM.

The Customer must purchase this service from the WACM operator. The charges for such service will be based upon the rate referred to below.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The LAP charges for VAR Support may be modified upon written notice to the Customer. Any change to the charges for VAR Support shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Rocky Mountain Region shall charge the Customer in accordance with the rate then in effect.

Credit may be given to those Customers with generators in the control area providing WACM with VAR Support. Any crediting arrangements must be documented in the customer's service agreement.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

$$\text{WACM VAR Support Rate} = \frac{\text{Total Annual Revenue Requirement for Generation} \times \text{Percentage of Resource Capacity Used for VAR Support}}{\text{Load in the Control Area Requiring VAR Support}}$$

* * * * *

Rate

The rate to be in effect April 1, 1998, through September 30, 1998, is:

Monthly: $0.112/kW-month
Weekly: $0.026/kW-week
Daily: $0.004/kW-day
Hourly: 0.154 mills/kWh

This rate is based on the above formula and on FY 1996 financial and load data. A recalculated rate will go into effect every October based on the above formula and updated financial and load data.

Rate Schedule L–AS3 (Supersedes L–T3) Schedule 3 to Tariff April 1, 1998

Regulation and Frequency Response Service

Applicable

Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Colorado Missouri control area (WACM) operator. The Customer (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission systems within WACM) must either purchase this service from WACM or make alternative comparable arrangements to satisfy its Regulation obligation. The charges for Regulation are referred to below. The amount of Regulation will be set forth in the service agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The LAP charges for Regulation may be modified upon written notice to the Customer. Any change to the Regulation charges shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Rocky Mountain Region (RMR) shall charge the Customer in accordance with the rate then in effect.

Customers will receive a credit for Regulation on their power bill if they receive Regulation from another source, or self-supply it for their own load. Credit will also be given to those Customers who provide WACM with Regulation. These types of crediting arrangements must be documented in the customer's service agreement.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

* * * * *

$$\text{WACM Regulation Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation}}{\text{Load in the Control Area Requiring Regulation}}$$

Rate

The rate to be in effect April 1, 1998, through September 30, 1998, is:

Monthly: $0.147/kW-month
Weekly: $0.034/kW-week
Daily: $0.005/kW-day

This rate is based on the above formula and on FY 1996 financial and load data. A recalculated rate will go into effect every October based on the above formula and updated financial and load data.

If resources are not available from a WACM resource, RMR will offer to purchase the Regulation and pass through the costs to the Customer, plus an amount for administration.

Rate Schedule L–AS4, (Supersedes L–T3), Schedule 4 to Tariff, April 1, 1998.

Energy Imbalance Service

Applicable

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within the Western Area Colorado Missouri control area (WACM) over a single hour. The Customer (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission system within WACM) must either obtain this service from WACM or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation.

The WACM shall establish a deviation band of +/−3.0 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Customer's scheduled transaction(s). Deviation accounting will be completed monthly on an hour-to-hour basis.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Energy Imbalance Service compensation may be modified upon written notice to the Customer. Any change to the Customer compensation for Energy Imbalance Service shall be as set forth in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Rocky Mountain Region (RMR) shall charge the Customer in accordance with the rate then in effect.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

For negative excursions (under deliveries) outside the bandwidth and occurring more than five times per month, RMR reserves the right to assess a penalty charge of 100 mills/kWh.

For positive excursions (over deliveries) outside the bandwidth, the Customer will be credited on the customer's bill, lagged by 1 month. The credit will be 50 percent of the regional average monthly price for non-firm purchases, provided the over deliveries do not impinge upon WACM operations. For example, during times of high water or operating constraints, RMR reserves the right to eliminate credits for over deliveries.

* * * * *

Rate

The bandwidth in effect April 1, 1998, through September 30, 1998, is 6 percent (+/−3 percent hourly deviation).

Rate Schedule L–AS5 (Supersedes L–T3), Schedule 5 to Tariff, April 1, 1998.

Operating Reserve—Spinning Reserve Service

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Customer (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission system within Western Area Colorado Missouri control area (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the service agreement.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

No long-term Reserves are available beyond internal WACM requirements.

* * * * * *

Rate

There are no long-term Reserves available from WACM. An offer will be made to purchase Reserves for a Customer and pass through the cost, plus an amount for administration.

In the event that Reserves are called upon for Emergency Use, the Rocky Mountain Region (RMR) will assess a charge for energy used, at the greater of 30 mills/kWh or the prevailing market energy rate in the region. The Customer would be responsible for providing the transmission to get the Reserves to its destination.

Rate Schedule L–AS6 (Supersedes L–T3) Schedule 6 to Tariff April 1, 1998

Operating Reserve—Supplemental Reserve Service

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Customer (Loveland Area Projects' Transmission Customers and customers on others' transmission system within Western Area Colorado Missouri control area (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the service agreement.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

No long-term Reserves are available beyond internal WACM requirements.

* * * * *

Rate

There are no long-term Reserves available from WACM. An offer will be made to purchase Reserves for a Customer and pass through the cost, plus an amount for administration.

In the event that Reserves are called upon for Emergency Use, the Rocky Mountain Region will assess a charge for energy used, at the greater of 30 mills/kWh or the prevailing market energy rate in the region. The Customer would be responsible for providing the transmission to get the Reserves to its destination.

Rate Schedule L–FPT1 (Supersedes L–T3) Schedule 7 to Tariff April 1, 1998

Long-Term Firm and Short-Term Point-to-Point Transmission Service

Applicable

The Transmission Customer shall compensate Rocky Mountain Region (RMR) each month for Reserved Capacity pursuant to the applicable

Firm Point-to-Point Transmission Service Agreement and rates referred to below. The formula rates used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

RMR may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. RMR shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by RMR must be announced to all Eligible Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, RMR must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

If a Transmission Customer requires use of subtransmission facilities, a specific facility use charge will be assessed in addition to this formula rate.

* * * * *

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{LAP Transmission System Total Load}}$$

Rate

The rate to be in effect April 1, 1998, through September 30, 1998, is as follows.

Maximum of:

Yearly: $27.84/kW of reserved capacity per year

Monthly: $2.32/kW of reserved capacity per month

Weekly: $0.54/kW of reserved capacity per week

Daily: $0.08/kW of reserved capacity per day

This rate is based on the above formula and FY 1996 data. A recalculated rate will go into effect every October based on the above formula and updated financial and load data.

Rate Schedule L–NFPT1 (Supersedes L–T4) Schedule 8 to Tariff April 1, 1998

Non-Firm Point-to-Point Transmission Service

Applicable

The Transmission Customer shall compensate Rocky Mountain Region (RMR) for Non-Firm Point-to-Point Transmission Service pursuant to the applicable Non-Firm Point-to-Point Transmission Service Agreement and rate referred to below. The formula rates used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

RMR may modify the charges for Non-Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Non-Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. RMR shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by RMR must be announced to all Eligible Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, RMR must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

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$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Rate

The rate to be in effect April 1, 1998, through September 30, 1998, is:

Maximum of:

Monthly: $2.32/kW of reserved capacity per month

Weekly: $0.54/kW of reserved capacity per week

Daily: $0.08/kW of reserved capacity per day

Hourly: 3.33 mills/kWh

This rate is based on the above formula and FY 1996 data. A recalculated rate will go into effect every October based on the above formula and updated financial and load data.

Rate Schedule L–NT1 (Supersedes L–T3) Attachment H to Tariff April 1, 1998

Annual Transmission Revenue Requirement for Network Integration Transmission Service

Applicable

The Transmission Customer shall compensate the Rocky Mountain Region (RMR) each month for Network Transmission Service pursuant to the applicable Network Integration Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this

schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

RMR may modify the charges for Network Integration Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Network Integration Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. RMR shall charge the Transmission Customer in accordance with the revenue requirement then in effect.

Effective

The first day of the first full billing period beginning on or after April 1, 1998, through March 31, 2003.

Formula Rate

$$\text{Monthly Charge} = \text{Transmission Customer's Load-Ratio Share} \times \frac{\text{Revenue Requirement}}{12}$$

If a Transmission Customer requires use of subtransmission facilities, a specific facility use charge will be assessed in addition to this formula rate.

If an existing Transmission Customer elects to retain its Transmission Contract and the contract terms are payment on an energy basis, the capacity-unit rate under the formula rate will be converted to an energy-unit rate based on the individual customer's total load factor.

* * * * *

Rate

The revenue requirement in effect April 1, 1998, through September 30, 1998, is $31,555,162. This revenue requirement is based on the above formula and FY 1996 data. A recalculated revenue requirement will go into effect every October based on the above formula and updated financial and load data.

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BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area/Integrated Projects and Colorado River Storage Project—Notice of Rate Order–WAPA–78

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–78 and Rate Schedule SLIP–F6, placing firm power rates from the Salt Lake City Area/Integrated Projects (SLCA/IP) of the Western Area Power Administration (Western) into effect on an interim basis. Also Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4, placing firm and nonfirm transmission rates on the Colorado River Storage Project (CRSP) transmission system into effect on an interim basis. Lastly, Rate Schedules SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1 placing rates for ancillary services on the CRSP system into effect on an interim basis.

The provisional firm power, firm and nonfirm transmission, and ancillary service rates will be effective from April 1, 1998 through March 31, 2003. The provisional firm power rate consists of an energy charge of 8.1 mills per kilowatthour (mills/kWh) and a capacity charge of $3.44 per kilowatt month (kW-month), which results in a composite rate of 17.57 mills/kWh. This is a 12.9 percent decrease from the current composite rate of 20.17 mills/kWh.

The provisional firm point-to-point transmission rate for 1998 is $2.23/kW-month. This is a 18.0 percent increase over the current firm transmission rate of $1.89/kW-month. The provisional network integration transmission service rate is the product of the network customer's load ratio share times one twelfth of the annual transmission revenue requirement. The non-firm point-to-point transmission rate will still be negotiated between Western and the customer, but under the new rate schedule, it shall never exceed the firm point-to-point transmission rate, which is 3.0 mills/kWh.

DATES: Rate Schedules SLIP–F6, SP–PTP5, SP–NW1, SP–NFT4, SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1 will be placed into effect on an interim basis on the first day of the first full billing period beginning on April 1, 1998, and will be in effect until Federal Energy Regulatory Commission confirms, approves, and places the rate schedules in effect on a final basis through March 31, 2003, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493. Ms. Carol Loftin, Team Lead, Rate Analysis, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6380.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power rate adjustments at 10 CFR Part 903, and 18 CFR 300, procedures for approving Power Marketing Administration rates by FERC, Rate Order No. WAPA–78, confirming, approving, and placing the proposed SLCA/IP firm power rate adjustment, CRSP firm and nonfirm point-to-point, and network transmission rate adjustment, and ancillary services rates into effect on an interim basis, is issued, and the new Rate Schedules SLIP–F6, SP–PTP5, SP–NW1, SP–NFT4, SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1 will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: March 23, 1998.

Elizabeth A. Moler,

Deputy Secretary.

In the matter of: Western Area Power Administration Rate Adjustments for Salt Lake City Area Integrated Projects, and Colorado River Storage Project.

[Rate Order No. WAPA–78]

Order Confirming, Approving, and Placing the Salt Lake City Area/ Integrated Projects Firm Power, Colorado River Storage Project Transmission, and Ancillary Service Rates Into Effect on an Interim Basis

April 1, 1998.

These power and transmission rates are established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR Part 903. Procedures for approving Power Marketing Administration rates by FERC are found at 18 CFR Part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW/month: Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).

AHP: Available hydro power. Maximum amount of hydro capacity and energy that will be made available to the Contractor monthly as determined by Western based on prevailing water conditions and set forth in Contractor's firm power contract.

Capacity Component: Part of the firm power rate; expressed in dollars per kW per month ($/kW-month). Applied each billing period to the maximum kW the Contractor is entitled to on a seasonal basis, as established by the Contractor's firm power contract.

CDP: Customer displacement power. One of two options available under the Replacement Purchase Options Amendment. It is the amount of supplemental power acquired or generated by the Contractor, on its own behalf, which will be used as part of the Contractor's CROD and Monthly Energy within a given period.

CME: Capitalized movable equipment.

Collbran: Collbran Project.

Contractor: An entity which has a contract with Western for SLCA/IP Firm Electric Service.

CROD: Contract rate of delivery. The maximum amount of capacity the Contractor is entitled to receive under its long-term firm power contract.

CRSP: Colorado River Storage Project (includes Seedskadee and Dolores Projects).

CRSP Act: Act of April 11, 1956, ch. 203, 70 Stat. 105, as amended, 43 U.S.C. 620–620o.

CRSP CSC: The Colorado River Storage Project Customer Service Center, Western's office in Salt Lake City, Utah.

Customer: Any entity which receives SLCA/IP power, CRSP transmission, or ancillary services.

DOE: U.S. Department of Energy.

DOE Order RA 6120.2: An order addressing power marketing administration financial reporting, used in determining revenue requirements for rate development.

DSWR: Desert Southwest Region, Western's office in Phoenix, Arizona.

EIS: Environmental impact statement.

Energy Component: Part of the firm power rate; expressed in mills per kilowatt-hour (kWh). Applied to each kWh delivered to each customer.

FERC: Federal Energy Regulatory Commission.

Firming Power: Power Western will purchase up to the AHP level. This type of purchase is included in the firm power rate.

Firming Purchases: Power purchased by Western or the Contractor above the AHP level up to the Contractor's CROD. This purchase cost is passed directly to the Contractor.

FRN: **Federal Register** notice.

FY: Fiscal year.

Glen Canyon: One of the storage units of the CRSP.

GCD EIS: Glen Canyon Dam Environmental Impact Statement.

GWh: Gigawatt-hour; equal to one million kW for a period of 1 hour.

Interior: U.S. Department of Interior.

Interest Offset: An offset to interest accrued allowed customers for the monthly payment of principal which is due on a yearly basis.

kW: Kilowatt; 1,000 watts.

kWh: Kilowatt-hour; the common unit of electric energy, equal to one kW taken for a period of 1 hour.

kW-month: Unit of electric capacity, equal to maximum amount of kW taken during 1 month.

mill: Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent.

mills/kWh: Mills per kilowatt-hour.

MW: Megawatt; equal to 1,000 kW or 1,000,000 watts.

NEPA: National Environmental Policy Act of 1969.

OAT: Open access transmission tariff.

OMB: Office of Management and Budget.

O&M: Operation and maintenance.

OM&R: Operation, maintenance, and replacement.

PRS: Power repayment study.

Rate Brochure: A document prepared for public distribution explaining the background and purpose of this rate adjustment proposal.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Replacement Purchase Options Amendment: Amendment to the SLCA/IP firm electric service contract which provides options to the Contractor for replacing Glen Canyon Dam generation lost as a result of the GCD EIS.

RMR: Rocky Mountain Region, Western's office in Loveland, Colorado.

SLCA/IP: The Salt Lake City Area/ lntegrated Projects, which are the CRSP, Collbran, and Rio Grande Projects.

Supporting Documentation: Work papers which support the rate proposal.

Western: Western Area Power Administration, U.S. Department of Energy.

WRP: Western replacement power. One of two options available under the Replacement Purchase Options Amendment. It is the amount of supplemental power requested by the Contractor to be acquired by Western on behalf of the Contractor as part of the Contractor's CROD and monthly energy within a given period and paid for by the Contractor on a pass-through-cost basis.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after April 1, 1998, and will remain in effect pending FERC's approval of them or substitute rates on a final basis

through March 31, 2003, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these rates. The provisional firm power rate represents a change of more than 1 percent in total SLCA/IP revenues, and the provisional firm transmission rate represents a change of more than 1 percent in total CRSP transmission revenues. Therefore, they are major rate adjustments as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On March 21, 1997, letters were sent to all SLCA/IP customers and other interested parties announcing informal public meetings to be held in Utah, Colorado, New Mexico, and Arizona, from April 16 to April 25, 1997.

2. At these informal meetings, Western representatives explained the need for a rate adjustment and answered questions.

3. An FRN was published June 25, 1997 (62 FR 34255), officially announcing the proposed firm power, transmission, and ancillary services rates adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and outlining procedures for public participation.

4. On June 27, 1997, a rate announcement package was sent to all SLCA/IP customers, CRSP firm transmission customers, and other interested parties announcing the publication of the June 25, 1997, FRN, and the beginning of the formal public process to adjust firm power, transmission, and ancillary services rates. The package contained (1) a letter announcing the upcoming public information and comment forums and (2) a copy of the June 25 FRN.

5. On July 14, 1997, a copy of the July 1997 ''Brochure for Proposed Rates: Salt Lake City Area Integrated Projects Firm Power, CRSP Transmission, and Ancillary Services' was mailed to all SLCA/IP firm power customers, CRSP transmission customers, and other interested parties.

6. At the public information forums held from August 1 to August 7, 1997, in Utah, Colorado, New Mexico, and Arizona, Western representatives provided detailed explanations of the proposed rates for SLCA/IP and CRSP, provided a list of unresolved issues that could affect the proposed rates, and answered questions. An information handout was provided at the forum.

7. The comment forums were held from September 16 to September 19, 1997, in the same locations as the information forums to give the public an opportunity to comment for the record. Eleven individuals commented at these forums.

8. Eight comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended on September 23, 1997. Two additional letters were received after the 90-day consultation period. All comments have been considered in the preparation of this rate order.

Comments

Written comments were received from the following organizations:

Citizens Power, Colorado
Colorado River Energy Distributors Association, Utah
Irrigation & Electrical Districts Association of Arizona, Arizona
K.R. Saline & Associates, Arizona, on behalf of:
- Chandler Heights Citrus Irrigation District
- Electrical District No. 3 of Pinal County
- Electrical District No. 4 of Pinal County
- Electrical District No. 5 of Pinal County
- Electrical District No. 6 of Pinal County
- Electrical District No. 7 of Maricopa County
- City of Safford
- San Carlos Irrigation Project
- Maricopa Water District
- Roosevelt Irrigation District
- San Tan Irrigation District

Naslund, Salt Lake City, Utah
Platte River Power Authority, Colorado
Public Service Company of Colorado (2), Colorado
Tri-State Generation and Transmission Association, Inc., Colorado
Utah Associated Municipal Power Systems, Utah

Representatives of the following organizations made oral comments:

Arizona Power Pooling Association, Arizona
Colorado River Energy Distributors Association, Utah
Irrigation & Electrical District Association, Arizona
Electrical District No. 3 of Pinal County, Arizona
K.R. Saline & Associates, Arizona
Navajo Tribal Utility Authority, Arizona
Public Service Company of Colorado, Colorado
Platte River Power Authority, Colorado
R.W. Beck, on behalf of Colorado River Energy Distributors Association, Utah
Tri-State Generation & Transmission, Inc., Colorado
Utah Municipal Power Association, Utah

Project History

The SLCA/IP consists of the CRSP, Rio Grande, and Collbran Projects. The CRSP described herein includes two CRSP participating projects which have power facilities, Dolores and Seedskadee Projects. The Rio Grande and Collbran Projects were integrated with CRSP for marketing and rate making purposes on October 1, 1987. The goals of integration were to increase marketable resources and to simplify contract and rate development and project administration by creating one rate and assuring repayment of Projects' costs. All integrated projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for rate making, known as the SLCA/IP. A detailed description of the Collbran, Rio Grande, and CRSP Projects is located in the Supporting Documentation.

Power Repayment Studies—Firm Power Rate

Power repayment studies are prepared each FY to determine if power revenues will be sufficient to repay, within the prescribed time periods, all costs assigned to the SLCA/IP power function. 43 U.S.C. 620(d) sets forth payment and repayment obligations of the CRSP. DOE Order RA 6120.2, section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation

water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects or states.

A review of the PRS indicates that the existing firm power rates under Rate Schedule SLIP–F5 must be adjusted. The provisional composite rate for firm power is 17.57 mills/kWh, a 12.9 percent decrease from the existing firm power composite rate of 20.17 mills/kWh. The provisional firm power composite rate is comprised of a capacity charge of $3.44 /kW-month and an energy charge of 8.10 mills/kWh.

CRSP Transmission Service Rate Study

A transmission service rate study was prepared to ensure that transmission service rates are based on the cost of service of the CRSP transmission system. This study includes all transmission expenses and associated offsetting revenues. Transmission service rates are charged separately to entities receiving transmission only services over the CRSP transmission system. SLCA/IP long-term firm power customers also incur the cost for transmission of their SLCA/IP power; and this expense is included in the firm power rate.

A review of the CRSP transmission service rate study indicates that the existing firm and nonfirm CRSP transmission service rates under Rates Schedules SP–FT4 and SP–NFT3, respectively, must be increased. The CRSP CSC is seeking approval of a rate formula for calculation of the firm point-to-point transmission rate, to be applied annually, and a formula for calculating the network integration transmission service rate to be applied annually. These formulas will be effective April 1, 1998, through March 31, 2003. The provisional rate for firm, point-to-point, CRSP transmission service is $2.23 per kW-month for 1998, an 18.0 percent increase from the existing firm transmission rate of $1.89 per kW-month, which became effective October 1, 1992. This rate will be charged to existing firm transmission customers and future firm point-to-point transmission customers.

The change in the firm CRSP transmission service rate is due to increases in the formula numerator. These increases are in transmission facilities' costs and in assigning all transmission costs to all users.

Also, the computation of the denominator changed. Western is basing the transmission system reserved for its existing long-term firm power customers on its maximum annual firm obligations instead of generating plant capacity to determine the portion of the denominator associated with the transmission of firm power.

The provisional rate for nonfirm CRSP transmission service is determined by the current market rate, not to exceed the current CRSP firm point-to-point transmission rate. The provisional rate is expressed in mills/kWh, and is a maximum of 3.0 mills/kWh for 1998.

The provisional rate for network integration transmission service is a formula calculation. The CRSP CSC has not calculated a rate because Western does not currently have any network integration transmission service customers on its CRSP transmission system.

Ancillary Services

Six ancillary services will be offered by CRSP; two are required to be purchased by the CRSP transmission customer. These two are (1) scheduling, system control, and dispatch service, and (2) reactive supply and voltage control service. The remaining four ancillary services—regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service—will also be offered but are subject to availability from SLCA/IP resources.

Sales of regulation and frequency response, energy imbalance, spinning reserve, and supplemental reserve services from SLCA/IP power resources are limited since Western has allocated the SLCA/IP power resources to preference entities under long-term commitments. The availability and type of ancillary service will be determined based on excess resources available at the time the service is requested, except for the two ancillary services provided in conjunction with the sale of CRSP transmission services. If Western is unable to provide these services through SLCA/IP resources, the CRSP CSC will offer to provide these services by making market purchases or obtaining these services through a control area operator and passing these costs directly to the customer, including a 10 percent administrative charge.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The costs for providing scheduling, system control, and dispatch service, and reactive supply and voltage control service are included in the appropriate provisional transmission services rates. However, the charges for reactive supply and voltage control service will be in accordance with Western's DSWR and RMR applicable tariffs when they assume control area operator responsibility for the CRSP, expected to be April 1, 1998.

Existing and Provisional Rates

A comparison of the existing and provisional firm power and transmission rates follows:

COMPARISON OF EXISTING AND PROVISIONAL SALT LAKE CITY AREA/LNTEGRATED PROJECTS FIRM POWER, COLORADO RIVER STORAGE PROJECT TRANSMISSION AND ANCILLARY SERVICES

	Existing rates	Provisional rates (effective 4/1/98)
Firm Power Service Rate Schedule (existing rate effective 12/94)	SLIP–F5	SLIP–F6.
Firm Capacity Charge ($/kW/month)	$3.83	$3.44.
Firm Energy Charge (mills/kWh)	8.90	8.10.
Composite Rate (mills/kWh)	20.17	17.57.
Firm Point-to-Point Transmission Rate Schedule (existing rate effective 10/92)	SP–FT4	SP–PTP5.
Firm Transmission Rate ($/kW-month)	$1.89	$2.23 for 1998.
Network Transmission	N/A	SP–NW1.
Nonfirm Transmission Rate Schedule (existing rate effective 8/89)	SP–NNFT3	SP–NFT4.
Nonfirm Transmission Rate	Negotiated	Same, but not to exceed the firm rate.
Ancillary Services	N/A	SP–SD1, SP–RS1, SP–EI1, SP–FR1, SP–SSR1.

Certification of Rate

Western's Acting Administrator has certified that the SLCA/IP firm power, CRSP point-to-point, network integration and nonfirm transmission, and ancillary services rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The rates have been developed in accordance with agency administrative policies and applicable laws.

SLCA/IP Firm Power Rate Discussion

The provisional rate for SLCA/IP firm power is designed to recover an annual amount of revenue requirement that includes the repayment of power investment, payment of interest, purchased power expenses, OM&R expenses, and the repayment of irrigation assistance costs, as required by law.

The existing rate for SLCA/IP firm power under Rate Schedule SLIP–F5 expires November 30, 1999. Effective April 1, 1998, Rate Schedule SLIP–F5 will be superseded by the new rates in Rate Schedule SLIP–F6. The April 1, 1998, date corresponds with the implementation of the WRP and CDP options under the Replacement Purchase Options Amendment to the SLCA/IP Firm Electric Service Contracts (Amendment).

Recently, the CRSP CSC developed the Amendment which implements the Record of Decision for the Electric Power Marketing EIS to return the Contractors' allocations back to those established in the Post-89 Marketing Plan. This action increased Western's long-term firm annual contract commitment for energy from 5,699 GWh to 6,007 GWh and peak seasonal CROD from 1,290 MW to 1,406 MW. CRSP CSC's firm power commitments to meet Reclamation project use loads also increased. This increase in units sold contributes towards a lower per unit cost.

Additionally, this Amendment provides solutions which are reflective of the operational changes and reduced generating levels that resulted from the GCD EIS Record of Decision. Based on current year hydrology coupled with the reduced generating levels, Western will at times lack sufficient hydroelectric generation to meet the full CROD commitment. The Amendment provides options for either Western or the Contractor to supply the additional resources necessary to meet the full CROD commitment, at costs borne directly by the Contractor. At the Contractor's option, Western may provide the power under the WRP program through purchases on the open market, or the Contractor may provide the power under the CDP program or a combination of the two programs. Seasonal WRP and CDP provisions are effective April 1, 1998.

Each season, a portion of the resource commitments, determined by Western, will be made available to the customer through AHP. In the past, Western purchased all necessary firming power up to the CROD and included all the associated costs in the firm power rate. Under the Amendment, Western will firm up to the AHP level, if needed, and all the associated costs will be included in the firm power rate. The customer can then use WRP and/or CDP to augment the AHP to reach its full CROD.

The Amendment provisions concerning WRP and CDP programs necessitate an incremental administrative charge for those services. Western will estimate costs for these administrative charges during the first year these programs are effective—April 1, 1998, through March 31, 1999. During this first year, Western will work in consultation with customers to develop a method for tracking actual incremental WRP and CDP administrative charges. This first year will be considered a base year, and subsequent years' charges will be based upon actual costs and streamlining experiences. Contractors will be billed monthly for their share of the costs.

The provisional rates for SLCA/IP firm power consist of a capacity rate and an energy rate. The provisional capacity rate is $3.44/kW-month, and the provisional energy rate is 8.10 mills/kWh. The provisional rates for SLCA/IP firm power will result in an overall composite rate decrease of approximately 12.9 percent on April 1, 1998, when compared to the existing SLCA/IP firm power rate in Rate Schedule SLIP–F5. The total cost to the customer will depend upon the market prices for WRP and CDP. It is expected that the Contractors' total costs of receiving its full contract entitlement will be higher in the future since they will be receiving a different service under the Amendment. The firm power rate includes the cost of AHP, transmission delivery up to the Contractor's CROD at its designated point of delivery, and ancillary services.

Many factors influenced this firm power rate adjustment. The major factors having an impact upon the provisional SLCA/IP firm power rate are summarized in the table below. Because rates are calculated to return sufficient revenues based on estimated future costs, the table compares the change in the average annual projections used in the FY 1993 Rate Order PRS (which set the rate effective December 1, 1994) with the rate setting PRS prepared for this rate adjustment.

MAJOR FACTORS AFFECTING THE SALT LAKE CITY AREA INTEGRATED PROJECTS FIRM POWER RATE AVERAGE DURING RATE SETTING PERIODS

Factors	Change in average annual revenue requirement (thousands)	Estimated rate effect (mills/kWh)
Projected O&M costs decreased	$ −11,359	−1.8
Purchased power expense projections and transmission costs increased	3,636	0.6
The Integrated Projects annual expenses have increased, mostly due to the inclusion of the Dolores Project	3,582	0.6
Interest expenses have decreased as a result of Western applying an Interest Offset to the CRSP PRS	−5,098	−0.8
Other annual expenses have decreased, mostly due to revised estimates for Capital Movable Equipment (CME) interest	−2,889	−0.5
Payments to project investments and additions have decreased [1]	−663	−0.1
The projected cost of replacements increased [1]	2,718	0.4
Annual average payments to irrigation assistance increased	4,505	0.7
Offsetting revenues increased	−1,827	−0.3

MAJOR FACTORS AFFECTING THE SALT LAKE CITY AREA INTEGRATED PROJECTS FIRM POWER RATE AVERAGE DURING RATE SETTING PERIODS—Continued

Factors	Change in average annual revenue requirement (thousands)	Estimated rate effect (mills/kWh)
The total amount of energy delivered increased	N/A	−1.4

[1] These changes occurred as an average over the rate setting periods, and as a result, the same impact is not exhibited in the 5 year comparison table below.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the SLCA/IP firm power rate through the 5-year provisional rate approval period.

SLCA/IP FIRM POWER COMPARISON OF 5-YEAR RATE PERIOD (FY 1998–FY 2002) TOTAL REVENUES AND EXPENSES

	Existing rate ($000)	Proposed rate ($000)	Difference ($000)
Revenue Requirements:			
Annual expenses:			
O&M	$233,974	$179,481	($54,493)
Purchased Power and Wheeling	69,075	41,265	(27,810)
Integrated Projects Requirements	28,612	39,648	11,036
Interest	210,639	161,534	(49,105)
Other	69,759	(7,053)	(76,812)
Total annual expenses	612,059	414,875	(197,184)
Annual principal payments:			
Original Project and Additions	104,069	187,592	83,524
Replacements	29,030	26,376	(2,654)
Irrigation	11,266	2,469	(8,797)
Total principal payments	144,365	216,437	72,073
Total Annual Revenue Requirements	756,424	631,312	(125,111)
(less Offsetting Annual Revenue)	136,603	85,197	(51,406)
Net Annual Revenue Requirements	619,821	546,115	(73,705)

Basis for Rate Development

The provisional power rate contains a composite rate of 17.57 mills/kWh, which is a decrease of 12.9 percent below the existing rate of 20.17 mills/kWh. It should be noted that although there appears to be a significant decrease from the existing firm power composite rate to the provisional firm power composite rate, the Contractor will not be receiving the same type of service as a result of the Amendment; therefore, the decrease is not as substantial as it appears.

Comments

The comments and responses regarding the firm power rate, paraphrased for brevity when they do not affect the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are (1) purchased power, (2) status of issues which were identified as outstanding in the Rate Brochure, (3) O&M costs, (4) WRP/CDP administrative charges, and (5) miscellaneous comments.

1. Purchased-Power Issues

Comment: Western needs to make it very clear that, although the rates are going down, the responsibility to purchase above AHP will be transferred to the customer.

Response: As stated in the Rate Brochure page 2–2, the total cost to the customer will depend upon the market prices for WRP and CDP. However, it is expected that the Contractor's costs of receiving its full contract entitlement will be higher in the future.

Comment: Does the firm power rate include the 400 GWh of firming purchases?

Response: Yes. The Record of Decision for the Power Marketing EIS allowed Western to return to the original Post-1989 marketing CRODs and allowed for the additional purchase of 400 GWh as mentioned in the power marketing plan. The cost associated with the approximate 400 GWh of purchases are included in the firm power rate.

Comment: Customer wants clarification as to the difference between firming purchases and firming power that is referenced in the Rate Brochure. Are they purchases that Western will be making to firm up to the AHP level, or are they purchases that will be made for WRP or CDP?

Response: In general, firming power refers to the power Western will purchase up to the AHP level. This type of purchase is included in the firm power rate.

Firming purchases above the AHP level will be made by Western for those who elect WRP up to their CROD. These firming purchases will be on a pass-through-cost basis. Contractors may also elect to purchase their own power, through CDP, above what is provided by Western.

Comment: It appears that in the table that summarizes the costs, the purchased power costs increased. Yet, most of the purchased power is going to be passed through to the customers. Please explain.

Response: The annual purchased power costs shown in Table 3 of the Rate Brochure increased because of an assumption change in the PRS. In the existing rate, contractual power sales were projected to the end of the current contract period (2004), after which it was assumed that sales equaled generation, which required no additional power purchases.

In the provisional rate, contractual power sales were projected to extend through the rate setting period (60 years). This assumption change makes the average annual purchased power costs in the provisional rate higher than for the existing rate.

This modification in assumption is supported by criteria set forth in RA 6120.2 (10)(e)(2), which allows Western to forecast revenues based on past trends of customer load growth rates.

2. Status of Outstanding Issues

Comment: Customer stated Western should not include personnel retirement costs in the firm power costs.

Response: Retirement costs were not included in this provisional rate.

Comment: In the Rate Brochure on page 2–9, it says, ''If an updated depletion schedule is available during the comment period, Western may use the revised forecasts if the changes are significant in the rate setting PRS.'' One, what are the possibilities of that and, two, how will the customers know if some revised depletion schedule is available?

Response: It is CRSP CSC's policy to use the latest official data in all PRSs. An updated depletion schedule was not provided to Western and, therefore, the rate setting PRS was not modified. When an updated schedule is provided, Western will notify firm power customers in writing that the data is available for review, and this data will be included in the annual PRS prepared by Western.

Comment: On page 2–10, Western acknowledges that, ''The financial report from Reclamation or the Secretary of Interior under the Grand Canyon Protection Act has not yet been completed.'' Does Western have any knowledge of when that report will be available?

Response: Western has not received a final report signed by the Secretary of Interior and does not know when one will be provided to Western. Western included the estimate of $14 million of costs in this rate setting PRS.

3. Operation and Maintenance Costs

Comment: Western indicated that O&M costs decreased the rate by 1.5 mills/kWh. Please explain why this decrease occurred.

Response: Western has been undergoing a streamlining process throughout the agency. This streamlining reduced annual operation and maintenance costs approximately $11 million from the existing rate setting PRS.

Comment: The fifth year of projected O&M costs displays a substantial increase from previous years. This higher cost is projected throughout the remainder of the study. Western needs to analyze this to see if it is an appropriate estimate of fifth year costs.

Response: This increase in FY 2001 is due to some non-recurring O&M costs associated with a generator rewind at Crystal Powerplant, a part of the Aspinall Unit of the CRSP. This is a one-time cost and should not be carried in the study beyond that year. For this reason, the O&M cost estimates for the fifth and future years do not include the amount for the rewind. This adjustment has been made in the rate setting PRS and decreased projected O&M by approximately $2 million annually.

4. WRP/CDP Administrative Charges

Comment: Please explain how WRP customers will be charged, and if and how CDP customers will be charged. Also, the rate schedule needs to be clarified.

Response: A customer receiving WRP or other Firming Purchases on a pass-through-cost basis will pay for its proportionate share of the costs, including administrative, associated with providing this service. CDP customers, who are using the CRSP transmission system for the delivery of their CDP, will also pay for the proportionate share of the administrative costs associated with Western providing this service.

The WRP and CDP administrative charges will consist mostly of labor hours for the CRSP CSC, DSWR, and RMR employees who are working on WRP and CDP activities and will be treated as incremental labor costs. With WRP, these tasks include market studies, contract negotiation, and scheduling. With CDP, the charge will be for scheduling and determining available transfer capacity.

In the first year the WRP/CDP options are in effect (April 1, 1998), estimated charges will be applied. During that first year, actual costs will be tracked and used as a basis for subsequent years' charges.

Comment: The final paragraph of page 3–1 of the Rate Brochure seems to contradict the understanding that purchased power costs to firm allocations are carried as an expense to be recovered in the firm power rate. CDP customers should only be charged for the administrative costs.

Response: To clarify, CDP customers will not be charged firming purchases, but will be charged an administrative charge, if applicable.

The costs of firming purchases made to meet customers' allocations above AHP are not included in the firm power rate. These costs will be proportionately passed through to customers, except those receiving only CDP. The only firming power costs included in the firm power rate are those which firm up to the AHP level and which all firm power customers will pay through the firm power rate.

Comment: Customer strongly encourages Western to quickly initiate a process to determine the appropriate cost-tracking system for WRP and CDP costs as described in Section III, WRP and CDP Charges, of the Rate Brochure.

Response: A group of customers and Western employees has been organized. A meeting was held October 16, 1997, to begin this process. Once a draft of charges is completed, it will be provided to customers for comment.

Comment: Are CDP or WRP customer specific? If Western does not incur the cost as a result of the customer, then the customer does not get charged?

Response: The assumption is, if a customer is receiving CDP, that customer is purchasing its own resource. Western will deliver this resource over its system to the customer's delivery point if it has the available transmission, and this will be handled as a separate schedule by Western's schedulers. Thus, the schedulers will spend a certain amount of time each day in scheduling and accounting for this resource. In this scenario, Western will be charging a CDP administrative charge.

If the CDP is completely off Western's system, where a customer purchased power from elsewhere and Western did not have to schedule or account for it, there will be no CDP administrative charge because no additional tasks will be performed by Western.

Any customer receiving WRP will incur an administrative charge. With WRP, Western will always be performing tasks to provide this service, and, therefore, an administrative charge will always accompany WRP service.

Comment: In Section 3–2, the statements in the beginning are regarding WRP/CDP administrative costs; it ends with a paragraph regarding pass-through costs. Is Western still referring to the administrative costs associated with these pass-through-cost purchases, or are these some other costs being referred to in this paragraph?

Response: To clarify, in Section 3–1, Western is discussing two separate charges for those Contractors who are receiving WRP, or other Firming Purchases on a pass-through-cost basis, and CDP. The first charge is for the cost of WRP or Firming Purchases on a pass-through-cost basis. The second charge is for the administrative costs Western incurs as a result of providing the service. The last paragraph is referring to the firming purchase costs that will be passed-through to those Contractors who are receiving WRP, or other Firming Purchases on a pass-through-cost basis. CDP was incorrectly included in this paragraph.

5. Miscellaneous Comments

Comment: Traditionally there has been a 50/50 split between capacity and energy. Western calculated the total revenue requirements and took half of the revenue requirement for capacity and half of the revenue requirement for energy. Is that the way Western computed it this time?

Response: The CRSP CSC has stated that half of the firm power rate is allocated to capacity and half to energy based on an assumed 58.2 percent load factor. However, the actual load factor for SLCA/IP is 49.9 percent. Using the assumed load factor, rather than the actual load factor, alters the revenue split to approximately 46-percent energy and 54-percent capacity.

Comment: The Participating Projects will be collecting too much revenue starting in FY 2021.

Response: The CRSP CSC believes this comment is in reference to the Seedskadee and Dolores Participating Projects continuing to have surplus revenues included as revenue requirements. Surplus revenues from the sale of Seedskadee and Dolores Projects' power must assist in the repayment of CRSP costs as provided in Section 5 (e) of the CRSP Act of 1956.

Comment: Western used several different interest rates in calculating CME interest for the SLCA/IP. Why were the different interest rates used?

Response: Western used the coupon rate as required by Section 5(f) of the CRSP Act for all CRSP facilities. For FY 1997, this rate is 9.012 percent. For the Collbran and Rio Grande Projects, Western used the yield rate as required under RA 6120.2, Section 11. For FY 1997, this rate is 6.875 percent.

Comment: The power allocation of Caballo Dam, part of the Rio Grande Project, was increased from 40.5 percent to 100 percent. What was the reason for this change?

Response: Western incorrectly allocated 100 percent to Caballo Dam for O&M expenses. While Caballo Dam is allocated 100 percent for investments, it is only allocated 40.45 percent for O&M costs. Therefore, Western corrected the rate setting PRS to reflect an allocation of 40.45 percent for O&M. This change had no significant impact to the firm power rate.

Comment: Customer supports Western's inclusion of updated costs allocable to power for the Bonneville Unit of the Central Utah Project and urges that costs for future rate proceedings be similarly updated.

Response: Current cost estimates were included in the rate setting PRS and are reflected in the provisional rate. As revised estimates become available, they will be included in the annual CRSP power repayment study.

Comment: In the Executive Summary, the Aid to Participating Projects, which is labeled Cumulative Federal Investment, shows a large step increase of $944 million from 2002 to 2004, and then an additional step increase of $922 million from 2006 to 2007. What are the causes of these increases, and how do these increases affect the results of the power repayment study?

Response: The increase from 2002 to 2004 of $944 million results from the estimated completion of additions to the Dolores Project in Colorado and the Southern Utah County and Heber-Francis blocks of the Bonneville Unit (Central Utah Project). The increase from 2006 to 2007 reflects the addition of the Juab-Mona-Nephi block of the Central Utah Project. These are project construction costs allocated to irrigation which are beyond the ability of the irrigators in those projects to repay. These costs, along with their corresponding States' apportionment obligations, are the responsibility of power users to repay. These noninterest bearing power repayment obligations, which total about $1.9 billion, have a rate impact of approximately 4.8 mills/kWh increase.

Comment: Customer would like to compliment Western on the rate adjustment process, specifically the issue papers.

Response: The CRSP CSC believes the issue papers were beneficial for Western and its customers to increase communication. As a result, the CRSP CSC intends to continue to use issue papers for rate processes.

Comment: There is a significant increase in project use. What accounts for those increases?

Response: The projections for project use power are updated annually by Reclamation. The reason that the projections increase in successive years is due to the requirements of the Animas-La Plata Project and the Bonneville Unit of the Central Utah Project. Other projects requiring some future increase in project use power are the Navajo Indian Irrigation Project and the Paradox Valley Salinity Control Project. However, the total projections for project use power in the provisional rate are lower than those in the existing rate.

Comment: The interest offset credit shown in the ''Miscellaneous Annual Expense'' does not match the figure in the Supporting Documentation. Also, the methodology for figuring interest offset credit does not take compounding into consideration.

Response: In the Rate Brochure, the $40 million interest offset was an estimated amount because the methodology for computing the offset had not been completed. Before the rate proposal was published, the CRSP CSC had prepared several analyses using varying methodologies (including compounding and noncompounding interest) which yielded amounts greater and less than the $40 million indicated in the Rate Brochure.

Since the publication of the Rate Brochure, Western has determined the appropriate methodology for the interest offset. Western finds it appropriate to apply the interest offset methodology retroactively and to include what the interest savings would have been if the interest offset methodology would have been implemented from the beginning (1963). For this historic adjustment, Western is working toward an appropriate interest adjustment. The exact amount of the adjustment will not be available for this rate adjustment but is expected to become available during FY 1998. The estimate for this adjustment used in the provisional rate was revised downward from $40 million to $20 million based on the methodology change.

Comment: Customer supports efforts to keep water depletion assumptions realistic.

Response: The depletions were based on estimates projected using a 5-year cost evaluation period, 1998–2002, the fifth year being held constant through 2057. Western believes that this is an equitable treatment of depletions and is consistent with other projected data.

Comment: What revenues are credited to the firm power revenue requirements?

Response: Offsetting revenues, or firm power revenue credits, are any revenues that the CRSP receives which do not result from the sales of firm power, such as revenue from wheeling or transmission of nonproject power or nonfirm power sales. The major portion of the revenue credit is from wheeling revenue.

CRSP Transmission Discussion

The provisional rates for CRSP transmission service are based on a revenue requirement that recovers (i) the CRSP transmission system investment and interest costs for facilities associated with providing transmission service, and (ii) the operation, maintenance, and replacement costs allocated to transmission service. The CRSP transmission system includes facilities owned by CRSP CSC and the transmission facilities owned by others over which the CRSP CSC has contractual control. All the costs of the CRSP transmission system, including the costs paid to others for the contractual control of their transmission lines are in the total CRSP transmission revenue requirement. These revenue requirements are offset by appropriate CRSP transmission system revenues.

The firm transmission rate is based on all CRSP transmission costs. The provisional firm transmission rate will be applied to customers who purchase transmission services. The costs of CRSP firm transmission associated with the delivery of SLCA/IP firm power are included in the firm power rate.

The costs for providing scheduling, system control, and dispatch service, and reactive supply and voltage control service are included in the appropriate provisional transmission services rates. Once Western's DSWR and RMR assume control area operator responsibility for the CRSP, expected to be April 1, 1998, the charges for reactive supply and voltage control service will be in accordance with each Region's applicable tariff.

The provisional transmission rate formulas are scheduled to go into effect April 1, 1998, to correspond with the effective date of the provisional firm power rate.

CRSP Transmission Rate

Point-to-Point

The current firm transmission rate expires March 31, 1998. The provisional rate for firm point-to-point CRSP transmission service for 1998 is $2.23 per kW-month and will result in an 18.0 percent increase from the existing rate of $1.89 per kW-month under Rate Schedule SP–FT4. The provisional rate for nonfirm CRSP transmission service is expressed in mills/kWh and will be based on market conditions, but not to exceed the firm point-to-point rate. The nonfirm transmission rate for 1998 is 3.0 mills/kWh.

Western made three significant changes in its transmission rate methodology.

1. Western is basing the transmission system reserved for its existing long-term firm power customers on its maximum annual firm obligation instead of generating plant capacity. Also, Western has reserved 130 MW for use during high hydrological conditions. The reservation of Western's transmission under certain hydrological conditions is permitted under the provisions for determination of Available Transmission Capacity which have been accepted by the regional transmission planning groups of which Western is a member. Western's interpretation of FERC Order No. 888 is that such capacity reservations for favorable hydrological conditions under these circumstances is acceptable. The sum of the maximum annual firm power obligations, which includes the 130 MW reserved for use during high hydrological conditions, is 2 MW less than the generating plant capacity amount.

2. Western annually will be recalculating the firm and nonfirm point-to-point and network integration transmission service rates to be effective April 1 based upon the proposed formulas. The rate denominator (reserved capacity) and the net annual transmisssion revenue credits will be revised each year. This rate recalculation will be done yearly by projecting for the 5 future years the revenue credits and total transmission capacity reservation and then averaging these amounts. The same average annual revenue requirement, $63.3 million, will be used for the annual recalculation of the firm, nonfirm, and network integration CRSP transmission service rates throughout the 5 years of the effective rate. Western will annually provide 30 days advance notice prior to a revised rate becoming effective.

3. Based upon review, Western now includes all transmission costs to better reflect comparability between transmission charges for firm power customers and transmission for nonpower customers. Western considers the entire transmission system, including purchase wheeling contracts, integrated, with the exception of one small transmission agreement that is purchased to serve Western's office in Montrose, Colorado. Western believes this is consistent with FERC's ruling in Order No. 888 that all transmission costs of an integrated transmission system are included. As a result, Western has allocated approximately $7.5 million of costs to transmission that had been allocated only to its firm power customers in the initial rate proposal.

The change in the CRSP firm transmission service rate is due to gross transmission revenue requirements increasing, but being offset, to some extent, by transmission revenue credits and an increase in firm wheeling reservations.

Major factors having an impact upon the provisional CRSP transmission rates are summarized in the table below. Because rates must return sufficient revenues to pay for estimated future costs, the table compares the change in the average annual projections used in the FY 1993 transmission study (which set the rate effective October 1, 1992) and the rate setting transmission study for this rate adjustment.

Major factors	Unit	Amount	Estimated rate effect ($/kW-month)
Increase in average annual revenue requirements.	$1,000	$13,125	+.51
Increase in total transmission revenue credits.	$1,000	$2,544	−.10
Increase in amount of firm transmission only service.	([1])	86,913	−.07

[1] kW-year.

Network

Network integration transmission service is a new service for CRSP. Western does not currently have any network integration transmission customers on its CRSP transmission system. Western only has available transfer capacity on isolated portions of the CRSP transmission system, and therefore it does not believe it has sufficient capability to satisfy the needs of most entities desiring network integration transmission service.

The same revenue requirement that was used in determining the provisional firm point-to-point transmission rate will also be used in determining the provisional rate for the network integration transmission service. The provisional rate formula for the monthly demand charge for network integration transmission service, if purchased, will be the product of the network customer's load ratio share times one-twelfth (1/12) of the annual transmission revenue requirement. The load ratio share will be based on the network customer's hourly load (including its designated network load not physically interconnected with Western), coincident with Western's monthly transmission system peak. Western's transmission system peak includes the sum of capacity reserved for point-to-point transmission and the SLCA/IP long-term firm power obligations. The provisional rate formula is to be effective for the period beginning April 1, 1998, through March 31, 2003.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue requirements data for the CRSP firm point-to-point transmission rate through the 5-year provisional rate approval period.

CRSP COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES (1998–2002)

	Existing rate ($000)	Provisional rate ($000)	Difference ($000)
Revenue Requirements Annual Expenses:			
Investment	$170,558	$188,550	$17,992
O&M	$80,013	$63,483	($16,530)
Replacements	$14,000	$26,716	$12,716
3rd Party Transmission Expenses	$0	$37,606	$37,606
Total Annual Expenses	$264,571	$316,355	$51,784
Less Revenue Credits			
Miscellaneous	$3,941	$1,590	($2,351)
Exchange Capacity	$8,635	$19,124	$10,489
Nonfirm Transmission	$2,130	$6,566	$4,436
Provo River Project/Ancillary	$0	$149	$149
Total Revenue Credits	$14,706	$27,429	$12,723
Total Net Annual Revenue Requirements	$249,865	$288,926	$39,061

Basis for Rate Development

The provisional firm point-to-point transmission rate for 1998 is $2.23 per kW-month, which is an 18.0 percent increase when compared to the current firm transmission rate of $1.89 per kW-month. The rate formula extends through March 31, 2003.

Comments

The comments and responses regarding the transmission rates, paraphrased for brevity when it does not affect the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are (1) applicability of transmission rate, (2) offsetting revenues, (3) total capacity calculation, and (4) miscellaneous comments.

1. Applicability of Transmission Rate

Comment: Western indicates in its Rate Brochure that the provisional transmission rates will be applied to all ''transmission only'' sales, and therefore will not be applied to the use of the transmission system to deliver firm power obligations. Customers strongly support this position.

Response: The CRSP CSC does not, at this time, intend to bill firm power customers separately for the transmission use associated with firm power deliveries since this cost is included in the firm power rate. The CRSP CSC also does not intend, at this time, to bill firm power customers separately for ancillary services associated with firm power deliveries since this cost is also included in the firm power rate.

The transmission rate denominator reflects the use of the CRSP transmission system by all parties including the CRSP CSC. Also, the transmission costs allocated to be repaid by the long-term firm power customers are calculated on the same basis as those paid by firm point-to-point transmission customers and both customer groups are allocated an appropriate share of the transmission costs. However, they are billed differently for the service. The same costs are applied whether point-to-point or firm power customers are using the CRSP transmission system.

Comment: Customer requests clarification of what ancillary services are included in the transmission rate and why a separate scheduling and dispatch charge was developed.

Response: The provisional point-to-point and network integration transmission service rates include the CRSP CSC costs for scheduling, system control, and dispatch. These rates also include the cost of reactive supply and voltage control. Once DSWR and RMR assume control area responsibility for CRSP, expected April 1, 1998, their respective tariffs for reactive supply and voltage control will apply.

A charge for short-term sales of scheduling and dispatch service was developed and placed into effect by the Acting Administrator, pursuant to Delegation Order, and will remain in effect until DSWR and RMR assume control area operator responsibility for the CRSP, expected to be April 1, 1998. This rate was developed to be applied to those utilities that schedule through CRSP's control area because their transmission system is in CRSP's control area, but they are not using CRSP's transmission facilities. However, given the short amount of time this short-term charge would be effective,

Western has decided not to implement this short-term charge.

Comment: Will the new firm point-to-point rate be applicable to all existing contracts for firm transmission?

Response: Yes. The provisional firm point-to-point transmission rates will apply to all existing and future CRSP point-to-point transmission contracts for as long as the rate is effective.

2. Offsetting revenues

Comment: In developing its transmission rate, Western did not include any revenues from ancillary services. To the extent that Western recovers more than a minor amount of revenues from ancillary services, these revenues should offset costs in developing its transmission rate. The scheduling, system control, and dispatch service rate was determined using projected schedules, but no revenues were projected in the transmission revenue credit.

Response: Western did not include revenues from ancillary services for several reasons. First, the CRSP CSC disagrees that all revenues from ancillary services should be applied to offset the transmission expenses. Rather, the only ancillary service revenues the CRSP CSC would consider applying to offset transmission expenses are from the scheduling, system control, and dispatch. Any revenues from the remaining ancillary services will be applied to offset the firm power expenses, since they are all generation related.

Secondly, the charge for short-term sales that was developed for scheduling, system control, and dispatch is only in effect until DSWR and RMR assume control area responsibility. Since the initial rate proposal, the projected control area merger date has been changed from June 1, 1998 to April 1, 1998. Therefore, the CRSP CSC does not anticipate applying a scheduling, system control, and dispatch charge, since it will no longer have its own control area April 1, 1998.

Third, the CRSP CSC projects revenue credit estimates based on the average amount of the previous 5 years. Since the CRSP CSC has not charged a separate scheduling, system control, and dispatch service during the previous 5 years, it is unable to develop a projected estimate of revenues now.

The CRSP CSC will be annually recalculating the firm point-to-point transmission rate and as part of this, revenue credits will be revised, including ancillary services. During the first 5 years, the CRSP CSC will project the scheduling, system control, and dispatch ancillary service revenues based on the average of the years of data available (e.g., 2 years of data will be summed and divided by 2). Therefore, as CRSP receives the scheduling, system control, and dispatch ancillary service revenue, they will be included and reflected in the future annual recalculations of the firm point to point transmission rate.

Comment: What are the offsetting revenues for the transmission rate?

Response: These are transmission related revenues that come into the transmission system which are not from the sale of firm transmission, such as the revenue Western receives from phase-shifting transformers and nonfirm transmission service.

Comment: The 1992–96 back-up sheet shows an average for miscellaneous revenue credit of approximately $753,000. The rate study included about $318,000.

Response: The back-up sheet was incorrect. The amount included in the transmission and firm power rate study was $318,000.

Comment: The CRSP CSC should adjust its annual formula to account for annual changes in nonfirm transmission revenue. Customer suggests that this be updated each year.

Response: Western agrees and plans to adjust its formula to account for changing revenue credits, including nonfirm transmission revenue.

Comment: Nonfirm transmission revenue credit is understated for the future. Suggest using 1996 number of $2.5 million rather than using the historical average. Using the historical average for this revenue credit assures an overrecovery of transmission revenues on a nonfirm basis.

Response: The historical data provided shows fluctuations up and down; e.g., in 1995 nonfirm wheeling revenue dropped from about $1.6 million (1994 level) to $0.8 million. For this reason, an average was used instead of the most recent year historical data. Annually, Western will be updating the 5-year rolling estimate based on previous years' revenues.

Comment: The footnote to line F of tab 20 in the Supporting Documentation states that the amount comes from the spreadsheet shown in tab 23. The data reference does not add to the numbers on tab 20.

Response: When the exchange revenue and phase shifter revenues ($2,070,467 and $1,161,000 respectively for 1998) under tab 23 are summed, they equal the amount reflected in tab 20, line F ($3,680,467 for 1998), for every year.

3. Total Capacity Calculation

Comment: Not all firm transmission reservations/requests have been included in the rate study, particularly one customer's request for 78 MW in 1999, and 27 MW between 2000–2002. The customer has received confirmation for these amounts. Furthermore, the customer has made a verbal request, for 50 MW in 1998 that has not been confirmed.

Response: The 27 MW in years 1999 through 2002 are on the Pick-Sloan transmission system, not on the CRSP transmission system and, therefore, are not included in the CRSP transmission rate study. The remaining 51 MW of the 78 MW requested in 1999 is for 4 months (June 1 through September 30). Since this is not a long-term firm arrangement, Western will include the revenues as a revenue credit once it receives the revenues.

The CRSP CSC has not confirmed the 50 MW verbal request because, as the customer was informed, the transmission availability for this particular request can not be confirmed until the first month of request is closer. If Western is able to provide transmission service to the customer, then the revenues will be accounted for as nonfirm transmission revenues once they occur, since this request is also short-term (May through December). Furthermore, this request is outside the scope of this rate adjustment process.

Comment: Customer requests a breakdown of the denominator of the firm point-to-point transmission rate. In particular, does the denominator include Salt River Project exchange agreement?

Response: The denominator includes all of Western's long-term firm obligations, which is the sum of the CROD under long-term firm power contracts, plus an amount for high hydrological conditions, plus the sum of the contracted transmission reservations. The denominator also includes the maximum amount Western might be required to provide under the agreement with Salt River Project.

Comment: The transmission rate calculation table shows 250 MW for Salt River, but the customer believes this should be 500 MW.

Response: The 500 MW is the total exchange amount. Salt River Project delivers up to 500 MW to Western at Craig, Hayden, and Four Corners collectively. In exchange, Western delivers an equal amount at Glen Canyon. The remaining Craig, Hayden, and/or Four Corners generation, which does not exchange, is wheeled for Salt River to Glen Canyon up to a maximum

of 250 MW depending upon system transfer capability. The 250 MW is the maximum that Western would be required to wheel for Salt River Project if the exchange did not work. The 500 MW that are exchanged meet part of Western's CROD commitments.

Comment: The CRSP CSC is commended for proper treatment of the Salt River Project Exchange Agreement, but the proposed treatment of the Tri-State G&T Exchange Agreement is inconsistent. The 100 MW for the Tri-State Exchange is not included in the reserve capacity, as the Salt River Exchange is, and it is dealt with as an exchange credit. The treatment of revenue from the Exchange Contracts as a revenue credit to firm transmission revenue requirement results in the other firm transmission customers essentially subsidizing the costs of these contracts.

Response: The Salt River Exchange contract was entered into on the premise that it was integral to the delivery of SLCA/IP power. The revenues from the Salt River Exchange contracts are treated as a credit to the CRSP transmission revenue requirements, and the capacity amount is included in the calculation of total reserved capacity. Therefore, Salt River Project and the firm power customers jointly share in the full cost recovery of this exchange; the transmission customers do not.

However, the Tri-State contract was not entered into for the same purpose. This Tri-State agreement was in existence prior to FERC Order No. 888 and has negotiated capacity and annual payment calculation amounts that cannot be changed unilaterally.

Western is required by law to recover all the transmission costs through its revenues. In order to treat all transmission customers equitably, all the transmission customers, including the firm power customers, will share the burden of recouping the revenue requirements.

Comment: The rate study firm transmission capacity is not consistent with the supporting documentation. The rates summary refers to the firm wheeling contracted capacity in the years 2001 and 2002 as 370,315 kW; however, the Supporting Documentation shows 371,315 kW. Also, assuming the historic growth in capacity for the Page, Arizona, reservation, there needs to be an additional 1,400 kW in that year.

Response: The appropriate number of 371,315 kW is reflected in the rate order transmission study. The Page, Arizona, transmission capacity estimates are taken from projections provided by Page to Western. Western will update the capacity projections annually when establishing the yearly firm point-to-point transmission rate.

4. Miscellaneous Comments

Comment: Customer believes that the approximately $7.5 million of third-party transmission costs should not be included in the rate formula because the transmission usage of these systems will only be available for firm power customers.

Response: Almost all of the third party transmission contracts (costing approximately $7.5 million in transmission expenses) are included in the total CRSP transmission revenue requirements except one. The $2,610 annual cost paid to the Delta-Montrose Electric Associaton is to transmit power to the CRSP Operations Center in Montrose, Colorado. The Operations Center's functions deal with both transmission and electric service. Therefore, the $2,610 is allocated to both types of customers on an investment basis, the same method the O&M costs are allocated between the two customer groups. All of the other annual costs are for transmission that can be used to deliver SLCA/IP power and the power of others to points of delivery and, therefore, are included in the total CRSP transmission costs.

Western considers the entire transmission system, including purchase wheeling contracts, integrated, and believes this is consistent with FERC's ruling in Order No. 888 that all transmission costs of an integrated transmission system are included.

Additionally, Western has received inquiries for use of available transfer capacity over these contracted paths and may, in the future, provide transmission service where capacity is available.

Comment: Western has shifted transmission revenue requirements from generation to transmission-only customers by using peak annual CRODs instead of powerplant capacity. Western has moved approximately 7 percent of the transmission revenue requirement from the generation customers on the CRSP system to the transmission-only customers on the system.

Response: Western is basing its total transmission capacity reserved for its firm power obligations on the maximum CROD Western might be required to deliver under its existing firm power contracts instead of basing it on full nameplate power plant capacity. The CRSP CSC changed its calculation methodology since this is a more reasonable and accurate reflection of how much transmission system capacity must be reserved for those firm power customers.

Using full nameplate resulted in undercollection of transmission revenue requirements by transmission users, and overcollection of revenues from firm power customers. Also, Western included 130 MW for use during high hydrological conditions in its total reserved capacity calculation. In fact, the total CRSP reserved transmission capacity, less system transmission only contracts, is 2 MW less than the nameplate generating capacity; therefore, this has resulted in no impact to the transmission rate.

Comment: The proposed transmission rate structure is a good interim step towards compliance with FERC Orders No. 888 and 889. It is hoped that the CRSP transmission system will join other systems in a common approach.

Response: Western is reviewing the possible merits of joining an Independent System Operator (ISO). Should this occur, a joint ISO transmission rate will likely be developed.

Comment: The Rate Brochure states that no network service is offered at this time. Is Western using network integration transmission service when delivering firm power?

Response: Network integration transmission service is a new service being offered under Western's OAT. The firm power is transmitted under existing contracts, not under Western's OAT. FERC's Order No. 888–A, 78 FERC ¶ 61,220, mimeo at 243–244 (1997), notes the fact that Western's customers may neither be true point-to-point or network integration transmission customers.

Comment: Is Western's point-to-point service really a flexible point-to-point, that is a point could be multiple points?

Response: For existing contracts, it will depend on the contract. For future contracts, Western intends to provide the point-to-point service consistent with FERC Orders No. 888 and 888–A and under its OAT, which was published January 6, 1998, at 63 FR 521 (1998) however, the CRSP CSC is willing to customize transmission service, should that be desired and requested by new transmission customers.

Comment: What kind of loss multipliers does Western contemplate?

Response: The CRSP CSC has not made any changes to the losses in this rate adjustment. The average system loss factor is still 5.5 percent, unless otherwise stated in existing contracts.

Comment: In connection with the OAT that is being proposed, the customer understands that the FERC is requiring unbundling of the rate. The customer has been told that the

proposed firm power rate is bundled and includes transmission to customers' points of delivery, up to the customers' CROD. Does the CRSP CSC contemplate another rate proceeding with their OAT to unbundle this rate?

Response: Western does not anticipate unbundling its firm power rate at this time. The functional unbundling requirement of FERC Order No. 888 does not apply to existing contracts. Furthermore, Western has established a separate charge for transmission, and the firm power customers are paying this same charge as part of their firm power rate.

Comment: Western should conduct a study of price elasticity and competition in considering future funding proposals.

Response: Western appreciates the comment; however, the CRSP CSC is unable to directly respond because it is outside the scope of this rate adjustment process.

Comment: Western should ensure that direct assignment substations costs are borne by the appropriate customers, and a breakdown of the total substation costs should be made available to the public in any transmission rate adjustment study. The customer is concerned that some of these substations, if not properly and directly assigned to the customer when they serve only a specific customer, be included in the rate.

Response: The CRSP CSC does not have any direct assignment facilities; all customers share the costs for the entire transmission system. In some instances, third parties use a part of CRSP CSC's facilities and CRSP receives revenues for this. These revenues are included as credits to the gross transmission revenue requirement.

Comment: Commentor believes that there should be no power marketing expense assigned to transmission. In general, the allocation percentage based on investment has some flaws in it in terms of certain overhead expenses.

Response: Western's power marketing staff supports both the transmission and generation functions as appropriate. CRSP's allocation methodology between power and transmission has historically been on the basis of investment, and CRSP believes that this continues to be an equitable and appropriate method.

Ancillary Services Discussion

Ancillary services are previously provided services now being offered separately by Western. Of the six ancillary services offered by the CRSP CSC, two are required to be purchased by the CRSP transmission user. These two are scheduling, system control, and dispatch service, and reactive supply and voltage control service. The remaining four ancillary services—regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service—will be offered. Western's use of SLCA/IP resources to provide sales of ancillary services is subject to availability. Western has allocated most of its SLCA/IP power resources to preference entities under long-term commitments. Western will determine if any of its SLCA/IP resources are available to provide the ancillary service requested at the time of the request. If Western does not have the resources available from SLCA/IP, the CRSP CSC will offer to purchase the resource from the open market or from a control area operator, and pass the cost through to the customer, including a 10 percent administrative fee.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The costs for providing scheduling, system control, and dispatch service, and reactive supply and voltage control are included in the provisional transmission services rates. Once Western's DSWR and RMR assume control area responsibility for CRSP, expected April 1, 1998, their respective reactive supply and voltage control tariffs will apply.

The provisional rates and descriptions for the six ancillary services are as follows:

PROVISIONAL ANCILLARY SERVICES RATES

Ancillary service type	Ancillary service description	Provisional rate
Scheduling, System Control, and Dispatch.	Required to schedule the movement of power through, out of, within, or into a control area.	Included in appropriate transmission rates. Nonfirm customers will be supplied under the respective control area tariffs of either RMR or DSWR once control areas merge.
Reactive Supply and Voltage Control.	Reactive power support provided from generation facilities that is necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the transmission provider.	Included in appropriate transmission rates until control areas merge. After the control areas merge, RMR and DSWR tariffs will apply accordingly.
Regulation and Frequency Response.	Necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz).	Will obtain regulation on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the effective SLCA/IP firm power capacity rate, will be charged.
Energy Imbalance	Provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a control area over a single hour.	Will obtain from control area operator and pass through the costs, with an added 10 percent administrative charge.
Spinning Reserve	Needed to serve load immediately in the event of a system contingency.	Will obtain on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the effective SLCA/IP firm power rate, will be charged.
Supplemental Reserve	Needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time.	Will obtain on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the effective SLCA/IP firm power rate, will be charged.

Comments

The comments and responses regarding ancillary service rates, paraphrased for brevity when they do not affect the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are (1) scheduling, system control, and dispatch charge, (2) energy imbalance charge and deadband, and (3) miscellaneous comments.

1. Scheduling, System Control, and Dispatch Charge

Comment: Clarification of scheduling, system control, and dispatch charges is necessary. What charges will be assessed beyond the first five schedule changes per day? Can transactions entering or leaving the control area now be under one schedule? Will there be a separate category for schedules which require hourly schedule changes?

Response: The CRSP CSC developed a short-term scheduling, system control, and dispatch charge for those entities which have transmission in the Western Area Upper Colorado control area. However, because this control area is expected to be merged with two other control areas by April 1, 1998, CRSP does not anticipate applying this short-term charge.

Once DSWR and RMR assume control area operator responsibility, then transactions entering or leaving different control areas will be assessed charges appropriately by each control area.

Comment: There is an inherent conflict that exists between the limitation of five schedule changes per day and the burden to follow a load which is imposed under the Energy Imbalance Service provisions. To avoid being charged for energy imbalance, one must make a large number of schedule changes.

Response: The CRSP CSC developed a short-term scheduling, system control, and dispatch rate which established a limitation of 5 schedule changes per day. This rate, however, will not be applied because of the timing of the control area merger. Once DSWR and RMR assume control area responsibility for CRSP, the scheduling, system control, and dispatch rate and scheduling limitation set forth in their applicable tariffs will apply.

2. Energy Imbalance Charge

The CRSP CSC received several comments regarding its proposed energy imbalance service charge. Since the rate proposal, Western has revised the projected date from June 1, 1998, to April 1, 1998, for RMR and DSWR to assume control area operator responsibility. As a result of this revised control area merger date, the CRSP CSC will not be placing a separate energy imbalance charge into effect, rather it will offer to obtain this service from a control area operator, and pass the costs through directly to the customer, with an added 10 percent administrative charge. Therefore, the CRSP CSC is not responding to any of the comments received regarding this charge.

3. Miscellaneous

Comment: Does Western expect the price for supplemental reserves to be less than spinning reserves?

Response: The CRSP CSC developed the charges assuming the same charge would apply to both services. The CRSP CSC does not anticipate having reserves available from SLCA/IP resources. If these are available, they will be priced at the firm power rate. If they are unavailable, the CRSP CSC will purchase and pass these costs through to the customer, including a 10 percent administrative charge for the cost of providing the service.

Comment: The customer strongly supports Western continuing to provide ancillary services as part of firm power services.

Response: As part of its long-term power obligations, Western will continue to provide ancillary and transmission services and include the costs in the firm power rate.

Comment: The customer wants tracking and allocation methodologies for expenses and revenues associated with ancillary services to be analyzed in detail for proper tracking and accounting for each Federal Project customer in the future. Need to identify what resources are available to provide ancillary services to those customers which are not firm power customers.

Response: The CRSP CSC plans to begin a process of determining the amount of services each customer receives and also to determine the amount of ancillary services committed. However, the CRSP CSC does not anticipate having any SLCA/IP resources available for ancillary services to offer since these resources have already been committed to the SLCA/IP firm power customers.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality regulations, 40 CFR Parts 1500–1508; and DOE NEPA regulations, 10 CFR Part 1021, Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Submission to Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 1998, Rate Schedules SLIP–F6, SP–PTP5, SP–NW1, SP–NFT4, SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis through March 31, 2003.

Dated: March 23, 1998.

Elizabeth A. Moler,

Deputy Secretary.

Rate Schedule SLIP–F6, (Supersedes Schedule SLIP–F5); Salt Lake City Area Integrated Projects; Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming

Schedule of Rates for Firm Power Service

Effective

First day of the first full billing period beginning on or after April 1, 1998, and extending through March 31, 2003, or until superseded by another rate schedule, whichever occurs earlier.

Available

In the area served by the Salt Lake City Area Integrated Projects.

Applicable

To the wholesale power customer for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $3.44 per kilowatt of billing demand.
Energy Charge: 8.10 mills per kilowatthour of use.

Billing Demand

The billing demand will be the greater of:
1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or
2. The Contract Rate of Delivery.

Billing Energy

The billing energy will be the energy measured during the month up to, but not more than the delivery obligation under the power sales contract.

Adjustment for Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor

The customer will be required to maintain a power factor at all points of measurement between 95 percent lagging and 95 percent leading.

Adjustment for Purchased Resources

Purpose of Adjustment: The Record of Decision on Western's Electric Power Marketing Environmental Impact Statement returned the Contractor's allocations to those established in the Post-1989 Marketing Plan (Plan). This Plan originally included a 400 GWh pass-through-cost purchase. However, this 400 GWh is now included in the rate as a purchased power expense, but it may not be sufficient to meet the Contractor's full contract entitlement. Therefore, additional firming purchases may be needed in order to meet the Contractor's full entitlement. Western developed a Replacement Purchase Options Amendment, effective on April 1, 1997, which provided options for either Western to replace the firming purchases on a pass-through-cost basis through Western Replacement Power (WRP) or for the Contractor to replace the firming purchases on its own through Customer Displacement Power (CDP). Those Contractors who are not receiving service under the Replacement Purchase Options Amendment will also receive additional firming on a pass-through-cost basis. This adjustment is to ensure that Western recovers the purchased power costs and any other associated costs for the firming purchases.

Adjustment for Western Replacement Power

Pursuant to the Contractor's Firm Electric Service Contract, as amended, Western will bill the Contractor for its proportionate share of the costs of Western Replacement Power within a given period and be paid for on a pass-through-cost basis. Western will include in the Contractor's monthly power bill the incremental administrative costs associated with Western Replacement Power.

Adjustment for Customer Displacement Power Administrative Charges

Western will include in the Contractor's regular monthly power bill the incremental administrative costs associated with Customer Displacement Power.

Adjustment for Contractors not currently receiving service under the Replacement Purchase Options Amendment.

When Western purchases firming resources on behalf of the Contractor, the Contractor shall be billed for its proportionate share of the costs associated with the additional firming purchase.

Rate Schedule SP–PTP5, (Supersedes Schedule SP–FT4); Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rate for Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after April 1, 1998, and extending through March 31, 2003, or until superseded by another rate schedule, whichever occurs earlier.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To firm transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service

Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Point-to-Point Rate Formula

The firm point-to-point rate is based on the net annual transmission revenue requirement averaged over a 5-year cost evaluation period (1998–2002). The total gross annual transmission revenue requirement, $63,271,015, is reduced by the currently projected 5-year average revenue credits to determine the total net annual costs to be recovered. The total net annual transmission revenue requirement to be recovered is divided by the currently projected 5-year average capacity reservation needed to meet firm power and transmission commitments in kW, plus the total network integration loads at system peak, to derive a cost/kW-month. The formula is as follows:

$63,271,015 − Total Revenue Credits=Total Net Annual Transmission Revenue Requirement÷Total Firm Capacity reservations+Network loads at system peak= Unit Cost/Year ($/kW-year)÷12

This formula will be recalculated by revising the rate denominator (reserved capacity) based on current reservations and the net annual transmission credits, and a revised rate, if needed, will be placed into effect every April 1. Western will provide notification 30 days prior to a revised rate becoming effective.

The rate for transmission service includes scheduling, system control, and dispatch. Rate Schedule SP–RS1 for reactive supply and voltage control is attached as part of this Rate Schedule and applies to firm point-to-point transmission customers.

Billing

The point-to-point transmission customer will be billed monthly by applying the resulting rate to the maximum amount of capacity reserved, payable whether utilized or not, except as otherwise provided in existing contracts.

Requirements for Reactive Power

Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may

be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustment for Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

Rate Schedule SP–NW1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rate for Network Integration Transmission Service

Effective

The first day of the first full billing period beginning on or after April 1, 1998, and extending through March 31, 2003, or until superseded by another rate schedule, whichever occurs earlier.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To firm transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service

Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Network Rate Formula

The network integration transmission service rate will be the product of the network customer's load ratio share times one twelfth (1/12) of the total net annual transmission revenue requirement. The same Net Annual Transmission Revenue Requirement is used in determining the rate for network transmission service as for point-to-point transmission service. The formula is as follows:

$63,271,015 − Total Revenue Credits=Total Net Annual Transmission Revenue Requirement÷Total Firm Capacity reservations + Network loads at system peak=Unit Cost/Year ($/kW-year)÷12

The rate for network transmission service includes scheduling, system control, and dispatch. Rate Schedule SP–RS1 will be attached as part of this Rate Schedule and apply to network transmission customers.

Requirements for Reactive Power

Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustment for Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

Rate Schedule SP-NFT4; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rate for Nonfirm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after April 1, 1998, and extending through March 31, 2003, or until superseded by another rate schedule, whichever occurs earlier.

Available

This schedule supersedes SP-NFT3 and is available for the Nonfirm Transmission Service on the Colorado River Storage Project transmission system.

Character and Conditions of Service

Transmission service on an interruptible basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract or in advance by the Western Area Power Administration (Western). Conditions for curtailment shall be determined by Western and in accordance with Western's Open Access Tariff.

Rate

The Proposed Rate for nonfirm point-to-point CRSP transmission service is a mills/kWh rate based on market conditions but never higher than the firm point-to-point rate as specified in Rate Schedule SP-FT5 or any superseding rate schedule.

Adjustments for Reactive Power

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustments for Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract. If a service contract is not available, the losses shall be specified in advance and may be included in the rates for the service.

Rate Schedule SP-SD1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rates for Scheduling, System Control, and Dispatch Ancillary Service

Effective

Beginning on April 1, 1998, and extending through March 31, 2003.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To all customers who are not using the CRSP transmission but are receiving scheduling, system control, and dispatch service.

Character of Service

Scheduling, System Control, and Dispatch—is required to schedule the movement of power through, out of, within, or into a control area.

Rate

Included in appropriate transmission rates. Once control areas consolidate, Rocky Mountain and Desert Southwest Regions' tariffs will apply to nonfirm customers accordingly.

Rate Schedule SP-RS1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rates for Reactive Supply and Voltage Control Ancillary Service

Effective

Beginning on April 1, 1998, and extending through March 31, 2003.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To all CRSP transmission customers.

Character of Service

Is reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.

Rate

Service is included in appropriate transmission rates. Once control areas merge, Rocky Mountain and Desert Southwest Regions' tariffs will apply accordingly.

Rate Schedule SP-EI1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rates for Energy Imbalance Ancillary Service

Effective

Beginning on April 1, 1998, and extending through March 31, 2003.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To all CRSP transmission customers receiving this service.

Character of Service

Provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a control area over a single hour.

Rate

Will obtain from control area operator and pass through the costs, with an added 10 percent adminstrative charge.

Rate Schedule SP–FR1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rates for Regulation and Frequency Response Ancillary Service

Effective

Beginning on April 1, 1998, and extending through March 31, 2003.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To all CRSP transmission customers receiving this service.

Character of Service

Is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz).

Rate

Will obtain regulation on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the SLCA/IP firm power capacity rate, currently in effect, will be charged.

Rate Schedule SP–SSR1; Colorado River Storage Project; Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rates for Spinning and Supplemental Reserve Ancillary Service

Effective

Beginning on April 1, 1998, and extending through March 31, 2003.

Available

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable

To all CRSP transmission customers receiving this service.

Character of Service

Spinning Reserve is defined in Schedule 6 of Western Area Power Administration's Open Access Transmission Tariff.

Supplemental Reserve is defined in Schedule 6 of Western Area Power Administration's Open Access Transmission Tariff.

Rate

Spinning Reserve will obtain on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the SLCA/IP firm power rate currently in effect will be charged.

Supplemental Reserve will obtain on the open market for the customer and pass through the costs, with an added 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the SLCA/IP firm power rate currently in effect will be charged.

[FR Doc. 98–8939 Filed 4–3–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5991–5]

Contractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency has authorized the following subcontractor to access information that has been, or will be, submitted to the EPA under section 114 of the Clean Air Act (CAA) as amended: Sanford Consulting, 105 Fallenwood Avenue, Durham, North Carolina, 27713. Some of this information may be claimed to be confidential business information (CBI) by the submitter. This subcontractor will be providing support to the EPA under contracts 68–D6–0008 and 68–D6–0010. The prime contractor on this contract is EC/R, Incorporated, 2327 Englert Drive, Suite 100, Durham, North Carolina, 27713.

DATES: Access to confidential data submitted to EPA will occur no sooner than April 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Melva Toomer, Document Control Officer, Office of Air Quality Planning and Standards (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that the EPA may provide the above mentioned subcontractor access to these materials on a need-to-know basis. Under the direction of the prime contractor, this subcontractor will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in developing Federal Air Pollution Control Regulations.

In accordance with 40 CFR 2.301(h), the EPA had determined that the above subcontractor requires access to CBI submitted to the EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contract. The subcontractor's personnel will be given access to information submitted under section 114 of the CAA. The subcontractor's personnel will be required to sign nondisclosure agreements and will receive training on appropriate security procedures before they are permitted access to CBI.

Clearnace for access to CAA CBI is scheduled to expire on September 30, 2001 under contract 68–D6–0008 and contract 68–D6–0010.

Dated: March 31, 1998.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–8963 Filed 4–3–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5991–6]

Technical Workshop on Selecting Input Distributions for Probabilistic Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a workshop on issues related to using probability distributions to represent exposure factors in probabilistic risk assessments. Experts from industry and academia as well as practitioners from state and federal agencies will convene to discuss these issues. The workshop will be open to members of the public as observers.

DATES: The meeting will begin on Tuesday, April 21, 1998, at 8:00 a.m. and end on Wednesday, April 22, 1998, at 5:00 p.m.

ADDRESSES: The meeting will be held at the EPA Region II Headquarters offices, 290 Broadway, New York, NY 10007. Eastern Research Group, Inc., an EPA contractor, will convene and facilitate the workshop. To attend the workshop as an observer, contact Eastern Research Group, Inc., Tel: (781) 674–7374. You may also obtain additional information and register by visiting the National Center for Environmental Assessment HomePage at *http://www.epa.gov/ncea/calendar.htm*. Space is limited so please register early.

FOR FURTHER INFORMATION CONTACT: For further information concerning the Workshop on Selecting Input Distributions, please contact Marian Olsen, U.S. EPA Region II, 290 Broadway, New York, NY 10007, Telephone (212) 637–4313 or Steven Knott, U.S. EPA Office of Research and Development (8601–D), 401 M St. SW, Washington, D.C. 20460, Telephone (202) 564–3359.

SUPPLEMENTARY INFORMATION: On May 15, 1997, the U.S. Environmental Protection Agency (EPA) Deputy Administrator signed the Agency's ''Policy for Use of Probabilistic Analysis in Risk Assessment.'' This policy establishes the Agency's position that ''such probabilistic analysis techniques as Monte Carlo Analysis, given adequate supporting data and credible assumptions, can be viable statistical tools for analyzing variability and uncertainty in risk assessments.'' The policy also identifies several implementation activities designed to assist Agency assessors with their review and preparation of probabilistic assessments. These activities include a commitment by the EPA Risk Assessment Forum (RAF) to organize workshops or colloquia to facilitate the development of distributions for exposure factors.

In the Summer of 1997, a technical panel, convened under the auspices of the RAF, began work on a framework for selecting input distributions for use in Monte Carlo analyses. The framework emphasized parametric methods and was organized around three fundamental activities: selecting candidate theoretical distributions, estimating the parameters of the candidate distributions, and evaluating the quality of the fit of the candidate distributions. Application of this framework to three exposure factors highlighted several issues. These issues resolve into two broad categories: issues associated with the representativeness of the data, and issues associated with using the Empirical Distribution Function (or resampling techniques) versus using a theoretical Parametric Distribution Function. These issues will be the focal point for discussions during this workshop. The goal of the Workshop is to provide a forum for expert discussions on these issues. Eastern Research Group, Inc. will take notes during these discussions and will produce a Workshop report. The information obtained through these discussions will be considered by EPA as work continues on the development of a framework and guidance for selecting input distributions for probabilistic risk assessments.

Dated: April 1, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–8962 Filed 4–3–98; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 9, 1998, from 9:00 a.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. *Report*
—Farm Credit System Building Association—Quarterly Report
C. *New Business*
—Policy Statement on FCA's Financial Institution Rating System

Dated: April 12, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–9043 Filed 4–2–98; 12:00 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Second Meeting of the Advisory Committee for the 1999/2000 World Radiocommunication Conference (WRC–99 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–99 Advisory Committee will be held on Monday, April 27, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1999 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: April 27, 1998; 9:30 a.m.—12 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–99 Advisory

Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 1999 World Radiocommunication Conference (WRC–99). In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the second meeting of the WRC–99 Advisory Committee. The WRC–99 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the first meeting is as follows:

Agenda

Second meeting of the WRC–99 Advisory Committee, Federal Communications Commission 1919 M Street, NW., Room 856, Washington, D.C. 20554

April 27, 1998; 9:30 a.m.—12 p.m.

1. Opening Remarks
2. Approval of Agenda
3. IWG Reports
4. Consideration of Consensus Views or Propoals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8931 Filed 4–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:06 a.m. on Tuesday, March 31, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director Joseph H. Neely (Appointive), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 1, 1998.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 98–9025 Filed 4–2–98; 9:41 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Korell Family Partnership, McCook, Nebraska; to acquire voting shares of AmFirst Financial Services, Inc., McCook, Nebraska, and thereby indirectly acquire State Bank, Benkelman, Nebraska, and AmFirst Bank, N.A., McCook, Nebraska.

Board of Governors of the Federal Reserve System, April 1, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8946 Filed 4–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Osceola Bancorporation, Osceola, Iowa; to acquire 100 percent of the voting shares of Huxley Bancorp, Huxley, Iowa, and thereby indirectly acquire First State Bank, Huxley, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Gilmer Bankshares, Gilmer, Texas, and First Gilmer (Delaware) Holdings, Ltd., Wilmington, Delaware; to acquire 100 percent of the voting shares of Wood County National Bank, Quitman, Texas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to acquire 100 percent of the voting shares of California State Bank, West Covina, California.

Board of Governors of the Federal Reserve System, March 31, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8855 Filed 4–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisition by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-4582) published on pages 9233 and 9234 of the issue for Tuesday February 24, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for First Midwest Bancorp, Itasca, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Midwest Bancorp, and First Midwest Acquisition Corporation, both of Itasca, Illinois; to acquire 100 percent of the voting shares of Heritage Financial Services, Inc., Tinley Park, Illinois, and thereby indirectly acquire Heritage Bank, Blue Island, Illinois, and First National Bank of Lockport, Lockport, Illinois.

In connection with this application, Applicant also has applied to acquire Heritage Trust Company, Tinley Park, Illinois, and thereby engage in performing trust company operations, pursuant to § 225.28(b)(5) of the Board's Regulation Y. First Midwest Acquisition Corporation also has applied to become a bank holding company.

Comments on this application must be received by April 9, 1998.

Board of Governors of the Federal Reserve System, March 31, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8856 Filed 4–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-8280) published on pages 15420 and 15421 of the issue for Wednesday, March 31, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Hall Properties, LP, Perry Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hall Properties, LP, Perry, Oklahoma; to acquire and additional 13.40 percent, for a total of 40 percent, of the voting shares of Perry Bancshares, Inc., Perry, Oklahoma, and thereby indirectly acquire Exchange Bank & Trust Company, Perry, Oklahoma.

Comments on this application must be received by April 24, 1998.

Board of Governors of the Federal Reserve System, April 1, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8947 Filed 4–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (edt) April 13, 1998.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 9, 1998, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 1, 1998.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 98–9009 Filed 4–1–98; 4:48 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0004]

Associated Octel Company L., et al. and Ethyl Corp; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreements

SUMMARY: The two consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics or Geoffrey Green FTC/S–2627, Washington, DC 20580. (202) 326–2821 or 326–2641.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for March 31, 1998), on the World Wide Web, at ''http://www/ftc/gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from The Associated Octel Company Ltd. (''Octel'') and its parent corporation, Great Lakes Chemical Corporation (''Great Lakes''), and from Ethyl Corporation (''Ethyl''). Octel has its principal place of business in Ellsemere Port, England. Great Lakes has its principal place of business in West Lafayette, Indiana. Ethyl has its principal place of business in Richmond, Virginia.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record.

After sixty (60) days, the Commission will again review the agreements and the comments received, and decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaint alleges that Octel, Great Lakes, and Ethyl (collectively referred to as ''respondents'') have engaged in acts and practices that have unreasonably restrained competition in the manufacture and sale of lead antiknock compounds in violation of Section 5 of the Federal Trade Commission Act. Lead antiknock compounds are gasoline additives that contain tetraethyl or tetramethyl lead, and that increase the octane rating of gasoline.

The complaint alleges that until 1994, Octel and Ethyl were the two largest manufacturers of lead antiknock compounds in the world. Between October 1993 and March 1994, respondents entered into a series of contracts, agreements, and understandings—written and unwritten—regarding the manufacturer, distribution, and sale of lead antiknock compounds. According to the complaint, among the important undertakings are the following:

(a) Ethyl agreed to cease manufacturing lead antiknock compounds.

(b) Octel agreed to supply to Ethyl each year, for re-sale, a limited volume of lead antiknock compounds at a discount price.

(c) Octel and Ethyl agreed that the maximum volume of lead antiknock compounds supplied to Ethyl each year would be a fixed portion of Octel's annual capacity to manufacture compounds, but left Octel free to reduce that capacity unilaterally.

(d) Octel and Ethyl agreed that the price of lead antiknock compounds purchased by Ethyl for re-sale to customers in the United States and certain other countries would be adjusted each year, depending upon the change in the average sale price charged by Octel to retail customers located in the United States and certain other countries, thus giving Octel the means to influence Ethyl's costs (and therefore its price) by raising its own price.

(e) Octel agreed to notify Ethyl each year of the change in the average sale price charged by Octel to retail customers located in the United States and certain other countries.

(f) Octel agreed to cease the bulk shipping of lead antiknock compounds, and to transfer to Ethyl certain ocean going vessels dedicated to transporting lead antiknock compounds.

(g) Ethyl agreed to provide to Octel all bulk shipping services required by Octel for the distribution of lead antiknock compounds.

The complaint further alleges that in March 1994, Ethyl closed its manufacturing operation in Sarnia, Canada—the company's only facility for the production of lead antiknock compounds.

Finally, the complaint alleges that the effect of respondents' concerted decision to close the Sarnia manufacturing facility, together with certain terms of respondents' supply agreement, is to increase the likelihood of coordinated interaction among sellers of lead antiknock compounds, to increase prices, and to injure consumers.

The quantity and price terms of the supply agreement are of serious concern to the Commission. As Ethyl has closed its facility for manufacturing lead antiknock compounds, the company's potential sales volume is artificially capped by the supply agreement, and is subject to manipulation by Octel. Given this arrangement, Ethyl's ability to expand its output is diminished. And if Ethyl cannot expand its output, then it has no incentive to reduce its prices.

The wholesale price term adopted by the parties (tying the Octel-to-Ethyl transfer price to changes in Octel's retail price) enhances Octel's incentive to increase its own retail prices. The reason is the Ethyl increases its payments to Octel as and to the extent that Octel increases its prices to refiners.[1]

Finally, in order to implement the price term, Octel discloses to Ethyl any changes in its average retail price. This disclosure of information may reduce uncertainty in an oligopolistic market and thus facilitate coordinated interaction.

Octel, Great Lakes, and Ethyl have signed consent agreements containing the proposed consent orders. The proposed consent orders require respondents to modify the contract under which Octel supplies lead antiknock compounds to Ethyl.[2] Octel would be obligated to provide Ethyl with whatever volumes Ethyl requires for resale to U.S. customers. The elimination of the artificial cap on Ethyl's output should enhance Ethyl's incentives to price aggressively.[3]

The proposed consent orders also require respondents to modify the price term of the supply agreement so that (i) the price of product available to Ethyl for resale in the United States is not tied to changes in Octel's retail price, and (ii) the price of product available to Ethyl for resale outside of the United States is not tied to changes in Octel's retail price in the United States. The transfer price is thus de-coupled from Octel's retail price, thereby eliminating the anticompetitive incentives discussed above.

Octel and Ethyl will negotiate a new transfer price for lead antiknock additives. If the transfer price is too high (relative to the price at which Ethyl could self-manufacture product), then prices to consumers may likewise be supra-competitive. The proposed remedy relies upon Ethyl's incentive to negotiate the lowest possible price.[4]

The proposed consent orders provide that the new transfer price adopted by the parties may not be structured such that the unit price increases if Ethyl purchases greater volumes of lead antiknock additives from Octel. The prohibited pricing mechanism, a ''volume penalty,'' would deter output expansion by Ethyl and thus restrain competition. Indeed, a volume penalty could have the same effect upon Ethyl as an artificial cap on the quantity of product available to Ethyl.[5]

The proposed consent orders also would prohibit Octel and Ethyl from disclosing to one another information regarding historical, current, or future prices for lead antiknock compounds sold to customers located in the United States.

In addition, the proposed consent orders would require respondents to provide the Commission with notice in

[1] In *American Cyanamid*, Docket No. C–3739 (May 12, 1997), the Commission determined that an incentive payment tied to higher retail prices was anticompetitive where the parties were in a purely vertical relationship: American Cyanamid made rebate payments to dealers that charged higher prices. An incentive payment between horizontal competitors, as here, is even more dangerous to competition.

[2] The Commission has determined that it is not practicable to order Ethyl to re-open its Sarnia facility.

[3] This order provision would not diminish the volume of lead antiknock compounds available to Ethyl from Octel for resale outside of the United States.

[4] Ethyl's incentive to seek a low transfer price would be compromised if the company could recoup high payments by receiving a side payment from Octel, perhaps by means of a separate transaction. In theory, the bulk transportation agreement between Octel and Ethyl offers an opportunity for such recoupment. However, as long as the fee that Octel will pay Ethyl for transportation services is regulated by the parties' contract dated March 25, 1994, there is no danger of side payments through this mechanism.

The alternative to permitting the parties to negotiate a new transfer price is to have the Commission set the transfer price. Generally, the Commission does not regulate prices.

[5] As noted above, the proposed consent orders would require respondents to eliminate the artificial cap that is included in the original Octel-Ethyl supply agreement.

advance of acquiring the assets or securities of any firm engaged in the distribution of lead antiknock compounds in the United States, or the manufacture of lead antiknock compounds anywhere in the world. The prior notice obligation would also apply to the sale of lead antiknock compounds to a competing manufacturer, as such a transaction may be used to induce the rival to exit from manufacturing.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–8920 Filed 4–3–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–11–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The Fourth National Health and Nutrition Examination Survey (NHANES IV)—(0920–0237)—Reinstatement—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. NHANES IV is planned for 1998–2004 to include 40,000 sample persons. They will receive an interview and a physical examination. A pretest of 400 people and a dress rehearsal of 555 are needed to test the sampling process, data collection procedures, computer-assisted personal interviews (including translations into Spanish), examination protocols, automated computer systems and quality control procedures. Participation in the pretest and the full survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from future NHANES can be compared to those from previous NHANES to monitor changes in the health of the U.S. population. NHANES IV will also establish a national probability sample of genetic material for future genetic testing for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The burden hour estimate in this notice is based on the request for OMB approval for the pretest, dress rehearsal and the first 2.25 years of the full survey. Total annual burden hours are 42,411.

	Annualized number of respondents	Number of responses/ respondent	Hours as minutes	Average burden/response (in hrs.)	Total burden (in hrs.)
Screener only	13467	1	10/60	0.167	2249
Scm/Fam only	710	1	26/60	0.434	308
Scm/Fam/HH only	1066	1	366/60	6.101	1604
Scrn/Fam/HH/Prim. Mec exam only (no TB)*	263	1	366/60	6.101	1604
Scrn/Fam/HH/Prim. Mec+TB read at Mec*	2366	1	436/60	7.268	17193
Scrn/Fam/HH/Prim. Mec+TB read at home*	2628	1	371/60	6.184	16254
Full replicate exam at Mec & travel	263	1	300/60	5.000	1314
Replicate dietary recall only (5%) & travel	263	1	105/60	1.750	460
Additional dietary recall option (extra 15%)	789	1	105/60	1.750	1380
Scrn/Fam/HH/Home exam (no TB)	7	1	116/60	1.931	14
Scrn/Fam/HH/Home exam (TB read at home)	64	1	161/60	2.681	171
Telephone followup of elderly-option	1165	1	15/60	0.250	291

*NOTE: Burden hours per response for *full* participation = 6.6 hrs. including travel time, are based on these three categories only. It would be misleading to tell respondents what the burden is for full participation if other categories were included which would reduce the average burden hours per respondent, such as the 10-minute screener-only or home exam.

Scrn = Screener questionnaire
Fam = Family questionnaire
HH = Household questionnaire
Prim.Mec = Primary Mec exam
TB = Tuberculosis skin test reading.

2. Sentinel Surveillance for Chronic Liver Disease—New—A questionnaire has been designed to collect information for the Sentinel Surveillance for Chronic Liver Disease project. The purpose of the project is to determine the incidence

and period prevalence of physician-diagnosed chronic liver disease in a defined geographic area, the contribution of chronic viral hepatitis to the burden of disease, and the influence of etiologic agents(s) and other factors on mortality, and to monitor the incidence of and mortality from chronic lever disease over time. The information gathered will be analyzed, in conjunction with data collected from other sources, to address these questions. The results of the project will assist the Hepatitis Branch, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, in accomplishing the part of its mission related to preparing recommendations for the prevention and control of all types of viral hepatitis and their sequellae. In order to focus prevention efforts and resource allocation, a representative view of the overall burden of chronic liver disease, its natural history, and the relative contribution of viral hepatitis is needed. Total annual burden hours are 150.

Number of respond-ents	Number of re-sponses/ respond-ent	Average burden/ response (in hrs.)	Total burden (in hrs.)
300	1	0.5	150

3. Foreign Quarantine Regulations—(0920–0134)—Reinstatement—Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and the existing regulations governing quarantine activities (42 CFR Part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public health. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health importance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting, as well as a minimum of interference with trade and travel.

Respondents would include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine would dictate which forms are completed by whom. Thus, the ''respondents'' portion of the information below is replaced by the requisite form title. Total annual burden hours are 122.

Citation	Form No.	Number of respondents	Number of responses/ respondent	Total No. of responses	Burden/re-sponse	Total burden
Reporting:						
71.21		1450	1	1450	0.016	24
71.33(c)		10	1	10	0.5	5
71.35		6	1	6	0.05	0.3
71.51(b)(3)		5	1	5	0.05	0.3
71.51(d)	CDC 75.37	350	1	350	0.166	58.3
71.52(d)		10	1	10	0.5	5.0
71.53(d)	CDC 75.10A	40	1	40	0.166	6.6
Total Reporting		1871		1871		99.2
Recordkeeping 71.53(e)		90	1	90	0.25	22.5
Total Recordkeeping		90		90		22.5

Dated: March 31, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8907 Filed 4–3–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: First Annual Conference on Genetics and Public Health: Translating Advances in Human Genetics into Disease Prevention and Health Promotion.

Times and Dates: 8:30 a.m.–5 p.m., May 13, 1998; 8:30 a.m.–5 p.m., May 14, 1998; 8:30 a.m.–3 p.m., May 15, 1998.

Place: Holiday Inn Atlanta-Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

Status: Open to the public limited only by the space available. The meeting room accommodates approximately 600 people.

Purpose: The purpose of this meeting is to review public health opportunities and challenges in the use of genetic information and technologies that are rapidly becoming available through advances in human genetics research, and provide a forum for exchanging information and ideas among national and state public health agencies. The two major themes will be (1) establish awareness about the scope and process for integrating advances in human genetics into public health programs, and (2) strengthen partnerships in disease prevention and health promotion efforts. Participants will receive current information that is relevant to public health strategies and policies related to genetics.

Matters to be Discussed: The program will provide an overview of the developments in human genetics and the ethical, legal, and social issues associated with the use of genetic information, with particular emphasis on the major issues and priorities relevant to public health. Researchers, bioethicists, consumers, and industry speakers will join speakers from Federal and State agencies and national organizations to develop an understanding about the partnerships required to prevent inappropriate use of genetic testing and to develop epidemiologic methods for assessing the impact of gene-environment interactions

on the burden of disease, disability and death in various populations.

Contact Person for More Information: Linda Mitchell or Timothy G. Baker, Office of Genetics and Disease Prevention, NCEH, CDC, 2858 Woodcock Boulevard, M/S K–28, Atlanta, Georgia 30341, e-mail address: genetics@cdc.gov, telephone 770/488–3235, fax 770/488–3236.

Dated: March 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8906 Filed 4–3–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director, Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 8 a.m.–5:15 p.m., April 14, 1998; 8 a.m.–3:30 p.m., April 15, 1998.

Place: The Georgian Terrace, 659 Peachtree Street, Atlanta, Georgia 30308, telephone 404/897–1991.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be Discussed: Agenda items include: Setting priorities for the assessment of topics to be included in the Guide; report by the Methods Work Group; review and discussion of the draft chapter on Vaccine Preventable Diseases; discussions on cost effectiveness and plans for field testing; updates by the Tobacco Chapter Development Team, the Physical Activity Chapter Development Team, and the Violence and Abusive Behavior Chapter Development Team; evaluating the effectiveness of compound interventions; and plans for dissemination of the Guide.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, GCPS Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on April 7, 1998.

Dated: March 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8905 Filed 4–3–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Reduction of the Mid-Continent Lesser Snow Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice announces the U.S. Fish and Wildlife Service's (hereinafter Service) intent to review aspects of the migratory bird regulations pertaining to the mid-continent lesser snow goose (MCLSG) population. The Service intends for this review to lead to proposed changes in the migratory bird regulations that would result in reducing the MCLSG population from over 3 million birds to a more sustainable population of approximately 1.5 million birds over the next few years. The reduction appears necessary to reverse the damage by these geese on the Arctic ecosystem which also provides important nesting habitat for many other species of migratory birds, some of which are species of management concern. Population reduction will also decrease the likelihood of avian disease outbreaks, such as avian cholera, that sometimes are associated with extremely high concentrations of waterfowl. The Service has attempted to curb the population growth of MCLSG through habitat management, expansion and liberalization of existing seasons, and increases in bag and possession limits. However, the population continues to grow and the geese continue to rapidly degrade their breeding habitats. Proposed regulatory measures, along with possible changes in the Service's habitat management strategies for MCLSG, may be the first of several phases needed to reduce the MCLSG population. Any subsequent proposals will be noticed in the **Federal Register** and will be subject to compliance with the National Environmental Policy Act, as appropriate. As part of the first phase, the Service will prepare an Environmental Assessment for public review to evaluate migratory bird regulatory alternatives for reducing the MCLSG population. The Service invites public comment and suggestions on possible options.

DATES: Written comments are requested by June 5, 1998.

ADDRESSES: The public may submit written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634__ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

''Migratory Birds'' are defined in 50 CFR 10.12 as meaning any bird, irrespective of its origin in the wild or in captivity, which belongs to the species listed in 10.13, for the purposes of protection under the Migratory Bird Treaty Act (Act) (16 U.S.C. 703–712). Snow geese (*Anser caerulescens*) are among the species listed.

Mid-continent lesser snow geese (MCLSG) breed in the arctic and subarctic regions of Canada, specifically along the west coast of Hudson and James Bays and the southern portions of Baffin and South Hampton Islands. Beginning in late August, they migrate southward over the Canadian boreal forests and along the Central and western Mississippi flyways to their wintering grounds spanning across Texas, Louisiana, Arkansas, Oklahoma, Mississippi, and New Mexico and into the northern States of Mexico. During migration, these geese stage at sites along the Central and Mississippi flyways such as the Rainwater Basin Wetland Management District in Nebraska and De Soto National Wildlife Refuge on the Iowa-Nebraska border.

The MCLSG population has increased in the last 30 years from an estimated 900,000 birds in 1969 to over 3 million birds in 1996 and the population continues to grow at an annual rate of 5 percent (Abraham et al. 1996). Due to this high growth rate, virtually unlimited food resources in the lower 48 United States and prairie Canada, and a decline in overall mortality in the last 30 years, the MCLSG population has become a threat to itself and to other migratory bird species. MCLSG are destroying arctic and subarctic breeding

habitats used by many other species to the point of desertification, soil salinization, and depletion of vegetative communities (Abraham and Jefferies 1997). The Service believes that the MCLSG population exceeds sustainable levels for their arctic and subarctic breeding habitats, and the population must be reduced to approximately 1.5 million birds to bring the population to within long-term management objective levels (Central/Mississippi Flyway Councils 1982). The Service is also concerned that avian cholera, a highly contagious and deadly disease, could be transmitted to other migratory birds that stage with large concentrations of MCLSG during spring and fall migration.

The Service has attempted to curb the population growth of MCLSG through habitat management, expansion and liberalization of existing seasons, and increases in bag and possession limits, however, the population continues to grow and the geese continue to rapidly degrade their breeding habitats. Over the last year, the Service has consulted with various scientific and conservation organizations in the United States and Canada and has worked in coordination with the Canadian Wildlife Service to bring all available scientific information regarding MCLSG to decision makers.

Under the Act, the Secretary of the Interior has the responsibility for setting appropriate regulations for the take of migratory birds, with due regard for maintaining such populations in a healthy state and at satisfactory levels. As a first step in determining whether and how to reduce the MCLSG population to healthy and sustainable levels, the Service will examine various migratory bird regulatory alternatives and their impacts in an Environmental Assessment, a draft of which will be made available for public review.

Along with the Service's review of regulatory alternatives, the Service will develop habitat management strategies to contribute to a reduction in the MCLSG population. When developed, any proposals will be subject to compliance with the National Environmental Policy Act, as appropriate.

Literature Cited

Abraham, K.F., and R.L. Jefferies. 1997. High goose populations: causes, impacts, and implications. Pages 7–72 in B.D.J. Batt (editor). Arctic Ecosystems in Peril: Report of the Arctic Goose Habitat Working Group. Arctic Goose Joint Venture Special Publication. U.S. Fish and Wildlife Service, Washington, D.C. and Canadian Wildlife Service, Ottawa, Ontario.

Abraham, K.F., R.L. Jefferies, R.F. Rockwell, and C.D. MacInnes. 1996. Why are there so many white geese in North America? Pages 79–92 in J. Ratti (editor). Proceedings of the 7th International Waterfowl Symposium. Ducks Unlimited, Memphis, Tennessee.

Central and Mississippi Flyway Councils. 1982. Management guidelines for mid-continent snow geese in Wildfowl Management Guidelines. 22 pages.

Dated: March 26, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–8553 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62050]

Intent To Prepare a Planning Amendment to the Sonoma-Gerlach Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment.

SUMMARY: The following described land has been proposed for direct sale under the authority of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719) to the Pershing County Fair and Recreation Board:

Mount Diablo Meridian, Nevada

T. 27 N., R. 31 E.,
Sec. 7: E½SE¼NE¼, NE¼SW¼SE¼, S½SW¼SE¼, E½SE¼;
Sec. 8: SW¼NW¼, W½SW¼;
Sec. 18: N½NE¼, E½NE¼NW¼.

The land has not been specifically identified for disposal under the authority of the Federal Land Policy and Management Act, and the proposed plan amendment/environmental assessment would identify the subject lands for disposal under the authority of the subject Act.

SUPPLEMENTARY INFORMATION: The lands are currently under lease to the Pershing County Fair and Recreation Board under the auspices of the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 *et seq.*), for a golf course.

The Fair and Recreation Board desires to purchase the lands in order to provide more flexibility in procuring financing and in management of the proposed golf course.

DATES AND ADDRESS: For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed plan amendment to: Ron Wenker, District Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, at the above Winnemucca Field Office address or telephone (702) 623–1500.

Dated: March 26, 1998.

Colin P. Christensen,

Acting District Manager, Winnemucca, Nevada.

[FR Doc. 98–8861 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–10]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management, Winnemucca District, intends to develop an Activity Plan/Land Use Plan amendment for the Back Rock Desert located in the northwest portion of the district. The purpose of the plan and amendment is to better manage the resources and increasing level of activities occurring on the desert. Currently the Black Rock region reflects very few man-made developments and contains pristine sections of the Applegate/Lassen National Historic Trail. Plan goals include [1] Managing the varied resources while providing for a wide range of dispersed recreational activities and opportunities in a prudent manner; [2] Providing economic opportunities and other human values within a sustainable, healthy ecosystem. Competitive events and commercial uses of the desert have increased tremendously since the original Management Framework Plan was completed in 1982.

During July, 1997, five public scoping meetings were held to gather public input as to their concerns and suggestions for the Black Rock Desert. Input gathered from these meetings will be used to develop the objectives for the plan and to formulate the alternatives for the Environmental Impact Statement leading to the amendment of the Land Use Plan.

DATES: A public comment period on the forthcoming Draft Plan Amendment will be announced in the spring of 1998.

ADDRESSES: Written comments should be addressed to: Ron Wenker, District Manager, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Mike Bilbo, Recreation Specialist, Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (702) 623–1500.

Dated: March 23, 1998.

Ron Wenker,

District Manager.

[FR Doc. 98–8866 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–5410–A150; AZA 29818]

Application for Conveyance of Federally-Owned Mineral Interests, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application for conveyance of federally-owned mineral interests has been filed under the provisions of 43 CFR 2720 for the following-described lands:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 1 E.,
Sec. 19, lot 2;
Sec. 29, N½N½;
Sec. 30, N½NE¼, NE¼NW¼.
Containing 318.16 acres.

Publication of this notice in the **Federal Register** segregates the mineral interests owned by the United States in the lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate upon issuance of a conveyance document for the mineral interests, rejection of the application, or two years from the date of this publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Laura Wood, (602) 417–9360, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004–2203.

Dated: March 23, 1998.

Mary Jo Yoas,

Supervisor, Lands and Minerals Operations.

[FR Doc. 98–8862 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62289]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-competitive sale of public lands in Clark County, NV.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures at not less than fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act (Pub. L. 94–579).

Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,
Sec. 24, W½NW¼NW¼NW¼,
W½SW¼NW¼NW¼,
W½NW¼SW¼NW¼,
W½SW¼SW¼NW¼,
W½NW¼NW¼SW¼,
W½SW¼NW¼SW¼,
W½NW¼SW¼SW¼,
NW¼SW¼SW¼SW¼.
Containing 37 acres, more or less.

The parcel is being offered as a non-competitive direct sale to Las Vegas Motor Speedway for a racing facility. The land is not required for any federal purpose. The sale is consistent with current Bureau planning for this area and would be in the public interest. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Those rights for highway purposes granted to Nevada Department of Transportation by permit no. Nev-057852 under the Act of September 27, 1958 [23 U.S.C. 317(a)].

2. Those rights for road purposes which have been granted to the Las Vegas Motor Speedway by permit no. N–60255 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed sale to the District Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for disposal. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a racing facility. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for sale until after the classification becomes effective.

Dated: March 18, 1998.

Adrian A. Garcia,

Acting Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. 98–8867 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–068–06–1610–00]

California Desert District, Barstow Field Office, Notice of Intent To Initiate Amendment to the California Desert Conservation Area Plan, Multiplie-Use Class Changes and Boundary Adjustments to Stoddard Valley and Johnson Valley off Highway Vehicle Areas, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to initiate plan amendment

SUMMARY: Pursuant to the regulations at 43 CFR 1610.2(c) and 1610.3-1(d) implementing the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), amendments are proposed to adjust the boundaries of the Stoddard Valley and Johnson Valley Off-Highway Vehicle (OHV) Areas, change existing ''multiple-use classifications'' (MUC) in the adjusted areas, and change vehicle use designations in the affected areas.

The proposed amendments to adjust boundaries and change MUC designations and vehicle use designations are documented as specific management actions in the approved management plans for these OHV areas. In the Final Stoddard Valley OHV Area Management Plan (September 1993), Management Action (2) under Land Use is to ''adjust portions of the OHV Area boundary''; and Management Action (3) under Land Use is to ''identify public land within the planning area to be used as an exchange base with which to acquire private land located within the Open Area, and through amendment to the CDCA Plan change those lands from MUC Moderate or Intensive to Unclassified''. In the Final Johnson Valley OHV Area Management Plan (August 1992), Management Action (1) under Land Classification and Acquisition is to ''adjust the northern area boundary and propose an amendment to change approximately 600 acres of public lands from MUC Moderate and vehicle use designation Limited to MUC Intensive and vehicle use designation Open''.

The proposed amendments affect an estimated 10,900 acres of public lands in Stoddard Valley and an estimated 750 acres of public lands in Johnson Valley. The following specific amendments are proposed, consistent with the decisions in the respective management plans:

Stoddard Valley OHV Area

- Change approximately 5,890 acres in portions of sections 4, 5 and 6, T. 6 N., R. 2 W., SBM; portions of sections 2 and 3, T. 6 N., R. 3 W., SBM; portions of sections 19, 20, 30, 31 and 32, T. 7 N., R. 2 W, SBM; and portions of sections 20, 26, 27, 28, 32, 34 and 35, T. 7 N., R. 3 W., SBM from MUC ''Moderate'' to ''Unclassified''.
- Change approximately 1,360 acres in portions of sections 3 and 4, T. 8 N., R. 2 W., SBM; a portion of section 19, T. 9 N., R. 1 W., SBM; and portions of sections 15, 22, 23 and 24, T. 9 N., R. 2 W., SBM from MUC ''Intensive'' to ''Unclassified''.
- Change approximately 1,040 acres in portions of sections 9 and 17, T. 7 N., R. 2 W., SBM from MUC ''Moderate'' to ''Intensive''.
- Change approximately 1,470 acres in portions of sections 4 and 5, T. 7 N., R. 1 W., SBM; and portions of sections 10 and 11, T. 7 N., R. 2 W., SBM from MUC ''Limited'' to ''Intensive''.
- Change approximately 330 acres in a portion of section 18, T. 7 N., R. 1 W., SBM; and a portion of section 13, T. 7 N., R. 2 W., SBM from MUC ''Intensive'' to ''Limited''.

Johnson Valley OHV Area

- Change approximately 750 acres in sections 13, 14 and 15, T. 6 N., R. 3 E., SBM and in section 18, T. 6 N., R. 4 E., SBM from MUC ''Moderate'' to ''Intensive''.

When adopted, the proposed amendments would result in the following net MUC changes:

Stoddard Valley OHV Area Planning Area:

MUC Intensive Increases by 820 Acres
MUC Moderate Decreases by 6,930 Acres
MUC Limited Decreases by 1,140 Acres
Unclassified Lands Increases by 7,250 Acres

Johnson Valley OHV Planning Area:

MUC Intensive Increases by 750 Acres
MUC Moderate Decreases by 750 Acres

For both OHV planning areas, vehicle use designations would change to ''open'' in new MUC Intensive areas. For the Stoddard Valley OHV planning area, vehicle use designations would change to ''limited'' in new MUC Limited areas and in new Unclassified areas.

The management plans for these OHV areas recognize that existing boundary configurations, in specific areas, inhibit management efforts to resolve problems associated with impact to private properties. Current MUC designations, in specific areas, also do not support efforts to acquire private land inholdings within the OHV areas. The proposed MUC changes in Stoddard Valley would dedicate specific public lands outside of the open area boundary as an ''exchange base'' to facilitate the acquisition of private parcels within the open area. The planned adjustments to open area boundaries, MUC changes and vehicle designations would be consistent with actual OHV use in these areas.

Environmental documentation of impacts, including these proposed amendments, was completed for the management plans for the Stoddard Valley and Johnson Valley OHV Areas. Since preparation of those environmental assessments, critical habitat was designated for the threatened desert tortoise in the region. The proposed amendments do not affect any designated critical habitat.

Information on the proposed amendments, including detailed maps of the affected areas, is available at the Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311 Attn: David Frink (760) 252–6042.

Written comments on the proposed amendments must be postmarked no later than thirty (30) days from the date of this publication in the **Federal Register**. All written comments must be sent to the Barstow Field Office at the above address. Comments, including the names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday except holidays). Individual respondents may request confidentiality. If you wish to withhold your name and street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 23, 1998.

Tim Read,

Barstow Field Manager.

[FR Doc. 98–8860 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–46; GP8–0104; OR–54142]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,706.84 acres of public lands and approximately 156.83 acres of non-Federal land, to protect the natural and recreational values of the Coos Bay North Spit Special Recreation Management Area. This notice closes the public lands for up to 2 years from location and entry from the mining laws. The public lands will remain open to the mineral leasing laws. Upon acquisition, the non-Federal lands will be opened to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by July 6, 1998.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

SUPPLEMENTARY INFORMATION: On March 13, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from entry or location under the United States mining laws (30 U.S.C. Ch. 2 (1994)), subject to valid existing rights:

Willamette Meridian

Public Lands

T. 25 S., R. 13 W.,
Sec. 4, N½NW¼;
Sec. 5, fractional NW¼NW¼;
Sec. 6, lot 3, lots 5 to 9, inclusive, and SE¼NE¼;
Sec. 7, lots 6 and 8, and lots 10 to 19, inclusive;
Sec. 18, lots 7 and 8, E½NW¼, fractional W½NW¼, and fractional NW¼SW¼.
T. 25 S., R. 14 W.,
Sec. 12, lot 1;
Sec. 13, lots 1 to 4, inclusive, and E½SE¼;
Sec. 23, lot 1;
Sec. 24, lots 6 to 13, inclusive, W½NE¼, and NE¼SW¼;
Sec. 25, lot 3 and lot 1 including all of the tideland lying east of, fronting, and abutting upon;
Sec. 26, lots 8, 9, and 10.

The areas described aggregate approximately 1,706.84 acres in Coos County.

Non-Federal Land

T. 25 S., R. 13 W.,
Sec. 8, lot 2;
Sec. 18, lots 3 and 4, and NE¼SW¼;
Sec. 19, lot 4.
T. 25 S., R. 14 W.,
Sec. 24, lot 4.

Along with any accretion to the above listed lands. The areas described aggregate approximately 156.83 acres in Coos County.

The purpose of the proposed withdrawal is to protect the unique natural and recreational values and unique coastal barrier reef as to the lands within the Coos Bay North Spit Special Recreation Management Area.

For a period of 91 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed action. All interested parties who desire a public meeting for the purpose of being heard on the proposed action must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, cooperative agreements, or discretionary land use authorizations, upon approval of the authorized officer of the Bureau of Land Management.

Dated: March 30, 1998.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 98–8859 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget, Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service; Allegheny Portage Railroad National Historic Site, Colonial National Historical Park, Everglades National Park, Frederick Douglass National Historic Site, Glen Canyon National Recreation Area, Golden Gate National Recreation Area, Grand Canyon National Park, Independence National Historical Park, Mesa Verde National Park, Sitka National Historical Park, Sleeping Bear Dunes National Lakeshore, Yellowstone National Park, Yosemite National Park.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service and 13 units of the National Park System (Allegheny Portage Railroad National Historic Site, Colonial National Historical Park, Everglades National Park, Frederick Douglass National Historic Site, Glen Canyon National Recreation Area, Golden Gate National Recreation Area, Grand Canyon National Park, Independence National Historical Park, Mesa Verde National Park, Sitka National Historical Park, Sleeping Bear Dunes National Lakeshore, Yellowstone National Park, Yosemite National Park) propose to conduct visitor surveys to assess visitor reactions to new, demonstration visitor fee programs. The results will be used by the National Park Service, Department of the Interior, and the Congress to evaluate the trial fee programs. A Paperwork Reduction Act submission that includes the proposed questionnaire for these surveys has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service invites comments on the proposed information collection request (ICR). Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The purpose of the ICR is to obtain in 13 national park units information about visitors and their reactions to types of new visitor fee programs being conducted on a trial basis in many units of the National Park System of the United States. The 13 national park units will represent a cross section of the parks in the National Park System. Results of this survey will be used by the National Park Service, the Department of the Interior, and the Congress to evaluate the trial fee programs.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance for this ICR.

DATES: Public comments will be accepted May 6, 1998.

Send Comments to: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503; and also to: John W. Duffield, Ph.D., Department of Economics, University of Montana, Missoula, MT 59812.

FOR FURTHER INFORMATION OF A COPY OF THE ICR SUBMITTED TO OMB, CONTACT: John Duffield, 406 – 728 – 9510.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the National Park Service Fee Demonstration Program.

Bureau Form Number: None.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information about visitors and their reactions to new visitor fee programs being conducted on a trial basis in many units of the National Park System of the United States. The results of this 13 national park unit survey will be used by the National Park Service, the Department of the Interior, and the Congress to evaluate the trial fee programs.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to react to fees and aspects of park management at the parks they are visiting. The intrusion on visitors is minimized by contacting them only once during their visit to the park.

Description of Respondents: Samples from each of the 13 parks of the individuals who visit that park.

Estimated Average Number of Respondents: 4,200 total (300 at each of 10 parks, 400 at each of the remaining 3 parks).

Frequency of Response: One time per respondent.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours per Response: 12 minutes.

Estimated Annual Reporting Burden: The total for all parks is estimated to be 840 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–8912 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Continue a Gift Shop Operation at the Marine Mammal Center Within Golden Gate National Recreation Area

SUMMARY: The National Park Service intends to continue the gift shop operation to the public visiting at the Marine Mammal Center within Golden Gate National Recreation Area. All earnings from the sale of items at the gift shop go directly to the support of emergency care of sick and injured sea life. This concession operation operates in conjunction with a Cooperative Agreement. The concession operation can not operate independently from the Cooperative Agreement and the Cooperative Agreement has not expired. It is the intent of the National Park Service to continue this type of operation which is self perpetuating and provides the needed funds for care and treatment of marine mammals. The visitor service operation will continue for four (4) years and eleven (11) months under the concession authorization. The existing concessioner which has operated satisfactorily under the existing permit and has a right of preference in renewal pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. *et seq.*) and 36 CFR 51.5.

SUPPLEMENTARY INFORMATION: Inquires may be directed to Mr. Mac Foreman, Office of Concession Program Management at (415) 427–1368.

Dated: March 20, 1998.

Martha K. Leicester,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–8913 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of the Delta Region Preservation Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at the following place and time.

DATES: Wednesday, April 15, 1998 at 7 p.m.

ADDRESSES: The meeting will be held at the University of New Orleans, Student Union, at the Lakefront Campus in New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130–1142, telephone (504) 589–3882, extension 108.

SUPPLEMENTARY INFORMATION: The Delta Region Preservation Commission was established pursuant to Section 907 of Pub. L. 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the region.

The matters to be discussed at this meeting include:

- Old Business.
- New Business.
- General Park Update.

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 matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the headquarters office of Jean Lafitte National Historical Park and Preserve.

Dated: March 23, 1998.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 98–8911 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Appalachian National Scenic Trail; Notice of Realty Action

AGENCY: National Park Service; Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces a proposed exchange of federally-owned lands for privately-owned lands located near Elm Road in the Village of Greenwood Lake, Orange County, New York. The properties are adjacent to the Village's Department of Public Works Facility.

I. The following described Federally-owned land which was acquired by the National Park Service, has been determined to be suitable for disposal by exchange. The authority for this exchange is Section 5(b) of the Land and Water Conservation Fund Act Amendments in Public Law 90–401, approved July 15, 1968, and Section 7(f) of the National Trails System Act, Public Law 90–543, as amended.

The selected Federal land is within the boundaries of the Appalachian National Scenic Trail. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

Fee ownership of the following Federally-owned property is to be exchanged: Tract 285–44, which is occupied by a portion of a water tank owned by the Village of Greenwood Lake, is a 4.66 acre portion of the land acquired by the United States of America by deed recorded in Deed Book 2134 on Page 710 at the Orange County Clerk's Office.

Conveyance of the land by the United States will be done by a Quitclaim Deed and will include a restriction which limits the height of any structure on the property.

II. In exchange for the land described in Paragraph I above, the United States of America will acquire a 16.93 acre portion of a parcel of land currently owned by the Village of Greenwood Lake lying within the boundaries of the Appalachian National Scenic Trail. There are no leases that affect the property, but it is subject to a co-operative agreement between the Village and the United States for limited trail purposes. Both the surface and mineral estates are to be exchanged. All right title and interest is to be conveyed by the United States in exchange for the conveyance of all right, title and interest of the Village of Greenwood Lake, and this land will be administered by the National Park Service as a part of the Appalachian National Scenic Trail upon completion of the exchange. This exchange of real property, will provide permanent protection for the Appalachian Trail and will allow the Village to own the land under its existing water tank which stores public drinking water.

The land to be acquired by the United States of America is described as follows: Tract 285–42 being a 16.93 acre portion the land acquired by the Village of Greenwood Lake by Orange County Deed Book 759, Page 518. Conveyance of the fee simple title, will be done by a General Warranty Deed.

The value of the properties exchanged shall be determined by a current fair market value appraisal and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require.

Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan and cultural reports, are available at the Appalachian Trail Land Acquisition Field Office, at the address listed below:

For a period of 45 days from the date of this notice, interested parties may submit written comments to the below address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Chief, Acquisition Division, National Park Service, AT/LAFO, PO Box 908, Martinsburg, WV 25402, 304–263–4943.

Dated: March 12, 1988.

Pamela Underhill,

Park Manager, Appalachian National Scenic Trail.

[FR Doc. 98–8910 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR Part 764; and Special permanent program performance standards—operations in alluvial valley floors, 30 CFR Part 822.

DATES: Comments on the proposed information collection must be received by June 5, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 764 and 822.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden on respondents. OSM will request a 3-year term of approval for these information collection activities.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR Part 764.

OMB Control Number: 1029–0030.

Summary: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: The 5 individuals, groups or businesses who petition the States, and the 4 State regulatory authorities who must process the petitions.

Total Annual Responses: 5.

Total Annual Burden Hours: 7,324.

Title: Special permanent program performance standards—operations in alluvial valley floors, 30 CFR Part 822.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10) of the Surface Coal Mining and Reclamation Act of 1977 (the Act) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 10 surface coal mining operators who operate on alluvial valley floors.

Total Annual Responses: 10.

Total Annual Burden Hours: 1,000.

Dated: March 27, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–8896 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 6, 1998.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for the Reclamation on Private Lands, 30 CFR 882. OMS is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 882, which is 1029–0057.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 7, 1998 (63 FR 890). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Reclamation on Private Lands, 30 CFR 882.

OMB Control Number: 1029–0057.

Summary: Pub. L. 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Sta+te governments and Indian tribes.

Total Annual Responses: 0.

Total Annual Burden Hours: 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

Dated: March 31, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–8895 Filed 4–3–98; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35). The Commission has requested OMB approval of this submission by COB April 8, 1998.

EFFECTIVE DATE: March 31, 1998.

PURPOSE OF INFORMATION COLLECTION: This information collection is for use by the Commission in connection with investigation No. 332–391, *Overview and Analysis of Current U.S. Unilateral Economic Sanctions*, instituted under

the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States House of Representatives Committee on Ways and Means. The Commission expects to deliver the results of its investigation to the Committee on August 19.

SUMMARY:

Title: Survey Worksheets for Investigation No. 332–391, Overview and Analysis of Current U.S. Unilateral Economic Sanctions.

Summary: Staff of the USITC plans to make telephone contacts with a broad representation of U.S. companies and trade associations. The survey worksheets contain questions that require responses from industry and are designed to provide staff with a uniform approach and consistent format for recording responses. Information collected will be used to assess U.S. companies' views on the effects of unilaterally imposed U.S. economic sanctions against other nations.

Need and Use of Information: The responses collected will provide the information requested by the U.S. House of Representatives Committee on Ways and Means in regard to the overview and analysis of current U.S. unilateral economic sanctions.

Description of Respondents: Firms and trade associations.

Number of Respondents: 500.

Frequency of Responses: Reporting—One Time.

Total Burden Hours: 250.

ADDITIONAL INFORMATION OR COMMENT: Copies of agency submissions to OMB in connection with this request may be obtained from Richard Brown, Chief, Services and Investment Division, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3438). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–7340). Copies of any comments should also be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

By order of the Commission.

Issued: April 1, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8965 Filed 4–3–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA–781 through 786 (Preliminary)]

Stainless Steel Round Wire From Canada, India, Japan, Korea, Spain and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–781 through 786 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire, provided for in subheading 7223.00.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 11, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 18, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 27, 1998, by ACS Industries, Inc. Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Company, Inc., Pomfret, CT; Sandvik Steel Company, Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Company, Inc., Mahwah, NJ.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 17, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than April 15, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 22, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Issued: March 31, 1998.

[FR Doc. 98–8964 Filed 4–3–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1887–97]

Expansion of the Direct Mail Program for the Boston, Buffalo, Newark, Philadelphia, Portland, Maine, San Juan District Offices and the Albany, Cherry Hill, Christiansted, Hartford, Pittsburgh, Providence, St. Albans and the St. Thomas Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to Include the Boston, Buffalo, Newark, Philadelphia, Portland, Maine, and San Juan District Offices and the Albany, Cherry Hill, Christiansted, Hartford, Pittsburgh, Providence, St. Albans and St. Thomas Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these Districts and Suboffices will mail their Form N–400 directly to the designated INS service center the processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective April 5, 1998, or March 30, 1998, whichever is later.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program, as applied to Form N–400, by adding the Boston, Buffalo, Newark, Philadelphia, Portland, Maine, and San Juan District Offices and the Albany, Cherry Hill, Christiansted, Hartford, Pittsburgh, Providence, St. Albans, and St. Thomas Suboffices as Direct Mail sites.

Where To File

Effective April 6, 1998, or March 30, 1998, whichever is later, applicants for naturalization residing within the jurisdiction of the Boston, Buffalo, Newark, Philadelphia, Portland, Maine, and San Juan District Offices and the Albany, Cherry Hill, Christiansted, Hartford, Pittsburgh, Providence, St. Albans, and St. Thomas Suboffices must mail the Form N–400, Application for Naturalization, directly to the Vermont Service Center at the following address: USINS Vermont Service Center, Attention: N–400 Unit, 75 Lower Weldon Street, St. Albans, Vermont 05479–0001.

Transition

During the first 60 days following the effective date of this notice, the Boston, Buffalo, Newark, Philadelphia, Portland, Maine, and San Juan District Offices and the Albany, Cherry Hill, Christiansted, Hartford, Pittsburgh, Providence, St. Albans, and St. Thomas Suboffices will forward in a timely fashion to the Vermont Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective District or Suboffice. Applicants will be provided a notice at the time of filing at the District or Suboffice advising them their application is being forwarded to the service center for initial processing. The applicant will receive written notification from his respective District or Suboffice of the date, place, and time of this interview for naturalization. When applications are forwarded from the District or Suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the Vermont Service Center for processing.

Dated: March 27, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–8871 Filed 4–3–98; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company; Quad Cities Nuclear Power Station, Units 1 and 2; Exemption

I

Commonwealth Edison Company (ComEd) and MidAmerican Energy Company are the holders of Facility Operating License Nos. DPR–29 and DPR–30, which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (the facility). ComEd (the licensee) is the holder of a 75-percent ownership share in Quad Cities. ComEd, acting as agent and representative of the two owners listed on the licenses, is licensed to operate the facility. The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission now or hereafter in effect.

The facility is a boiling-water reactor located at the licensees' site in Rockford County, Illinois.

II

Section 70.24 of Title 10 of the *Code of Federal Regulations*, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material maintain a criticality accident monitoring system in each area in which such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and requires that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to provide the means of identifying quickly any personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee that believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at Quad Cities is in the form of nuclear fuel. The quantity of special nuclear material other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Quad Cities and has determined that it is extremely unlikely that such an accident will occur if the licensees meet the following seven criteria:

1. Only three boiling-water reactor new fuel assemblies are allowed out of a shipping cask or a storage rack at one time;

2. The k-effective dose does not exceed 0.95, at a 95-percent probability, 95-percent confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water;

3. If optimum moderation occurs at low moderator density, the k-effective dose does not exceed 0.98, at a 95-percent probability, 95-percent confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation;

4. The k-effective dose does not exceed 0.95, at a 95-percent probability, 95-percent confidence level, in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water;

5. The quantity of special nuclear material, other than nuclear fuel, stored on-site in any given area is less than the quantity necessary for a critical mass;

6. Radiation monitors, as required by General Design Criterion (GDC) 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions; and

7. The maximum nominal U-235 enrichment is limited to 5.0 weight percent.

By letter dated October 27, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request, the licensee addressed the seven criteria previously stated. The licensee stated that Quad Cities does not analyze optimum moderation conditions as addressed in Criteria 3 above, but has used a standard industry practice by implementing administrative and physical controls in accordance with General Electric Service Information Letter 152, ''Criticality Margins for the Storage of New Fuel.'' To preclude the existence of an optimum moderation condition in the new fuel storage vault area, the following controls are used: the new fuel storage vault is verified dry; the drains are free and clear of obstruction before new fuel storage; low velocity fog nozzles (fire protection) in the vicinity of the dry storage vault have been removed; and the new fuel storage vault plugs are installed during prolonged work delays. The staff has found this practice acceptable.

The Commission's technical staff has reviewed the licensee's submittal and has determined that Quad Cities meets the criteria for prevention of inadvertent criticality. Therefore, the staff has determined that it is extremely unlikely that an inadvertent criticality will occur in the handling of special nuclear materials or in their storage areas at Quad Cities.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. Although Quad Cities is not licensed to GDC 63, the licensee has radiation monitors consistent with the requirements of GDC 63 in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to the requirements of GDC 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 70.24 for Quad Cities.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (63 FR 10957).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8918 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is permitting the withdrawal of Niagara Mohawk Power Corporation's (the licensee) application of September 20, 1996, regarding the proposed amendment to Facility Operating License No. DPR–63 for Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, New York.

The proposed amendment would have revised the facility technical specifications by changing certain surveillance requirements currently performed during refueling outages such that the surveillance requirements could be performed when the reactor is operating or during outage periods not associated with refueling. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 18, 1996 (61 FR 66709). However, by letter dated March 12, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 20, 1996, and the licensee's letter dated March 12, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 31st day of March 1998.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8917 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its May 14, 1997, application for proposed amendment to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendment would have revised the facility technical specifications pertaining to the surveillance requirements for the control room air conditioning system by changing the filter testing boundary and associated acceptance criteria.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 29, 1997 (62 FR 29158). However, by letter dated March 12, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 14, 1997, and the licensee's letter dated March 12, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 26th day of March 1998.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8919 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607]

Department of the Air Force at McClellan Air Force Base (McClellan Air Force Base Triga Reactor); Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Facility Operating License No. R–130 for a term of 20 years for the Department of the Air Force at McClellan Air Force Base (AFB) (the applicant) 2.3-megawatt thermal (MW(t)) TRIGA reactor located at the McClellan Nuclear Radiation Center (MNRC), McClellan AFB, California.

Description of Proposed Action

The proposed action is the issuance of Facility Operating License No. R–130 for the MNRC TRIGA research reactor at McClellan AFB, California, in response to an application from the applicant dated October 23, 1996, as supplemented. The proposed action would authorize operation of the MNRC reactor at a power level of 2.3 MW(t) for a period of 20 years. The reactor has pulsing capability, with a maximum reactivity step addition of 1.75$ proposed by the applicant. The MNRC has been in operation since mid-1991 under the authority of the Department of the Air Force under Section 91b of the Atomic Energy Act. The applicant has sought NRC licensing of the reactor due to the planned closure of McClellan AFB.

Summary of the Environmental Assessment

The NRC staff has reviewed the applicant's application for an operating license including the applicant's environmental report. To document its review, the staff has prepared an environmental assessment (EA) which examined radiological and nonradiological impacts of continued operation, the environmental effects of postulated radiological accidents, and the long-term effects of continued facility operation. Based on its review of the applicant's application, the staff has determined that the environmental

impacts, both radiological and nonradiological, associated with the licensing the MNRC for a period of 20 years, are not significant and have been adequately evaluated by the applicant.

Finding of No Significant Impact

The staff has reviewed the applicant's application for an operating license and environmental report in accordance with the requirements of 10 CFR Part 51. Based upon the EA, the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement.

For further details with respect to this action see the applicant's request for an operating license dated October 23, 1996, as supplemented on June 16, September 5, October 7 and 9, and December 17, 1997. These documents are available for public inspection at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. 20003. Single copies of the EA may be obtained from Alexander Adams Jr., Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, M.S. O–11–B–20, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 30th day of March 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8916 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133]

Environmental Assessment and Finding of No Significant Impact; Pacific Gas and Electric Company (Humboldt Bay Power Plant, Unit No. 3)

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Facility License No. DPR–7, issued to Pacific Gas and Electric Company (PG&E or the licensee), for the Humboldt Bay Power Plant, Unit No. 3, a permanently shut down plant, located near Eureka, California.

Identification of the Proposed Action

The proposed action would revise the Technical Specifications to incorporate the requirements of Appendix I to 10 CFR Part 50, into the Radiological Effluents Technical Specification (RETS) and to relocate the controls and limitations on RETS and radiological environmental monitoring (currently in the Technical Specifications) to the Offsite Dose Calculation Manual and the Process Control Program. The proposed action would also revise the Technical Specifications to implement Generic Letter 89–01 (GL 89–01) and to incorporate the requirements of the revised 10 CFR Part 20.

The Need for the Proposed Action

On July 29, 1996, the NRC published a **Federal Register** notice containing decommissioning regulation amendments that became effective August 28, 1996. Contained within these amendments were revisions to 10 CFR 50.36a and 10 CFR 50, Appendix I, making the Appendix I requirements applicable to decommissioning activities as well as operating nuclear power reactors.

Alternative to the Proposed Action

There is no alternative to this proposed action. PG&E, the Humboldt Bay licensee must comply with the recently revised NRC decommissioning regulations which require the technical specification changes contained in the proposed license amendment.

Environmental Impacts of the Proposed Action

Although the proposed limits on radiological effluents are much more stringent that the limits in the current technical specifications, the previous radiological effluents from Humboldt Bay decommissioning were so low that they would have been in compliance with the proposed new limits. Thus, the proposed action does not involve any measurable environmental impacts, since neither the facility configuration nor SAFSTOR decommissioning mode will change. The staff has also determined that the proposed action will not have any significant radiological impacts on air, water, land, or biota in the area or any other significant environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based on the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant impact on the quality of the human environment for the reason given above.

For detailed information with respect to this proposed action, see the application for a license amendment dated December 9, 1996, as supplemented on June 12, 1997 and March 13, 1998. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, Maryland, this 31st day of March 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8915 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 100th meeting on April 21–22 (Room T–2B3) and April 23 (Room T–2B1), 1998, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, April 21, 1998—8:30 A.M. until 6 P.M.

Wednesday, April 22, 1998—8:30 A.M. until 6 P.M.

Thursday, April 23, 1998—8:30 A.M. until 4 P.M.

A. *Viability Assessment (VA) Guidance*—The NRC staff will discuss guidance being prepared for its review of the Department of Energy's (DOE's) Yucca Mountain Viability Assessment.

B. *NEI Comments on VA*—Representatives from the Nuclear Energy Institute (NEI) will comment on the DOE's viability assessment for the proposed high-level waste repository at Yucca Mountain.

C. *Meeting with the NRC Executive Director for Operations*—Mr. Callan will discuss a number of issues of mutual interest with the Committee.

D. *Total System Sensitivity Analysis for Yucca Mountain*—The NRC staff will present results from their Total System Sensitivity Analysis for Yucca Mountain. The staff will prioritize the relative contribution to risk from various sources and study the effects of these various contributors in combination.

E. *NRC's Waste Related Research Program*—NRC's nuclear-waste-related research and technical assistance will be reviewed so that the Committee can prepare a report to the Commission on nuclear-waste-related research.

F. *Nuclear Waste Related Rulemaking*—The Committee will hear a briefing on the transfer of the rulemaking process in nuclear waste related areas from NRC's Office of Research to the Office of Nuclear Material Safety and Safeguards.

G. *Decommissioning Guidance*—The Committee will review proposed guidance for implementing the recent final rule on radiological criteria for license termination. Guidance to be reviewed will include documents on: surveys, dose modeling, restricted release criteria, and ALARA (as low as is reasonably achievable) criteria. Participation by the NRC staff and industry is anticipated.

H. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

I. *Preparation of ACNW Reports*—The Committee will discuss planned reports, including: nuclear-waste-related research, regulatory guides dealing with decommissioning, comments on DOE's Viability Assessment, and other topics discussed during this and previous meetings as the need arises.

J. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

K. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8 a.m. and 5 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are available on the internet at http://www.nrc.gov/ACRSACNW.

Dated: March 31, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–8914 Filed 4–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Federal-Mogul Corporation, Common Stock, No Par Value); File No. 1–1511

March 31, 1998.

Federal-Mogul Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Exchange, Inc. (''Exchange'' or ''PCX'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. (''NYSE'').

The Company has represented that the volume of trading in the Security conducted on the PCX is minimal compared to the volume of trading in the Security conducted on the NYSE. According to the Company, the total number of shares of the Security traded on the PCX in 1997 (611,896) represents less than three days of trading volume in the Security on the NYSE. The Company also stated that large holders of the Security located on the west coast do not use the PCX to trade the Security. Finally, the Company represented that the extra work performed by the Company's investor relations and legal departments in relation to the Security's listing on the PCX is not justified by the benefits of such listing.

At its meeting held on February 4, 1998, the Company's Board of Directors authorized the Company's management to proceed with the voluntary delisting of the Security from the Exchange.

In its letter dated March 4, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

The Company has represented that the Security will continue to be listed for trading on the NYSE.

Any interested person may, on or before April 17, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8926 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26853]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 31, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 22, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70–9187)

Notice of Proposal to Issue and Sell Common Stock; Order Authorizing Solicitation of Proxies

Allegheny Energy, Inc. (''AE''), 10435 Downsville Pike, Hagerstown, Maryland, a registered holding company, has filed a declaration under section 6(a), 7 and 12(e) of the Act and rules 54, 62 and 65.

The AE Board of Directors has adopted the Allegheny Energy, Inc. 1998 Long-Term Incentive Plan (''Plan''), subject to shareholder approval. AE proposes to issue and sell, through December 31, 2010, up to 10 million shares of this common stock, par value $1.25 per share (''Common Stock''), under the Plan. In addition, AE proposes to solicit proxies from its shareholders to approve the proposed Plan and to pay expenses related to the solicitation of proxies.

The purpose of the Plan is to maximize the long-term success at AE, to ensure a balanced emphasis on both current and long-term performance, to enhance Plan participants' identification with shareholders' interests, and to attract and retain competent key individuals. The Management Review and Director Affairs Committee of AE's board of directors (''Committee'') will administer the Plan. The Committee will consist of not less than two directors who are not employees of AE or its subsidiaries. The Committee will have exclusive authority to interpret the Plan and to designate the recipients of the Common Stock awarded under the Plan (''Awards'').

The Plan has no fixed expiration date. However, for the purpose of awarding incentive stock options under section 422 of the Internal Revenue Code, the Plan will expire ten years from its effective date. Certain provisions of the Plan relating to performance-based Awards under section 162(m) of the Internal Revenue Code will expire on the fifth anniversary of the Plan's effective date. AE's board of directors may terminate or amend the Plan at any time, but may not, without stockholder approval, increase the total number of shares of Common Stock available for grants.

Awards granted under the Plan include: (1) nonqualified stock options, which entitle the grantee to purchase, not more than ten years after the grant, up to the number of shares of Common Stock specified in the grant at a price set by the Committee at the time the grant is made; (2) incentive stock options, as designated by the Committee and defined in section 422 of the Internal Revenue Code; (3) performance awards, which are grants of rights to receive a payment of cash and/or shares of Common Stock contingent upon the extent to which certain predetermined performance targets have been met; and (4) restricted stock awards, which are grants of shares of Common Stock held by AE for the benefit of the grantee without payment of consideration by the grantee, subject to certain limitations on transferability and other restrictions.

Common Stock used for Awards under the Plan may be authorized but unissued Common Stock or Common Stock purchased on the open market, in private transactions or otherwise. The number of shares available for issuance under the Plan are subject to anti-dilution adjustments upon the occurrence of significant corporate events.

As mentioned above, AE proposes to solicit proxies from its shareholders to approve the proposed plan at AE's Annual Meeting scheduled to be held on May 14, 1998. AE requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d).

It appears to the Commission that the declaration, to the extent that it relates to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is ordered, that the declaration, to the extent that it relates to the proposed solicitation of proxies, be permitted to become effective immediately, under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8928 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23094; 812–10660]

SunAmerica Asset Management Corp., et al.; Notice of Application

March 31, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') granting an exemption under section 6(c) of the Act from section 17(e) of the Act and rule 17e-1 under the Act, under sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and under section 10(f) of the Act from section 10(f) of the Act and rule 10f-3 under the Act.

Summary of Application: The order would permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter.

Applicants: SunAmerica Asset Management Corp. (''SAAMCo''), Style Select Series, Inc. (''Style Select''), and Seasons Series Trust (''Season'') (together, with Style Select, the ''Funds''), Janus Capital Corporation (''Janus''), Miller Anderson & Sherrerd, LLP (''MAS''), Lazard Asset Management (''Lazard''), Davis Selected Advisers, LP (''Davis''), Neuberger&Berman, LLC (''Neuberger''), Berger Associates, Inc. (''Berger''), Perkins Wolf, McDonnell & Company (''PWM''), Rowe Price-Fleming International, Inc. (''Rowe-Fleming''), Pilgrim Baxter & Associates, Ltd. (''Pilgrim''), Warburg Pincus Asset Management, Inc. (''Warburg''), T. Rowe Price Associates, Inc. (''T. Rowe Price''), Strong Capital Management, Inc. (''Strong''), Bankers Trust Company (''Bankers''), and Glenmede Trust Company (''Glenmede'').

Filing Dates: The application was filed on May 13, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1998, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: SAAMCo and the Funds, SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204; Janus, 100 Fillmore Street, Denver, Colorado 80206; MAS, One Tower Bridge, West Conshohocken, Pennsylvania 19428; Lazard, 30 Rockefeller Plaza, New York, New York 10020; Davis, 124 East March Street, Santa Fe, New Mexico 87502; Neuberger, 605 Third Avenue, New York, New York 10158; Berger, 210 University Blvd., Suite 900, Denver, Colorado 80206; PWM, 53 West Jackson Blvd., Suite 818, Chicago, Illinois 60604; and Rowe-Fleming and T. Rowe-Price, 100 East Pratt Street, Baltimore, Maryland 21202; Pilgram, 825 DuPortail Road, Wayne, Pennsylvania 18087; Warburg, 466 Lexington Ave., New York, NY 10017; Strong, P.O. Box 2936, Milwaukee, Wisconsin 53201; Bankers, 130 Liberty Street, New York, New York 10006; and Glenmede, One Liberty Place, 1650 Market Street, Suite 1200, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Style Select consists of eight separate Portfolios, each of which is advised by SAAMCo and several investment subadvisers (the ''Style Select Portfolios''). Each Style Select Portfolio is designed to provide investors with access to several different professional investment advisers, each seeking the same investment objective and utilizing a similar style with respect to a separate portion of the respective Portfolio's assets. Seasons was established to serve as a funding medium for variable annuity contracts offered by Anchor National Life Insurance Company, an affiliated person of SAAMCo. Seasons consists of six separate Portfolios, four of which are advised by SAAMCo and several investment subadvisers (the ''Seasons Portfolios''). Each of the Seasons Portfolios represents a different asset allocation strategy, with the assets of each Portfolio being allocated among the same three subadvisers in differing proportions. Each subadviser manages its discrete portion or portions of the Seasons Portfolios according to a distinct investment strategy, which is different from that employed by the other subadvisers to the same Portfolio.

2. SAAMCo is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). SAAMCo selects the subadvisers for the Style Select and Seasons Portfolios (the ''Subadvisers''), provides various administrative services, and supervises the Portfolios' daily business affairs, subject to general review by the board of directors or trustees of each Fund. SAAMCo also directly advises discrete portions of two Style Select Portfolios and each Seasons Portfolio. The Subadvisers for the Style Select and Seasons Portfolios are: Janus; Berger; Lazard; Warburg; MAS; Pilgrim; T. Rowe Price; Davis; Neuberger; Strong; Rowe-Fleming; Wellington Management Company, LLP; L. Roy Papp & Associates; Montag & Caldwell, Inc.; David L. Babson & Co., Inc.; Bankers; and Glenmede.[1] Each Subadviser is registered under the Advisers Act. The Subadvisers that are affiliated with broker-dealers within the meaning of section 2(a)(3)(C) of the Act are: Janus, MAS, Lazard, Davis, Neuberger, Berger, PWM, Bankers, and Rowe-Fleming.

3. The requested relief would permit a portion of a Style Select or Seasons Portfolio (''Unaffiliated Portion'') to engage in principal transactions with a broker-dealer that is, or is an affiliated person of, a Subadviser to another portion of the Portfolio (''Affiliated Broker-Dealer''). The requested relief also would permit an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion without complying with the requirements of rule 17e–1(b) and (c) under the Act. Finally, the requested relief would permit an Unaffiliated Portion to purchase securities in an underwriting syndicate in which an Affiliated Broker is a participant, and would permit a purchase by a portion of a Style Select or Seasons Portfolio advised by the Subadviser affiliated with the Affiliated Broker-Dealer (''Affiliated Subadviser'') not to be aggregated with the purchase by the Unaffiliated Portion for purposes of determining compliance with rule 10f–3(b)(7) under the Act. The requested relief would apply only if the Affiliated Broker-Dealer is not an affiliated person or an affiliated person of an affiliated person of SAAMCo, the Subadviser making the investment decision with respect to the Unaffiliated Portion (''Unaffiliated Subadviser''),[2] or an officer, director, or employee of the Fund engaging in the transaction.

4. Applicants request relief for the Style Select and Seasons Portfolios, as well as any future portfolio of the Funds and any other registered open-end management investment company or portfolio thereof advised by SAAMCo and at least one other investment

[1] Each Subadviser that currently intends to rely on the order has been named as an applicant.

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser'' and ''Unaffiliated Portion'' include SAAMCo and the discrete portion of a Multi-Managed Portfolio (as defined below) directly advised by SAAMCo, respectively, provided that SAAMCo manages its portion of the Portfolio independently of the portions managed by the other Subadvisers to the Portfolio, and SAAMCo does not control or influence any other Subadviser's investment decisions for its portion of the Portfolio.

adviser (collectively, ''Multi-Managed Portfolios'').[3] In a Multi-Managed Portfolio, the advisory contract with each of the Subadviers to the Multi-Managed Portfolios assigns the Subadviser responsibility to manage a discrete portion of the respective Multi-Managed Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decision based on its own research and credit evaluations. SAAMCo does not dictate or influence brokerage allocation decisions with respect to the Multi-Managed Portfolios (except for those portions actually advised by SAAMCo). Each Subadviser to a Multi-Managed Portfolio is compensated based on a percentage of the value of assets allocated to that Subadviser. Applicants state that SAAMCo will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Relief From Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company or an affiliated person of such affiliated person (''second-tier affiliate''). Section 2(a)(3) of the Act defines an affiliated person of another person to be any person directly or indirectly controlling, controlled by, or under common control with such person and any investment adviser of an investment company.

2. Under section 2(a)(3), an Affiliated Broker-Dealer would be an affiliated person or a second-tier affiliate of a Multi-Managed Portfolio. As a result, any transactions sought to be effected by the Unaffiliated Subadviser on behalf of its portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer would be subject to the provisions of section 17(a). Applicants seek relief from section 17(a) to exempt principal transactions entered into in the ordinary course of business between the Unaffiliated Subadviser to an Unaffiliated Portion of a Multi-Managed Portfolio and an Affiliated Broker-Dealer. The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion of a Multi-Managed Portfolio solely because an Affiliated Subadviser manages another discrete portion of the same Portfolio.

3. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons stated below, applicants believe that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants state that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that this is the situation in each transaction for which relief is requested because if an Unaffiliated Subadviser were to purchase securities on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser.

5. Applicants state that each Subadviser's contract assignes it responsibility to manage a discrete portion of the Multi-Managed Portfolio. The contracts neither require nor authorize collaboration between or among Subadvisers. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that SAAMCo does not dictate or influence brokerage allocation decisions for the Multi-Managed Portfolios, except where SAAMCo actually advises an Unaffiliated Portion of a Multi-Managed Portfolio. Applicants submit that in managing a discrete portion of a Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company. Further, applicants state that, for each transaction for which relief is requested, the Unaffiliated Subadviser would be dealing with an Affiliated Broker-Dealer that is a competitor of that subadviser. Applicants believe, therefore, that each such transaction would be the product of arm's length bargaining.

6. In addition, applicants state that the method of compensating Subadvisers in the context of a Multi-Managed Portfolio furthers competition among them. Applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. Applicants argue that the execution of a transaction to the disadvantage of the Unaffiliated Portion of a Multi-Managed Portfolio would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion of the Portfolio, with no countervailing benefit to the Unaffiliated Subadviser. Applicants further submit that SAAMCo's power to dismiss Subadvisers or to change the portion of a Multi-Managed Portfolio allocated to each reinforces a subadviser's incentive to maximize the investment performance of its own portion of the Multi-Managed Portfolio.

B. Relief From Section 17(e) and Rule 17e–1

1. Section 17(e)(2)(A) of the Act prohibits an affiliate or a second-tier affiliate of a registered investment company acting as broker in connection with the sale of securities to or by the investment company, to receive a commission, fee or other remuneration for effecting such transaction which exceeds the usual and customary broker's commission if the sale is effected on a securities exchange.

2. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission, fee, or other remuneration which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2)(A). Paragraph (b) of rule 17e–1 requires the investment company's board of directors, including a majority of the disinterested directors, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on rule 17e–1 in the preceding quarter were effected in compliance with the company's rule 17e–1 procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transactions effected pursuant to rule 17e–1.

3. Applicants request relief under section 6(c) to the extent necessary to permit the Unaffiliated Portion of each Multi-Managed Portfolio to pay commissions, fees, or other remuneration to an Affiliated Broker-Dealer, acting as broker in the ordinary course of business, in connection with the sale of securities to or by such

[3] For purposes of this application, the term ''Unaffiliated Portion'' defined above includes a portion of any Multi-Managed Portfolio; and the term ''Affiliated Broker-Dealer'' includes a broker-dealer that is an affiliated person of an investment adviser of another portion of any Multi-Managed Portfolio.

Unaffiliated Portion of a Multi-Managed Portfolio, without complying with the requirements of subparagraphs (b) and (c) of rule 17e–1 under the Act. In addition, applicants request that such relief extend to transactions in futures contracts and related options as well as securities.

4. Applicants state that the transactions for which relief is requested will involve no conflict of interest and that there is no possibility of self-dealing. Applicants submit that the pecuniary interests of the particular Unaffiliated Subadviser are directly aligned with those of the Unaffiliated Portion of the Multi-Managed Portfolio. Applicants further submit that there is no possibility of self-dealing in situations in which a particular Unaffiliated Subadviser is not affiliated with any other Subadviser's Affiliated Broker-Dealer. For these reasons, applicants believe that the brokerage commissions, fees, or other remuneration to be paid by the Unaffiliated Portion will be reasonable and fair and that there is no danger that commissions will exceed the usual or customary level.

5. Applicants argue that the procedures required by rule 17e–1 (b) and (c) are unduly burdensome to the Unaffiliated Portions and the Unaffiliated Subadvisers. Applicants state that the costs to an Unaffiliated Subadviser of complying with those provisions of rule 17e–1 with respect to broker-dealers that have no affiliation with the Unaffiliated Subadviser may discourage that Subadviser from accepting or continuing a Multi-Managed Portfolio as a client. Applicants further state that to facilitate management of its portion of a Multi-Managed Portfolio, an Unaffiliated Subadviser would normally place orders for trades for its portion of a Portfolio at the same time and with the same broker-dealer as trades for other clients. Because Affiliated Broker-Dealers are not affiliated persons of an Unaffiliated Subadviser, the Unaffiliated Subadviser's computer systems are not generally programmed to detect transactions through these brokers. Applicants state that as a result, in order to compile the necessary records under rule 17e–1, one or more individuals employed by the Unaffiliated Subadviser must manually sift through the Unaffiliated Subadviser's trading records relating to the Portfolio. Applicants state that an Unaffiliated Subadviser may choose to forego trading its portion of a Multi-Managed Portfolio in block transactions with its other clients and may avoid executing transactions through Affiliated Broker-Dealers entirely, which may result in increased execution costs to the Unaffiliated Portion.

6. Applicants state that each Unaffiliated Subadviser that selects an Affiliated Broker-Dealer as broker will do so in accordance with the brokerage allocation practices set forth in the prospectus and statement of additional information for the respective Fund (*i.e.*, subject to best price and execution). In addition, applicants state that each Unaffiliated Subadviser selecting broker-dealers for its Unaffiliated Portion of a Multi-Managed Portfolio has an inherent interest in obtaining best price and execution, so as to maximize the Unaffiliated Portion's potential return. Conversely, applicants submit that such Unaffiliated Subadvisers have no interest in benefiting an Affiliated Broker-Dealer at the expense of the Unaffiliated Portions of the Multi-Managed Portfolios they manage.

C. Relief From Section 10(f) and Rule 10f–3

1. Section 10(f), in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of the foregoing. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors.

2. Applicants acknowledge that each Subadviser to a Multi-Managed Portfolio, although under contract to manage only a distinct portion of the Portfolio, is an investment adviser to the Multi-Managed Portfolio itself, not just the portion of the Portfolio it manages. All purchases of securities by any Unaffiliated Subadviser on behalf of its Unaffiliated Portion of a Multi-Managed Portfolio from an underwriting syndicate a principal underwriter of which is an affiliated person of another Subadviser to that Multi-Managed Portfolio, thus fall within the prohibitions of section 10(f).

3. Applicants request relief pursuant to section 10(f) exempting from the provisions of section 10(f) any purchase of securities by an Unaffiliated Portion of a Multi-Managed Portfolio in the ordinary course of business during the existence of an underwriting or selling syndicate, a principla underwriter of which is an Affiliated Broker-Dealer. Applicants believe that the requested relief meets the standards set forth in section 10(f).

4. Applicants state that section 10(f) was designed to prevent the practice of ''dumping'' otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate itself, or by forcing or encouraging the investment company to purchase such securities from another member of the syndicate. Applicants submit that such abuses are not present in the context of Multi-Managed Portfolios to any greater extent than is the case with a series investment company with unaffiliated advisers to separate Portfolios. As stated above in the conext of transactions under sections 17(a) and (e), in each underwriting transaction that would be subject to the requested relief, the Unaffiliated Subadviser would be dealing, on behalf of the Unaffiliated Portion of the Multi-Managed Portfolio, with an Affiliated Broker-Dealer that is an unrelated entity in an arm's length arrangement.

5. Rule 10f–3 exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 provides that the amount of securities of any class of an issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, shall not exceed certain percentages specified in the rule. Applicants request exemptive relief pursuant to section 10(f) to the extent necessary so that where a portion of a Multi-Managed Portfolio managed by an Affiliated Subadviser purchases securities in reliance upon rule 10f–3, for purposes of determining the Affiliated Subadviser's compliance with the percentage limits of rule 10f–3(b)(7), such purchases will not be aggregated with any purchases that might be made by an Unaffiliated Portion of the same Multi-Managed Portfolio. Applicants believe the requested relief meets the standards of section 10(f) for the reasons discussed above.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by SAAMCo and at least one other Unaffiliated Subadviser and will be operated consistent with the manner described in the application.

2. The Affiliated Broker-Dealer will not be an affiliated person or a second-

tier affiliate of SAAMCo, any Unaffiliated Subadviser, or any officer, director, or employee of the Fund engaging in the transaction.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement under which the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8929 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23096]

Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 31, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.

EV Traditional Worldwide Health Sciences Fund, Inc. [File No. 811–4196]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 31, 1997, applicant transferred its assets and liabilities to a corresponding new series of the Eaton Vance Growth Trust based on the relative net asset value per share. Applicant paid approximately $6,600 in expenses related to the reorganization.

Filing Dates: The application was filed on October 15, 1997 and amended on March 18, 1998.

Applicant's Address: 24 Federal Street, Boston, MA 02110.

Dean Witter High Income Securities [File No. 811–07157], Dean Witter National Municipal Trust [File No. 811–07163]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 10, 1997, Dean Witter High Income Securities (''HIS'') and Dean Witter National Municipal Trust (''NMT'') each transferred all assets and liabilities to Dean Witter High Yield Securities Inc. and Dean Witter Tax-Exempt Securities Trust, respectively, based on the relative net asset values per share. Dean Witter InterCapital Inc., applicants' investment adviser, bore all of the expenses in connection with the reorganizations, which amounted to approximately $268,000 for the reorganization of HIS and approximately $220,000 for the reorganization of NMT.

Filing Dates: Both applications were filed on December 9, 1997. The application for NMT was amended on February 18, 1998, and the application for HIS was amended on February 19, 1998.

Applicants' Address: Two World Trade Center, New York, New York 10048.

The Alabama Tax-Exempt Bond Trust, Series 1 [File No. 811–4094], The Alabama Tax-Exempt Bond Trust, Series 2 [File No. 811–4232], The Alabama Tax-Exempt Bond Trust, Series 3 [File No. 811–4385], The Alabama Tax-Exempt Bond Trust, Series 4 [File No. 811–4535]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. In April 1995, The Alabama Tax-Exempt Bond Trust, Series 1 distributed to unitholders their pro rate portion of cash proceeds from the liquidation of applicant's remaining assets less expenses. Expenses incurred in connection with the liquidation were approximately $310, and were allocated among existing units on a pro rata basis. In May 1995, The Alabama Tax-Exempt Bond Trust, Series 2 distributed to unitholders their pro rata portion of cash proceeds from the liquidation of applicant's remaining assets less expenses. Expenses incurred in connection with the liquidation were approximately $235, and were allocated among existing units on a pro rata basis. In December 1996, The Alabama Tax-Exempt Bond Trust, Series 3 and The Alabama Tax-Exempt Bond Trust, Series 4 each distributed to unitholders their pro rata portion of cash proceeds from the liquidation of each applicant's remaining assets less expenses. Expenses incurred in connection with the liquidations were approximately $260 and $270, respectively, and were allocated among existing units on a pro rata basis.

Filing Dates: The applications were filed on May 5, 1997, and amended on December 8, 1997.

Applicants' Address: 1901 Sixth Avenue South, Birmingham, Alabama 35203.

S&P STARS Fund [File No. 811–8800]

Summary: Applicant, a master fund in a master-feeder arrangement, seeks an order declaring that it has ceased to be an investment company. Applicant has a single feeder fund, the S&P STARS Portfolio (the ''STARS Portfolio''). On June 24, 1997, applicant redeemed its shares held by STARS Portfolio by delivering all of its portfolio securities to the STARS Portfolio. Applicant paid $25,981 in expenses related to the liquidation.

Filing Date: The application was filed on October 9, 1997, and an amendment thereto on February 6, 1998.

Applicant's Address: 245 Park Avenue, New York, New York 10167.

Cardinal Tax Exempt Money Trust [File No. 811–3686], Cardinal Government Securities Trust [File No. 811–3028], The Cardinal Fund, Inc. [File No. 811–1428], Cardinal Government Obligations Fund [File No. 811–4475]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On May 1, 1996, each applicant transferred its assets and liabilities to a corresponding new series (each the ''Successor Fund'') of The Cardinal Group, based on the aggregate net asset value of each fund.

Cardinal Tax Exempt Money Trust reorganized into Cardinal Tax Exempt Money Market Fund. The total cost of the reorganization, which was split among the applicant, the Successor Fund, and the underwriter, was $26,008.

Cardinal Government Securities Trust reorganized into Cardinal Government Securities Money Market Fund. The total cost of the reorganization, which was split among the applicant, the Successor Fund, and the underwriter, was $150,799.

The Cardinal Fund Inc. reorganized into The Cardinal Fund. The total cost of the reorganization, which was split among the applicant, the Successor Fund, and the underwriter, was $58,521.

Cardinal Government Obligations Fund reorganized into Cardinal Government Obligations Fund. The total cost of the reorganization, which was split among the applicant, the Successor Fund, and the underwriter, was $37,059.

Filing Dates: Each application was filed on August 14, 1997.

Applicants' Address: 155 East Broad Street, Columbus, Ohio 43215.

Scudder World Income Opportunities Fund, Inc. [File No. 811–8316]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 14, 1997, The Latin America Dollar Income Fund, Inc. (''LADIF'') acquired the assets of applicant at net asset value. Applicant and LADIF bore expenses related to the transaction in the amount of $225,000, based on each fund's relative asset size.

Filing Date: The application was filed on November 25, 1997 and amended on March 20, 1998.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

Warburg, Pincus Tax Free Fund, Inc. [File No. 811–7519]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 16, 1997, applicant distributed its net assets to its shareholders at the net asset value per share. Applicant's investment adviser, Warburg Pincus Asset Management, Inc., paid approximately $40,000 in expenses, consisting of auditing and legal expenses, in connection with the liquidation.

Filing Date: The application was filed on December 24, 1997, and amended on March 13, 1998.

Applicant's Address: 466 Lexington Avenue, New York, New York 10017–3147.

High Yield Cash Trust [File No. 811–3448]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By March 31, 1992, applicant completed a liquidating distribution to its shareholders at net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on September 28, 1992, and amended on August 12, 1996, April 21, 1997, and September 2, 1997.

Applicant's Address: Federated Investors Tower, Pittsburgh, Pennsylvania 15222–3779.

IDEX Fund [File No. 811–4202], IDEX Fund 3 [File No. 811–5000]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On September 20, 1996, each applicant transferred its assets and liabilities to IDEX Growth Portfolio, a portfolio of the IDEX Series Fund, based on the relative net asset value per share. IDEX Growth Portfolio paid $127,151 in expenses related to each transaction.

Filing Dates: Each application was filed on November 14, 1997 and amended on march 25, 1998.

Applicant's Address: 201 Highland Avenue, Largo, Florida 33770–2597.

CIGNA Income Fund, Inc. [File No. 811–1640], CIGNA Money Market Fund, Inc. [File No. 811–2542], CIGNA Municipal Bond Fund, Inc. [File No. 811–2700], CIGNA Cash Fund, Inc. [File No. 811–3472], CIGNA Tax-Exempt Cash Fund, Inc. [File No. 811–3473], CIGNA Aggressive Growth Fund, Inc. [File No. 811–3912], CIGNA Value Fund, Inc. [File No. 811–3913]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On April 30, 1985, each applicant transferred its assets and liabilities to a new, identically named series of CIGNA Funds Group (n/k/a AIM Funds Group), based on the relative net asset value per share of each fund. All expenses relating to each reorganization were borne by the respective applicant.

Filing Dates: Each application was filed on May 9, 1997, and amended on August 6, 1997.

Applicants' Address: 900 Cottage Grove Road, Hartford, CT 06152.

MuniVest New York Insured Fund, Inc. [File No. 811–7566], MuniYield New York Insured Fund III, Inc. [File No. 811–7258], MuniVest California Insured Fund, Inc. [File No. 811–7576]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On January 27, 1997, MuniVest New York Insured Fund, Inc. and MuniYield New York Insured Fund III, Inc. transferred their assets and liabilities to MuniYield New York Insured Fund II, Inc., based on the relative net asset value per share of each fund. On the same date, MuniVest California Insured Fund, Inc. transferred its assets and liabilities to MuniYield California Insured Fund II,Inc., based on the relative net asset value per share of each fund. The approximate expenses related to each transaction, which were borne by the respective acquiring fund, were as follows: MuniVest New York Insured Fund, Inc., $215,000; MuniYield New York Insured Fund III, Inc., $215,000; and MuniVest California Insured Fund, Inc., $207,000.

Filing Dates: Each application was filed on April 15, 1997, and amended on September 9, 1997.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, NJ 08536.

The JPM Advisor Funds [File No. 811–8794]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On November 15, 1996, each series of applicant redeemed all of its shares at its net asset value next determined on that date. Morgan Guaranty Trust Company of New York paid approximately $172,000 in expenses relating to the liquidation.

Filing Dates: The application was filed on May 30, 1997, and amended on August 18, 1997. Applicant has agreed to file an amendment during the notice period, the substance of which is incorporated in this notice.

Applicant's Address: 60 State Street, Suite 1300, Boston, Massachusetts 02109.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8930 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 6, 1998.

A closed meeting will be held on Tuesday, April 7, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 7, 1998, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 31, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–9026 Filed 4–2–98; 9:25 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39809; File No. SR–CBOE–98–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Related to Fees for Applicants for Membership and Existing Members Who Are Subject to a Statutory Disqualification

March 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on March 10, 1998, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt two new fees applicable to persons subject to a statutory disqualification under the Act on whose behalf the Exchange is obligated to file notice with the SEC pursuant to Rule 19h–1 under the Act.[2]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt two new fees that are intended to defray some of the expenses incurred by the Exchange in connection with applicants for membership and existing members who are subject to a statutory disqualification. The first new fee applies to any person who submits an application to the Exchange seeking to become a member or an associated person of a member or to continue as a member or in association with a member notwithstanding a statutory disqualification. The second new fee applies to any person who has been approved for membership or association with a member notwithstanding a statutory disqualification, and who subsequently seeks a change in status that, if approved, would require another filing to be made pursuant to Rule 19h–1(c) under the Act.[3] These two new fees would be in addition to any other Exchange membership fees that might be applicable.

Pursuant to Rule 19h–1 under the Act, the Exchange must file a notice with the Commission if the Exchange proposes to continue in or to admit into membership or association with a member any person subject to a statutory disqualification. Evaluating the circumstances of the statutory disqualification and the appropriateness of permitting the member or associated person to continue in or be admitted to membership or association with a member, and filing this notice with the Commission, requires effort and time by the Exchange staff and thus creates an expense for the Exchange. The Exchange believes it is appropriate for the applicant, member, or person associated with a member who is subject to a statutory disqualification to pay a fee that will offset at least a portion of these expenses. The Exchange believes that a fee in the amount of $2,500 is appropriate for this purpose.

After the Rule 19h–1 notice process has been completed and the necessary approvals have been obtained, if the member or associated person wants to change the status previously approved and the Exchange approves of this change, then the Exchange typically must file an amended or additional notice with the Commission pursuant Rule 19h–1(c). Once again the Exchange will incur the time and expense of complying with Rule 19h–1 on behalf of the member or associated person. The Exchange believes it is appropriate for the member or associated person who makes an application that, if approved, will make it necessary for the Exchange to undertake the filing of an amended 19h–1(c) notice to pay a fee to offset these expenses at least in part. Therefore, the proposed rule change would authorize the Exchange to charge a fee of $1,500 to any member or associated person on whose behalf the Exchange has filed a Rule 19h–1 filing that has been approved by the Commission who applies for a change in status that will require the Exchange to file an amended or additional Rule 19h–1(c) filing if the Exchange approves the requested change in status.

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[2] 17 CFR 240.19h–1.

[3] 17 CFR 240.19h–1(c).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act, and subparagraph (e) of Rule 19b–4 thereunder, in that it is designated by the Exchange as establishing a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the captain above and should be submitted by April 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8923 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39803; File No. SR–CHX–97–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Acceptance of Oversized Orders in the MAX System

March 25, 1998.

I. Introduction

On December 9, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Act of 1934 (''Act''),[1] a proposed rule change which was subsequently amended on January 9, 1998. The proposed rule change to amend the Exchange's rules relating to the entry and acceptance of oversized orders received through the MAX System was published for comment in the **Federal Register** on February 11, 1998.[2] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency [3] market and limit orders for Dual Trading System issues [4] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed on the basis of the Intermarket Trading System's (''ITS'') best bid or offer (''BBO''). Limit order must be executed at their limit price or better when: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market [5] or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.[6] The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through MAX that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies. If the order-entry firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order.

Under the current MAX rules, if the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[7] The Exchange proposed to change the way that these oversized orders are handled.

First, the Exchange proposed to amend Rule 37(b)(1) of Article XX to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39615 (February 3, 1998).

[3] The term ''agency order'' means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, interpretation and policy .04. That Rule defines a ''professional order'' as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[4] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

[5] The CHX specialist has the burden to demonstrate that the order would not have been executed had it been routed to the primary market. The Commission notes that this is often accomplished by sending a ''marker'' order to the primary market. *See also* CHX Article XX, Rule 37(b)(12).

[6] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[7] Under current rules, if an oversized market or limit order is received by the specialist, he must either reject the order immediately or immediately display it in accordance with CHX rules and the Commission's Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist must check with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

change the amount of time in which the specialist can cancel the oversized order. Rather than the current three minute window, the Exchange proposed to reduce this time period to one minute. If the specialist has not canceled the order in the one minute period, the order will be designated as an open order.

Second, the Exchange proposed to add interpretation and policy .06 to Rule 37 to specifically describe how oversized orders are to be handled during the one minute period in which the specialist can cancel the order. The interpretation will provide that if the oversized order is an agency limit order, the order must immediately be reflected in the specialist's quote in accordance with CHX rules.[8] Additionally, during the one minute window, the order must receive ''post protection.'' This means that while the BEST Rule will not apply during this period, the specialist must allow the order to interact with other orders received by the specialist at the post, using the same priority and precedence rules that apply to other orders received at the post.

Finally, during the one minute window, the specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9]

The Exchange's proposal reduces the amount of time that a CHX specialist has to reject an order that is larger than the auto-acceptance threshold thereby reducing an impediment to a free and open market. The Commission believes that this will benefit investors because the firm sending the order to the CHX specialist will be more certain of the ultimate status of the order and will no longer have to wait three minutes to determine if the order was being accepted or rejected by the specialist.

The Commission believes that it is necessary to impose specific duties on the CHX specialist during the one minute window to ensure that orders are handled consistent with best execution principles. The Commission believes that the Exchange's proposed interpretation and policy .06 to Rule 37 will benefit investors because it clarifies the obligations of the CHX specialist during the one minute period in which the specialist can cancel the order. For example, customer limit orders that are received by the CHX specialist must be displayed immediately, in accordance with the Commission's Limit Order Display Rule [10] and the Exchange's limit order rule,[11] even when the size of the limit order is in excess of the auto-acceptance threshold. In addition, under the proposed interpretation and policy .06 to Rule 37, CHX specialists are obligated to give orders in excess of the auto-acceptance threshold post protection during the one minute window, allowing them to interact with other orders received by the specialist at the post.

The Commission also believes that reducing the time frame from three minutes to one minute is an appropriate first step given the many improvements in technology since the three minute window was established. The Commission expects the Exchange to continue to evaluate further reductions as technology advances and causes the one minute window to be too long a period of time.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CHX–97–32) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8925 Filed 4–3–98; 8:45 am]

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[8] Article XX, Rule 7 of the CHX rules requires every limit order that is priced at or better than the specialist's quote to be included in the specialist's quote, subject to certain exceptions.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 240.11Ac1–4.

[11] CHX Article XX, Rule 7.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39819; Filed No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Partial Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. To Implement, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for all Nasdaq National Market Securities and To Extend the Short Sale Rule Pilot

March 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by Nasdaq. On March 25, 1998, Nasdaq submitted to the Commission Amendment No. 1 to the proposed rule changes.[3] On March 26, 1998, Nasdaq submitted to the Commission Amendment No. 2 to the proposed rule changes.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to a portion of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD and Nasdaq propose to amend the Primary Nasdaq Market Maker (''PMM'') standards for all Nasdaq National Market (''NNM'') securities, which are found in NASD Rule 4612, and to implement the proposed revised PMM standards on a pilot basis beginning on May 1, 1998, and extending until November 1, 1998. Additionally, the NASD and Nasdaq are proposing to: 1) continue the current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 25, 1998.

[4] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated March 26, 1998.

suspension of existing PMM standards through May 1, 1998 (the start date of the new PMM pilot); and 2) extend the pilot of the NASD's short sale rule—NASD Rule 3350 (''Short Sale Rule'')—including the market maker exemption to that rule and the definition of ''legal'' short sale until November 1, 1998 (the end date of the proposed PMM pilot). As noted below, as part of the PMM pilot program, the NASD and Nasdaq will shortly submit amendments to the Short Sale Rule, which would exempt from the Short Sale Rule certain customer facilitating, liquidity-providing transactions, regardless of whether the broker/dealer is qualified as a PMM. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

NASD Rule 4612. Primary Nasdaq Market Maker Standards

(a) A member registered as a Nasdaq market maker pursuant to Rule 4611 may be deemed to be a Primary Nasdaq Market Maker in Nasdaq National Market *(''NNM'')* securities if the market maker [complies with] *achieves the* threshold standards [(as established and published by the Association from time to time)] in the following qualification criteria.

(1) [amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in] *degree of liquidity contribution to* The Nasdaq Stock Market *as measured by the Net Liquidity Ratio*[5]*; and*

(2) [relation of individual dealer spread to average dealer spread] *a market maker's proportionate share of proprietary share-volume (''proportionate volume'') or the market maker's proportionate share of proprietary trades (''proportionate trades'').*[6] [; and

(3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.[7]]

[(b) A market maker for a Nasdaq National Market security must satisfy the threshold standards in at least two of the criteria in paragraph (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time.)[8]]

(b)(1) Except as provided in subparagraphs (b)(2) and (b)(3), to be designated as a Primary Nasdaq Market Maker in a particular NNM security a market maker must achieve:

(i) the NLR threshold; and[9]

(ii) the threshold for proportionate volume or the threshold for proportionate trades.[10]

(b)(2) If less than 50% of all registered market makers qualify as Primary Nasdaq Market Makers under subparagraph (b)(1), Nasdaq shall rank those market makers that achieve only the NLR threshold by:

(i) the market makers' proportionate volume, and shall designate (from highest to lowest ranked) such market makers as Primary Nasdaq Market Makers until the total number of market makers qualifying under subparagraphs (b)(1) and (b)(2)(i) reaches an amount up to but not exceeding 50% of all the registered market makers in that security; and

(ii) the market makers' proportionate trades, and shall designate (from highest to lowest ranked) such market makers as Primary Nasdaq Market Makers until the total number of market makers qualifying under subparagraphs (b)(1) and (b)(2)(ii) reaches an amount up to but not exceeding 50% of all the registered market makers in that security.[11]

(b)(3) If the number of registered market makers in a NNM security is eight (8) or fewer, a market maker shall qualify as a Primary Nasdaq Market Maker without regard to its proportionate volume or proportionate trades in that stock, provided it achieves the NLR threshold.

(c) *Unless otherwise provided.* [T]he review period for [review of] market maker performance in each of the

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[5] *The net Liquidity Ratio (''NLR'') formula accords credit for liquidity contribution: (1) in an ''up market'' by accumulating all sales, irrespective of price; and (2) in a ''down market'' by accumulating all purchases, irrespective of price. These trades are then divided by total shares traded in both up and down markets, excluding volume during neutral periods, sales at the inside offer during down markets, and purchases at the inside bid during up markets. In addition to excluding from the denominator of the NLR sales at the inside offer during down markets and purchases at the inside bid during up markets, these sales and purchases are excluded from the numerator of the NLR. The result is expressed as a ratio with a potential value between zero and one.*

For the purposes of calculating NLR, the direction fo the market is defined by looking at the five minute period prior to the trade report. If there has been no change in the bid price during that time, the last bid direction governs. That is, if the current best (inside) bid displayed in The Nasdaq Stock Market is below the preceding best (inside) bid (''down bid''), the market is deemed down, and if the current best (inside) bid displayed in The Nasdaq Stock Market is above the preceding best (inside) bid (''up bid''), the market is deemed up. If there has been a change during the previous five minutes, then the formula looks to the prior four changes and takes the predominant direction as the indicator. Thus, if at least three of the last four changes are down bids the market is deemed down, and if at least three of the last four changes are up bids the market is deemed up. If the changes are evenly split, the market is deemed neutral.

[6] *A market maker's proportionate volume shall be determined by: dividing the market maker's total proprietary share-volume in a stock by all market maker proprietary share-volume for that stock; and then multiplying that ratio by the total number of registered market makers in the stock. For example, if a market maker transacts 10% of the total proprietary share-volume in a stock with 10 registered market makers, the market maker's proportionate volume would be 1.0. A market maker's proportionate trades shall be determined by: dividing the market maker's total number of proprietary trades in a stock by the total number of proprietary trades by all market makers in that stock; and then multiplying that ratio by the total number of registered market makers in the stock. Subparagraph (b)(1)(ii) establishes the applicable thresholds for proportionate volume and proportionate trades.*

[7] [The threshold standards initially shall be established as:

(a) a market maker must maintain the best bid or best offer as shown on Nasdaq no less than 35% of the time;

(b) a market maker must maintain a spread no greater than 102% of the average dealer spread;

(c) no more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

The Board of Governors reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.]

[8] [The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the stock for the review period.]

[9] *The NLR threshold initially shall be established as 0.67.*

[10] *The threshold for proportionate volume and proportionate trades shall be 1.0 for each. Accordingly, a market maker must account for at least one times its proportionate share of all share-volume in the stock or must account for at least one times its proportionate share of all trades for the stock during the review period. For example, if during the review period a stock had 10 market makers and had an overall share-volume of 1,000,000 shares and 15,000 trades, a market maker would have to transact one-tenth of all share-volume or trades—100,000 in share-volume or 1,500 trades.*

[11] *The 50% levels set forth in subparagraphs (b)(2)(i) and (b)(2)(ii) shall be fixed and not subject to modification by Nasdaq, so that if a market maker meets the NLR threshold and falls within the top 50% of market makers when ranked by proportionate volume or the top 50% of market makers when ranked by proportionate trades, and market maker shall automatically be designated as a Primary Nasdaq Market Maker. The only instance in which Nasdaq would designate Primary Nasdaq Market Makers in an amount less than 50% of all registered market makers, would be if less than 50% of the registered market makers achieve the NLR threshold.*

When there is an odd number of registered market makers in a security, Nasdaq will round up to calculate the ''50%'' level (i.e., 50% level = (number of market makers +1)/2).

qualification criteria in [paragraph] *subparagraphs* (a), *(b),* [paragraph] *and* (g)[(1)(B), and paragraph (g)(2)(B)(ii)] shall be one calendar month*; provided, however, that if a market maker that is a Primary Nasdaq Market Maker would fail to maintain that status based on the application of the applicable thresholds for a particular month, the review period shall be that month (up to and including the last trading day of the month) and the prior month.*

(d) If, after the *applicable* review period, a market maker does not satisfy the threshold standards for the criteria in [paragraph] *subparagraphs* (a) *and (b),* the Primary Nasdaq Market Maker designation shall be withheld commencing on the next business day following notice of failure to [comply with] *achieve* the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

(1) Grounds for requests for reconsideration shall be limited to:

(A) system failure; *or*

(B) excused market maker withdrawal status [; or

(C) where a market maker failed to qualify under the criteria set forth in paragraph (a)(3) because of activity in a related derivative or convertible security, or activity in a security subject to derivative pricing mechanisms, such as currency differentials with foreign stocks.]

(2) Requests for reconsideration must be sent in writing to Nasdaq *Market* Operations [within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation].

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq National Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary Nasdaq Market Maker in [that stock] *a particular Nasdaq National Market security* if the market maker registers in [the stock] *that security* as a regular Nasdaq market maker and satisfies the qualification criteria for the next review peirod, *except that if the market maker is registered in the security on or before the fourteenth calendar day of the month, the review period shall be that calendar month.*

(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed *with the Securities and Exchange Commission,* no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a [PMM] *Primary Nasdaq Nasdaq National Market Maker* in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a [PMM] *Primary Nasdaq Market Maker* in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(B) For initial public offerings (IPOs):

(i) the market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied [the qualification criteria] *the applicable thresholds,* it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period, *except that if the market maker is registered in the security on or before the fourteenth calendar day of the month, the review period shall be that calendar month.*

(C) For purposes of subparagraph (B)(i) above:

(i) an issue ceases to be an IPO once it has traded on Nasdaq for five (5) business days; and

(ii) the applicable first review period for IPOs that come to market during the last five (5) business days of a month is the calender month after the month in which the IPO commenced trading on Nasdaq.

(3) Notwithstanding *sub*paragraph (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Rule 4611.

(h) [The Board of Governors may modify the threshold standards set forth in paragraphs (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on Nasdaq.] *This rule shall be in effect beginning May 1, 1998, and remain in effect until November 1, 1998.*

* * * * *

NASD Rule 3350

(a)–(k) No Changes.

(l) This Rule shall be in effect until [April 15, 1998] *November 1, 1998.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD and Nasdaq are proposing to amend the PMM standards, as described below, and to implement these revised PMM standards on a six-month pilot basis beginning May 1, 1998, and continuing until November 1, 1998. The NASD and Nasdaq are also proposing to extend the current suspension of the former PMM standards until the proposed PMM pilot program is implemented on May 1, 1998, and to extend the pilot program of the Short Sale Rule until November 1, 1998.

Background

On January 20, 1997, the Commission began phasing in new order handling rules (''Order Handling Rules''), which,

among other things, require Nasdaq market makers to display in their quotes customer limit orders that improve the market maker's quoted price or size.[12] With the implementation of the Order Handling Rules, trading in Nasdaq migrated to a more order-driven, rather than quote-driven, environment because market maker's now are required to reflect customer limit orders (not only proprietary interests) in their quotations. The implementation of the Order Handling Rules, however, rendered the PMM standards significantly less relevant because the criteria in NASD Rule 4612 [13] were premised on a quote-driven market; that is, these standards were based primarily on a market maker's quotes in relation to the inside quote and the quotes of other market makers, and the ratio of executions to quote changes.[14] Accordingly, these PMM standards were suspended from February 3, 1997, through April 1, 1998,[15] during which time all market makers have qualified as PMMs and have been able to avail themselves of the PMM exemption to the NASD's short sale rule.[16]

Since February 1997, the NASD and Nasdaq have worked to develop PMM standards that are more meaningful in an order-driven environment and better identify firms that are engaging in responsible market maker activity deserving of the benefits associated with being a PMM, such as being exempt from the short sale rule. The proposed PMM standards reward market makers that provide meaningful liquidity to the market based on the market makers' buying and selling activity in up and down markets and their relative buying and selling activity (in terms of share-volume and trading) in comparison to other market makers.

Specifically, to determine whether the market maker is a provider of liquidity, Nasdaq applies the net liquidity ratio (''NLR'' or ''NLR Test''). As explained below, a market maker must meet a certain numerical threshold to be considered a provider of liquidity, and thus ''pass'' the NLR threshold. Next, Nasdaq calculates a market maker's proportionate share of proprietary share-volume (''proportionate volume'') and proportionate share of proprietary trades (''proportionate trades'') [17] in a stock, and determines whether the market maker needs a certain numerical threshold for proportionate volume or a certain numerical threshold for proportionate trades (collectively, the ''Proportionality Test'').[18] If the market maker passes both the NLR and Proportionality Tests, the market maker qualifies as a PMM. As further described below, the proposed rule contains alternative approaches for stocks where the number of market makers meeting the NLR and Proportionality Tests is less than 50% of registered market makers and for stocks with fewer than eight registered market makers.

NLR Test and Proportionality Test. Under the NLR Test, Nasdaq first determines the direction of the market (*i.e.*, whether the market is ''up'' or ''down''),[19] and then examines whether the market maker is engaging in liquidity-providing activity during up and down market periods. Specifically, a market maker will receive credit for all proprietary purchases in down markets, and all proprietary sales during up markets. The accumulated proprietary share-volume of these liquidity trades is divided by the total proprietary volume traded during up and down markets, excluding volume during neutral periods, sales at the inside offer during down markets, and purchases at the inside bid during up markets.[20] The NASD and Nasdaq believe that these trades demonstrate a positive liquidity contribution to the market; that is, the market maker is providing liquidity and market stabilization by buying during down markets (when there is significant selling interest), and by selling in up markets (when there is significant buying interest). The resulting number provides an NLR with a potential value between 0 an 1. An NLR of 1.0, for example, indicates that each transaction was done in a liquidity-providing, stabilizing manner.

After the NLR is calculated, Nasdaq applies the Proportionality Test and examines whether the market maker transacts either its proportionate volume or its proportionate trades for the

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[12] *See* Securities Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996) (''Order Handling Rules Adopting Release''). Specifically, the SEC adopted Rule 11Ac1–4, the Limit Order Display Rule, which requires the display of customer limit orders: (1) that are priced better than a market maker's quote; or (2) that add to the size of a market maker's quote when the market maker is at the best price in the market. *Id.*

[13] Under the suspended PMM standards in NASD Rule 4612, which this proposal seeks to continue to suspend, a Nasdaq market maker is deemed to be a PMM if it meets two of three criteria: (1) the market maker maintained the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintained a spread no greater than 102% of the average dealer spread (''102% test''); and (3) no more than 50% of a market maker's quotation changes occurred without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it nevertheless qualifies if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock.

[14] Specifically, the implementation of the Order Handling Rules raised the following concerns with the PMM standards in NASD Rule 4612: (1) it became impossible to tell when market maker quote changes were being driven by customer interests that are entered and then subsequently canceled without any execution, thus making it difficult for market makers to meet the 102% test; (2) the test regarding the percentage of time in which the market maker's quote was at the inside became less relevant because market maker quotes were driven to an extent by customer limit orders; and (3) SOES decrementation had a significant impact on individual market maker quotations as they could be decreased to zero and automatically refreshed at a designated price. *See* Securities Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of suspension of PMM standards).

[15] *Id.*; Securities Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (order granting temporary accelerated approval of continuing suspension of PMM standards until April 1, 1998; File No. SR–NASD–97–73).

[16] This exemption to NASD Rule 3350 allows ''qualified'' market makers (*i.e.*, PMMs) to sell short on a down bid (*i.e.*, when the current bid is lower than the previous inside bid) when engaging in *bona fide* market making activity. *See* NASD Rule 3350(c)(1).

[17] A market maker's proportionate volume shall be determined by: dividing the market maker's total proprietary share-volume in a stock by all market maker proprietary share-volume for that stock; and then multiplying that ratio by the total number of registered market makers in the stock. A market maker's proportionate trades shall be determined by: dividing the market maker's total number of proprietary trades in a stock by the total number of proprietary trades by all market makers in that stock; and then multiplying that ratio by the total number of registered market makers in the stock. For example, if a market maker transacts 10% of the total proprietary share-volume in a stock with 10 registered market makers, the market maker's proportionate volume would be 1.0.

[18] The threshold for proportionate volume and proportionate trades shall be 1.0 for each. Accordingly, a market maker must account for at least one time its proportionate share of all share-volume in the stock or its proportionate share of all trades for the stock during the review period. For example, if during the review period a stock had 10 market makers and had an overall share-volume of 1,000,000 shares an 15,000 trades, a market maker would have to transact one-tenth of all share-volume or trades—100,000 in share-volume or 1,500 trades.

[19] For the purposes of calculating NLR, the direction of the market is defined by looking at the five minute period prior to the trade report. If there has been no change in the bid price during that time, the last bid direction governs. That is, if the current best (inside) bid displayed in Nasdaq is below the preceding best (inside) bid (''down bid''), the market is deemed down. If the current best (inside) bid displayed in Nasdaq is above the preceding best (inside) bid (''up bid''), the market is deemed up. If there has been a change during the previous five minutes, then the formula looks to the prior four changes and takes the predominant direction as the indicator. Thus, if at least three of the last four changes are down bids the market is deemed down. If at least three of the last four changes are up bids the market is deemed up. If the changes are evenly split, the market is deemed neutral.

[20] These trades are included neither in the equation's numerator nor the equation's denominator because they do not clearly demonstrate that the market maker is providing stabilizing liquidity to the market. Because these trades are eliminated from the equation, they count neither for nor against a market maker in calculating the market maker's NLR.

security at issue. The Proportionality Test recognizes that market makers may add to liquidity by effecting specified levels of share-volume or trades. Similarly, this test takes into account situations in which a stock may have a few lead market makers that transact a large percentage of the share-volume (thus providing liquidity), but also may have other market makers that effect a fair share of trades—but a comparatively lower percentage of share-volume—in the stock (thus also providing liquidity).[21] A market maker automatically will qualify as a PMM in a particular stock if the market maker: (1) passes the NLR Test by achieving a liquidity ratio of 0.67 or greater; and (2) passes the Proportionality Test by transacting either the market maker's proportionate volume or proportionate trades.

50% Analysis. If after the application of the NLR and Proportionality Tests, the number of firms earning PMM status is less than 50% of all registered market makers in a stock, Nasdaq will augment the number of PMMs using the following method. If there are market makers that meet the NLR Test but not the Proportionality Test (''Remaining Market Makers''), Nasdaq will calculate the number of market makers that will bring the total number of PMMs to 50% of all registered market makers in the stock.[22] (If there are no market makers that meet the NLR, Nasdaq will not apply the ''50% Analysis'' and will not augment the number of PMMs.) Nasdaq then will rank these Remaining Market Makers by proportionate volume, and will designate (from highest to lowest ranked) the Remaining Market Makers as PMMs until the total number of PMMs (*i.e.*, those market makers that meet both the NLR and Proportionality Tests an the top-ranked Remaining Market Makers by proportionate volume) reaches a number not more than 50% of all registered market makers.[23] Nasdaq also will rank the Remaining Market Makers by proportionate trades, and will designate these Remaining Market Makers as PMMs until the total number of PMMs (*i.e.*, those market makers that meet both the NLR and Proportionality Tests and the top-ranked Remaining Market Makers by proportionate trades) reaches a number not more than 50% of all registered market makers.[24]

Securities with Eight or Fewer Market Makers. If the number of market makers in a particular NNM security is eight or fewer, a market maker will earn PMM status by satisfying the NLR threshold only. Thus, for stocks with eight or fewer market makers, Nasdaq will consider neither volume nor trades in determining PMM status. The NASD and Nasdaq believe that this approach is appropriate because it makes the PMM status more attainable in these circumstances and gives firms an incentive to make markets in smaller or less widely-covered securities.

One Month Look-Back Provision. Proposed NASD Rule 4612 generally provides that a market maker may qualify as a PMM for a particular stock if the market maker meets the applicable thresholds for the particular stock during the review period, which generally is one calendar month. The proposed rule, however, contains a one-month ''look-back'' provision. Under this provision, Nasdaq will consider the previous calendar month and the current month to determine a market maker's continued PMM eligibility if the market maker attained PMM status in a security during the previous month, but fails to meet the applicable thresholds for the current month. Specifically, if a market maker that is a PPM fails to meet the applicable thresholds during a given month (and thus would lose its PMM status for the next month) Nasdaq will: (1) calculate the market maker's NLR and proportionate volume and trade levels for the month in question (using trade data up to and including the last trading day of the month) and the prior month; and (2) use these figures to determine if the market maker meets the PMM thresholds. Thus, a market maker will retain its PMM status if, based on the NLR and proportionate trade and volume numbers for the month at issue and the previous month, the market maker meets the applicable PMM thresholds.[25] In effect, this retains the requirement that a market maker earn PPM status on a stock-by-stock basis, but provides some flexibility in that short-term fluctuations or anomalies in a market maker's performance are smoothed out over a longer period.

Timing For Implementation of New PMM Standards. As proposed, the new PMM standards will become effective May 1, 1998. The NASD and Nasdaq note that currently all market makers registered in a security are PMMs due to the suspension of previous PMM standards, and will continue to be so designated on the pilot's proposed start date of May 1, 1998. The NASD and Nasdaq recognize that once the pilot begins on May 1, 1998, PMMs will not have the ability to avail themselves of the one-month look-back provision because there will be no meaningful trading to analyze prior to May 1, 1998. Thus, in order to give PMMs the full benefit of the one-month look-back period and to allow market makers time to adjust their trading activity to the new standards, the NASD and Nasdaq propose to implement the new standards so that no market maker that is designated as a PMM when the pilot begins on May 1, 1998, will lose its PMM status—based on a failure to meet the new PMM standards—until July 6, 1998. The NASD and Nasdaq believe that it is fair to give market makers this time to adjust their training activity before they lose their PMM designation, particularly since PMM standards have been suspended for more than a year and since the new PMMs are more stringent than the previous standards.[26]

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[21] For example, Stock X has 12 market makers. Market makers ABCD and EFGH attract a large percentage of order flow from institutions and account for 30% of the share-volume, but only 15 percent of the trades in the stock. Market makers QRST and UVWX attract a high percent of retail order flow and thus account for 30% of the trades, but account only for 15% of the share-volume of the stock. Each of these market makers provides liquidity to the market, and each would receive credit under the formula.

[22] For example, if Stock Q has 24 market makers, and 9 meet the NLR and Proportionality tests, there would be 3 open slots which could be filled when the Remaining Market Makers were ranked by volume and then by trades.

[23] The 50% levels shall be fixed and not subject to modification by Nasdaq, so that if a market maker meets the NLR threshold and falls within the top 50% of market makers when ranked by proportionate volume or the top 50%of market makers when ranked by proportionate trades, the market maker automatically shall be designated as a PMM. The only instance in which Nasdaq would designate PMMs in an amount less than 50% of all registered market makers, would be if less than 50% of the registered market makers achieve the NLR.

[24] Under the 50% Analysis, the group of market makers designated as PMMs by volume and then by trades may not be the same, and thus the final number of PMMs may be more than 50% of the total number of market makers. Conversely, the number of PMMs may be less than 50% of all market makers because all PMMs must meet the NLR threshold. For example, Stock Q has 24 market makers, and 9 market makers are PMMs because they meet both the NLR and the Proportionality Test. If no other market maker (aside from the 9 PMMs) meet the NLR threshold, no other market makers will be designated as PMMs. If there are 3 or more market makers that meet the NLR, then these Remaining Market makers will be ranked by proportionate volume and then by proportionate trades and the top 3 from each of these two groups (which may or may not overlap in identity) will be designated as PMMs.

[25] Similar to the previous PMM standards, if the market maker meets the PMM thresholds for the applicable review period, Nasdaq will append a ''P'' next to the market maker's identification symbol on the Nasdaq WorkStation beginning the first day of the next month. Additionally, if a PMM fails to meet the thresholds for the applicable review period, Nasdaq will notify the PMM of such failure and remove the ''P'' designation on the next business day following notification.

[26] Subparagraph (f) of NASD Rule 4612 permits market makers to request reconsideration of a notice to withhold PMM designation based on a market maker's excused with drawal status. The NASD and

Continued

Examples of Operation of Proposed PMM Standards. Below are examples of how the proposed new PMM standards will operate:

Example 1. Stock WXYZ has six market makers. Four market makers achieve an NLR of at least .67 or above. Because WXYZ has less than eight market makers, all four of the market makers with an NLR of at least .67 will be designated as PMMs, regardless of their volume or trades.

Example 2. Stock ABCD has 20 market makers; 11 market makers achieve an NLR of at least .67 or above. Of those 11 market makers, six transact at least their proportional level of share-volume or trades. These six market makers automatically are designated as PMMS. Because the number of market makers that meet both the NLR and Proportionality Tests is less than 50% of the total number of registered market makers in ABCD, Nasdaq will rank the remaining market makers that have an NLR of at least .67 (five in total) according to their proportionate level of share-volume. The top for qualify, yielding a total of 10 PPMs (*i.e.*, 50% of the total number of market makers). Next, the same five market makers are ranked according to the proportionate level of trades and the top four are designated as PMMs. In this example, the four market makers chosen by ranking by proportionate volume and the four market makers chosen by ranking by proportionate trades are the same. Thus, the final number of PMMs is 10, or 50% of the total number of registered market makers.

Market makers in stock ABCD	NLR	Proportionate volume	Proportionate trades	PMM?
Market Maker 1	.76	3.80	0.88	YES.
Market Maker 2	.78	1.58	1.07	YES.
Market Maker 3	.83	1.17	1.00	YES.
Market Maker 4	.81	0.80	1.48	YES.
Market Maker 5	.84	0.79	1.41	YES.
Market Maker 6	.82	0.97	1.01	YES.
Market Maker 7	.80	0.98	0.84	YES.
Market Maker 8	.87	0.65	0.61	YES.
Market Maker 9	.79	0.54	0.94	YES.
Market Maker 10	.85	0.51	0.69	YES.
Market Maker 11	.80	0.16	0.24	NO.
Market Maker 12	.65	3.94	2.83	NO.
Market Maker 13	.66	0.83	1.84	NO.
Market Maker 14	.65	0.67	0.94	NO.
Market Maker 15	.64	0.51	0.93	NO.
Market Maker 16	.61	0.41	0.84	NO.
Market Maker 17	.61	0.40	0.49	NO.
Market Maker 18	.58	0.70	0.95	NO.
Market Maker 19	.51	0.16	0.24	NO.
Market Maker 20	.48	0.01	0.02	NO.

Example 3. Stock IJKL has 19 market makers; 11 market makers have an NLR of .67 or better. Of those 11 market makers, six transact at least their proportional level of share-volume or trades. These six market makers automatically are designated as PMMs. Because the number of market makers that meet both the NLR and Proportionality Tests is less than 50% of the total number of registered market makers in IJKL, Nasdaq will rank the remaining market makers that have an NLR of at least .67 (five in total) according to their proportionate level of share-volume. The top four are designated as PMMs, thus yielding a total of 10 PMMs.[27] Next, the same five market makers are ranked according to their proportionate level of trades and the top four are designated as PMMs, thus yielding a total of 10 PMMs. Unlike Example 2, the four market makers chosen by ranking by proportionate volume and the four market makers chosen by ranking by proportionate trades are not the same. Three of the four market makers (*i.e.*, market makers 7, 8, and 9, listed below) are the same; market maker 10, however, is designated as a PMM according to its proportionate volume and market maker 11 is designated a PMM according to its proportionate trades. Thus, the final number of PMMs is 11, or 55% of the total number of registered market makers.

Market makers in stock IJKL	NLR	Proportionate volume	Proportionate trades	PMM?
Market Maker 1	.76	3.80	0.88	YES.
Market Maker 2	.78	1.58	1.07	YES.
Market Maker 3	.83	1.17	1.00	YES.
Market Maker 4	.81	0.80	1.48	YES.
Market Maker 5	.84	0.79	1.41	YES.
Market Maker 6	.82	0.97	1.01	YES.
Market Maker 7	.80	0.98	0.84	YES.
Market Maker 8	.87	0.65	0.61	YES.
Market Maker 9	.79	0.54	0.94	YES.
Market Maker 10	.85	0.51	0.24	YES.
Market Maker 11	.80	0.16	0.31	YES.

Nasdaq note that the rules governing withdrawals from market making (*i.e.*, NASD rules 4619–4620, and 4730) recently were amended. *See* Securities Exchange Act Release No. 39423 (December 10, 1997) 62 FR 66160 (December 17, 1997). Furthermore, the NASD and Nasdaq recently submitted a rule proposal (SR–NASD–98–17) to implement a new older delivery and execution system to replace SelectNet and SOES. *See* Securities Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998). If approved, this proposal also would amend the procedures relating to withdrawal for ''SOES-ed out of the box'' situations.

[27] This example illustrates that when there is an odd number of registered market makers, Nasdaq rounds up to calculate the ''50%'' level (*i.e.*, 50% level = (number of market makers + 1)/2). That is, in example 3 where there are 19 registered market makers, Nasdaq would round up and would have 10 possible PMM slots when ranking by proportionate volume and would have 10 possible slots when ranking by proportionate trades (*i.e.*, (19 + 1)/2 = 10).

Market makers in stock IJKL	NLR	Proportionate volume	Proportionate trades	PMM?
Market Maker 12	.65	3.94	2.83	NO.
Market Maker 13	.66	0.83	1.84	NO.
Market Maker 14	.65	0.67	0.94	NO.
Market Maker 15	.64	0.51	0.93	NO.
Market Maker 16	.61	0.41	0.84	NO.
Market Maker 17	.61	0.40	0.49	NO.
Market Maker 18	.58	0.70	0.95	NO.
Market Maker 19	.51	0.16	0.24	NO.

Example 4. Stock EFGH has 18 market makers. Six of the 18 market makers meet both the NLR and Proportionality Tests. These six market markers automatically are designated as PMM. Because less than 50% of the total number of registered market makers in EFGH qualify as PMMs, Nasdaq would augment this number of the ranking process. Since, however, Market Maker 7 is the only remaining market maker that meets the NLR, only Market Maker 7 will be designated as a PMM. Thus, only 7 (or 38.9%) of the 18 registered market makers qualify as PMMs.

Market makers in stock EFGH	NLR	Proportionate volume	Proportionate trades	PMM?
Market Maker 1	.76	3.80	0.88	YES.
Market Maker 2	.68	1.58	1.07	YES.
Market Maker 3	.73	1.17	1.00	YES.
Market Maker 4	.71	1.00	1.48	YES.
Market Maker 5	.84	1.02	1.41	YES.
Market Maker 6	.72	1.21	1.01	YES.
Market Maker 7	.67	0.91	0.84	YES.
Market Maker 8	.66	0.65	1.01	NO.
Market Maker 9	.65	0.54	0.94	NO.
Market Maker 10	.65	0.51	0.69	NO.
Market Maker 11	.65	0.16	0.24	NO.
Market Maker 12	.65	3.94	2.83	NO.
Market Maker 13	.65	0.83	1.84	NO.
Market Maker 14	.65	0.67	0.94	NO.
Market Maker 15	.64	0.51	0.93	NO.
Market Maker 16	.61	0.41	0.84	NO.
Market Maker 17	.61	0.40	0.49	NO.
Market Maker 18	.58	0.70	0.95	NO.

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Extension of Suspension of Existing PMM and Extension of Short Sale Rule

In addition to proposing new PMM standards, the NASD and Nasdaq are proposing to extend the current suspension of the presently suspended PMM standards until the proposed PMM pilot program is implemented on May 1, 1998. This extension will allow for continuity in the market until the new PMM standards are phased in.

Additionally, as explained below, the NASD and Nasdaq are proposing to extend until November 1, 1998, the pilot of the Short Sale Rule including the market maker exemption to that rule and the amended definition of legal short sale.[28] The Short Sale Rule has been operating on a pilot basis since June 29, 1994,[29] and most recently was extended until April 15, 1998.[30] On August 8, 1997, the NASD and Nasdaq submitted a proposal to implement the Short Sale Rule on a permanent basis.[31] Subsequent to submitting this request, the Commission instructed the NASD and Nasdaq that it would not determine whether to implement the Short Sale Rule on a permanent basis until more meaningful PMM standards were developed and implemented. In response, the NASD and Nasdaq have proposed the standards described in this filing. Furthermore, the NASD and Nasdaq anticipate that under the proposed PMM standards, the number of market makers qualifying for PMM status will be reduced significantly from the levels under previous PMM standards. In order to minimize any unintended consequence of the more stringent PMM standards—such as restricting market makers from ''facilitating'' customer orders or broker/dealers from executing riskless principal transactions (and effectively acting as agent) when they have a net short position—the NASD and Nasdaq shortly will file a rule proposal to amend the Short Sale Rule to provide all market makers (not only PMMs) with an exemption to the Short Sale Rule to engage in customer-facilitating, liquidity-providing transactions.

Accordingly, an extension of the Short Sale Rule is necessary to allow the NASD and Nasdaq to study the effects of the revised PMMs and the soon-to-be filed amendments to the Short Sale Rule, and to study the interaction between the revised PMM standards and

[28] The definition of ''legal'' short sale was amended on a pilot basis on September 26, 1997, and has been extended commensurate with the subsequent extensions of the Short Sale Rule pilot. *See* Securities Exchange Act Release No. 39139 (September 26, 1997) 62 FR 52169 (October 6, 1997) (initial temporary approval order for amendment to ''legal'' short sale); Securities Exchange Act Release No. 39551 (January 14, 1998) 63 FR 3370 (January 22, 1998) (extending amended legal short sale definition until April 15, 1998).This amendment provides that a ''legal'' short sale can be effected on a down bid: at a price of 1/16th above the bid when the inside spread is 1/16th or greater; or at a price equal to or greater than the offer price when the inside spread is less than 1/16th.

[29] *See* Securities Exchange Act Release No. 34277 (June 29, 1994) 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order'').

[30] *See* Securities Exchange Act Release No. 39551 (January 14, 1998) 63 FR 3370 (January 22, 1998).

[31] *See* Securities Exchange Act Release No. 38979 (August 26, 1997) 62 FR 46537 (September 3, 1997).

the Short Sale Rule. At the end of the PMM pilot, it is expected that the NASD, Nasdaq, and the Commission will be in a better position to evaluate the efficacy of the revised PMM standards and to evaluate the proposal to permanently approve the Short Sale Rule.

Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with Sections 15A(b)(6) and 11A(a)(1)(C) of the Exchange Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the maintenance of fair and orderly markets to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure fair competition among brokers and dealers.

Specifically, the NASD and Nasdaq believe that the proposed PMM standards provide a meaningful measure of whether a market maker is providing liquidity to the market and thus deserving of an exemption to the NASD's Short Sale Rule. Furthermore, by sufficiently restricting the number of market makers that may qualify for PMM status, the proposed standards foster competition among market makers and benefit investors. Similarly, the proposal protects investors by limiting the number of market makers that may sell short only to those who regularly effect liquidity-providing and stabilizing transactions. Furthermore, the temporary extension of the suspension of the presently suspended PMM standards until the new standards are in place and an extension of the pilot of the Short Sale Rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule and continuity of short sale regulation, thus promoting market efficiency and orderly markets during a transition period. The proposal should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq believe that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD and Nasdaq have requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the extended suspension of the current PMM standards and the extension of the Short Sale Rule pilot prior to the 30th day after publication in the **Federal Register**. For the reasons discussed in Item V below, the Commission grants accelerated partial approval for these portions of the proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted by April 27, 1998.

V. Commission's Findings and Order Granting Accelerated Partial Approval of the Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the Short Sale Rule pilot until November 1, 1998, and the extension of the current suspension of existing PMM standards through May 1, 1998, are consistent with the requirements of the Exchange Act and the rules and regulations applicable to the NASD. In particular, these extensions conform with the requirements of Section 15A(b)(6)[32] of the Exchange Act and the rules and regulations thereunder. Pursuant to Section 15A(b)(6), the NASD's rules must be designed, among other things, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission believes that these portions of the proposal are consistent with Section 15A(b)(6) of the Exchange Act because extension of the Short Sale Rule pilot and continued suspension of the current PMM standards will maintain the status quo while the Commission and the NASD review the operation of the pilot program for new PMM standards. It is not unreasonable to maintain the NASD's Short Sale Rule for a further short period while the Commission evaluates the effect of new PMM standards on market maker behavior and use of the short sale exemption. Thus, because the Commission's ultimate stance on the Short Sale Rule may be affected, in part, by the operation of the proposed new PMM standards, it is reasonable to keep the Short Sale Rule in place while the pilot for new PPM standards commences. Furthermore, it is judicious, in the short term, to avoid reintroducing existing, potentially outdated PMM standards prior to the implementation of a new PMM pilot.

In finding that the extensions of the Short Sale Rule pilot and the suspension of the existing PMM standards are consistent with the Exchange Act, the Commission reserves judgment on the merits of the Short Sale

[32] 15 U.S.C. 78o–3(b)6).

Rule, any market maker exemptions, and the proposed new PMM standards. The Commission recognizes that the current Short Sale Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. Moreover, during this period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with additional information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

The Commission finds good cause for approving the extension of the Short Sale Pilot and the extension of the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of filing thereof. The Short Sale Rule has been in place since September 6, 1994, and the Commission is only extending it for six and a half months in order to evaluate its interaction with new PMM standards. In addition, as noted above, it could be disruptive to market making to reintroduce outdated PMM standards for a brief period prior to implementation of a new PMM pilot.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[33] that the portion of the proposed rule change (File No. SR–NASD–98–26) containing the extension of the NASD's Short Sale Rule pilot until November 1, 1998, and the suspension of existing PMM standards until May 1, 1998, is hereby approved on an accelerated basis.[34]

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[33] 15 U.S.C. 78s(b)(2).

[34] In approving this portion of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39813; File No. SR–NYSE–98–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Exempted Borrowers and Good Faith Accounts

March 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by he NYSE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission also is granting accelerated approval of the proposal for 120 days, until July 27, 1998.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 431, ''Margin Requirements,'' to apply the maintenance margin requirements of NYSE Rule 431 to good faith accounts and to provide that the proprietary accounts of introducing broker-dealers who are exempted borrowers under Regulation T[4] will continue to be subject to NYSE Rule 431(e)(6). The NYSE has requested accelerated approval of the proposal for 120 days.[5]

Proposed NYSE Rule 431, as amended, is attached as Exhibit A.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 23, 1998, the NYSE amended its proposal. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Division of Market Regulation, Commission, dated March 20, 1998 (''Amendment No. 1''). In Amendment No. 1, the NYSE modified its proposal to request temporary approval of the proposal for 120 days.

[4] 12 CFR 220. Regulation T, ''Credit by Brokers and Dealers,'' is administered by the Board of Governors of the Federal Reserve System (''FRB'') pursuant to Section 7 of the Act.

[5] *See* Amendment No. 1, *supra* note 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 1997, the FRB adopted amendments to Regulation T, which governs initial extensions of credit to customers and broker-dealers. One significant Regulation T change established a ''good faith'' account which can be used for transactions in non-equity securities.[6] Unlike transactions in a cash or margin account, transactions in the good faith account are *not* subject to the requirements of Regulation T with respect to initial margin and payment and liquidation time frames.

The NYSE believes that transactions in a good faith account raise the same safety and soundness concerns from a maintenance margin perspective as cash and margin account transactions. Accordingly, the NYSE proposes to amend NYSE Rule 431 so that transactions in all accounts of customers (except for cash accounts, as discussed below), including the new good faith account, will be subject to the current applicable maintenance margin requirements of NYSE Rule 431(c).[7] As is currently the case, cash accounts subject to Regulation T will not be subject to the overall NYSE Rule 431 requirements, but in certain cases will be covered by specific rule provisions. In this regard, the NYSE notes that NYSE Rule 431 requirements currently apply to cash account transactions in exempted securities (NYSE Rule 341(e)(2)(F); for certain options (NYSE Rule 431(f)(2)(M)); and for ''when issued'' and ''when distributed'' securities (NYSE rule 341(f)(3)(B)).

[6] 12 CFR 220.6.

[7] NYSE Rule 431(c), as amended, will specify the margin that must be maintained in all customer accounts, except for cash accounts subject to Regulation T, unless a transaction in a cash account is subject to other provisions of NYSE Rule 431.

The FRB also established a classification of exempted borrowers which are exempt from Regulation T. An ''exempted borrower,'' as defined in Regulation T, is a broker-dealer ''a substantial portion of whose business consists of transactions with persons other than brokers or dealers.'' [8] The NYSE currently does not apply the requirements of NYSE Rule 431 to member organization accounts except for transactions in the proprietary accounts of broker-dealers which are carried by a member organization. Specifically, NYSE Rule 431(e)(6) states that a member organization may carry the proprietary account of another broker-dealer upon a margin basis which is satisfactory to both parties provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition.

The NYSE believes that exempted borrowers should remain exempt from the requirements of NYSE Rule 431. However, under the new Regulation T definition of exempted borrower, the proprietary transactions of an introducing organization that qualifies as an exempted borrower (*i.e.*, an organization that conducts a substantial public business) will not be subject to Regulation T. The proposed amendments to NYSE Rule 431(a)(2) will exclude exempted borrowers from the definition of customer. However, for safety and soundness purposes, proprietary accounts that are carried or cleared by a member organization will remain subject to the NYSE Rule 431 equity requirements. Accordingly, NYSE Rule 431(a)(2), as amended, will state that the term ''customer'' will not include an ''exempted borrower'' as defined in Regulation T, except for the proprietary account of a broker-dealer carried by a member organization pursuant to NYSE Rule 431(e)(6).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public. The NYSE believes that the proposed rule change also is consistent with the rules and regulations of the FRB in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) of the Act.

[8] 12 CFR 220.2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed amendments to NYSE Rule 431 for 120 days [9] prior to the 30th day after publication of the proposed rule change in the **Federal Register.** The NYSE states that accelerated approval of the proposal will ensure that the appropriate requirements under NYSE Rule 431 are in place when the Regulation T amendments become effective on April 1, 1998. According to the NYSE, approval of the proposed amendments to NYSE Rule 431 as of April 1, 1998, is necessary so that transactions in the new good faith account and in the proprietary accounts of non-carrying/clearing member organizations will be subject to NYSE Rule 431 margin requirements.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review of the NYSE's proposal and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the Commission finds that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

[9] *See* Amendment No. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Specifically, the Commission finds that it is appropriate for the NYSE to apply the existing maintenance margin requirements of NYSE Rule 431(c) to transactions in the new ''good faith'' account permitted under Regulation T. The NYSE notes that the non-equity transactions permitted in the good faith account will not be subject to the initial margin requirements and payment and liquidation time frames of Regulation T. However, as the NYSE notes, transactions in the good faith account may raise the same safety and soundness concerns with regard to maintenance margin as do transactions in cash and margin accounts. Accordingly, the Commission believes that it is appropriate for the NYSE to apply the existing maintenance margin requirements specified in NYSE Rule 431(c) to transactions in the good faith account. The Commission believes that applying the maintenance margin requirements of NYSE Rule 431(c) to transactions in the good faith account will protect investors and the public interest and help to maintain fair and orderly markets by ensuring that good faith accounts contain adequate margin reserves.

NYSE Rule 431(e)(6) states that a member may carry the proprietary account of another registered broker-dealer upon a margin basis satisfactory to both parties, provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition. The Commission believes that it is appropriate for the NYSE to amend the definition of ''customer'' in NYSE Rule 431(a)(2) so that NYSE Rule 431(e)(6) will continue to apply to the proprietary accounts of introducing broker-dealers that qualify as ''exempted borrowers'' under Regulation T. By continuing to apply NYSE Rule 431(e)(6) to these accounts, the Commission believes that the proposal will help to ensure that these accounts contain adequate margin, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** in order to ensure that the proposed changes are effective by April 1, 1998, when the Regulation T amendments concerning good faith accounts and exempted borrowers become effective. The Commission believes that the proposed changes will help to ensure adequate margin requirements for good faith accounts and for introducing broker-dealers that qualify as exempted borrowers. Accordingly, the Commission finds that

it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve the proposal on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 1 to the proposal on an accelerated basis. In Amendment No. 1, the NYSE modified its proposal to provide that the proposal will be effective for 120 days. The Commission believes that it is appropriate to provide for temporary approval of the proposal for 120 days in order to provide for a full notice and comment period when the NYSE requests permanent approval of the changes to NYSE Rule 431. Therefore, the Commission believes that Amendments No. 1 is consistent with Sections 6(b) and 19(b)(2) of the Act and Amendment No. 1 is approved on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–HYSE–98–08 and should be submitted by April 27, 1998.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–98–08) is approved for 120 days, until July 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Additions are italicized; deletions are bracketed.

Proposed Amendments to NYSE Rule 431

Rule 431(a)(1) unchanged.

(a)(2) The term ''customer'' means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include *the following: (a)* a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers[.], *or (b) an ''exempted borrower'' as defined by Regulation T of the Board of Governors of the Federal Reserve Board (''Regulation T''), except for the proprietary account of a broker-dealer carried by a member organization pursuant to Section (e)(6) of this Rule.*

(a)(3) through (b)(4) unchanged.

(c) Maintenance Margin.

The margin which must be maintained in [margin] *all* accounts of customers, *except for cash account subject to Regulation T unless a transaction in a cash account is subject to other provisions of this rule,* shall be as follows:

(1) 25% of the current market value of all securities ''long'' in the account; plus

(2) $2.50 per share or 100% of the current market value, whichever among is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30% of the current market value, whichever amount is greater, or each stock ''short'' in the account selling at $5.00 per share or above; plus

(4) 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond ''short'' in the account.

[FR Doc. 98–8924 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2775]

Bureau of Consular Affairs; Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Affidavit Regarding Change of Name.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before May 6, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Affidavit Regarding Change of Name.

Frequency: On occasion.

Form Number: DSP–60.

Respondents: Applicants who have a passport that has a name on it that is substantially different from that shown on the citizenship evidence, or which was not acquired by a female applicant's marriage.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 18,750 hours.

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evalaute the accuracy of agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit

comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 19, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–8872 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2776]

Bureau of Consular Affairs; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Statement Regarding Lost and Stolen Passport.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments shall be submitted to OMB on or before May 6, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Statement Regarding Lost and Stolen Passport.

Frequency: On occasion.

Form Number: DSP–64.

Respondents: Applicants for a new passport when a previous valid or potentially valid passport cannot be submitted.

Estimated Number of Respondents: 30,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 7,500 hours.

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 19, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–8873 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2777]

Bureau of Consular Affairs; Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Birth Affidavit.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before May 6, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Birth Affidavit.

Frequency: On occasion.

Form Number: DSJP–10A.

Respondents: Applicants who cannot submit an acceptable birth certificate.

Estimated Number of Respondents: 50,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 12,500 hours.

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 19, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–8874 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 277B]

Bureau of Consular Affairs; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-day Notice of Information Collection; Passport Amendment/ Validation Application.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before May 6, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Passport Amendment/Validation Application.

Frequency: On occasion.

Form Number: DSP–19.

Respondents: Applicants who have a passport that needs to be amended for

any reason such as name change or to add visa pages.

Estimated Number of Respondents: 150,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 37,500 hours.

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden of those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 19, 1998.

Glen H. Johnson,

Acting, Chief Information Officer.

[FR Doc. 98–8875 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2779]

Bureau of Consular Affairs; Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Department of States.

ACTION: 30-Day Notice of Information Collection; Statement of Identity.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before May 6, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Statement of Identity.

Frequency: On occasion.

Form Number: DSP–10.

Respondents: Applicant who has not submitted adequate documentary evidence with their passport application.

Estimated Number of Respondents: 2,600.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 650 hours.

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 19, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–8876 Filed 4–3–98; 8:45 am]

BILLING CODE 4710–06–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1503).

TIME AND DATE: 9:00 a.m. (CDT), April 8, 1998.

PLACE: Institute for Economic Development Auditorium, 2355 Nashville Road, Bowling Green, Kentucky.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 24, 1998.

New Business

B—Purchase Award

B1. Contract with Porter Walker, Inc., to provide general industrial consumables for all TVA locations.

C—Energy

C1. Distributed generation policy that provides for the development and implementation of distributed generation systems and related services, including the design, construction, operation, and maintenance of near or on-site production of electric power, steam, hot water, and chilled water, for use by the end user.

E—Real Property Transactions

E1. Abandonment of easement rights to install telecommunications equipment at structure No. 36 on the Lonsdale-Alcoa Bull Run Loop Transmission Line, Tract No. PCS–14.

E2. Delegation of authority to Facilities and Realty Management to execute an agreement with The Knoxville Super Chamber for use of Old City Hall for 18 months, with operating and maintenance costs reimbursed by the Chamber to TVA.

E3. Modification of deed restrictions in two deeds affecting approximately 4.2 acres of former TVA land (portions of Tract Nos. XWBR–446 and –447), and sale of a permanent commercial recreation easement affecting approximately 22.2 acres of TVA land (Tract No. XWBR–709RE) on Watts Bar Lake in Roane County, Tennessee.

F—Unclassified

F1. Approval to file a condemnation case in connection with acquisition of permanent easements and rights-of-way for an electric power transmission line at the Batesville-West Batesville Transmission Line, Batesville, Mississippi.

Information Items

1. Approval of new Labor Relations agreements between TVA and the Public Safety Service Employees' Union.

Dated: April 1, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–9029 Filed 4–2–98; 9:26 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 172]

Future Air-Ground Communications in the VHF Aeronautical Data Bank (118–137 MHz); Correction

ACTION: Correction.

This document contains a correction to a meeting notice published in the **Federal Register** on March 31, 1998 (63 FR 15479).

SUMMARY: The venues previously published for the RTCA Special Committee 172 meeting are corrected by changing the Army and Navy Club and RTCA in the first paragraph, second sentence (column 3) to RTCA for all four days of the meeting.

The meeting announcement is revised to give RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036, as the meeting venue for April 14–17, 1998.

Issued in Washington, DC, on March 31, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–8949 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–98–3700]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes seven collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Michael Robinson, NHTSA Information Collection Clearance Officer, 400 Seventh Street, S.W., Room 6123, NAD–40, Washington, D.C. 20590. Mr. Robinson's telephone number is (202) 366–9456. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Brake Hose Manufacturing Identification, Safety Standard No. 106.

OMB Control Number: 2127–0052.

Affected Public: Business or other for-profit.

Abstract: Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title 15 United State Code 1932, Section 103, authorizes the issuance of Federal Motor Vehicle Safety Standards, (FMVSS). The Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, Standard 106, Brake Hoses was issued. This standard specifies labeling and performance requirements for all motor vehicle brake hose assemblers, brake hoses and brake hose end fittings manufacturers for automotive vehicles. These entities must register their identification marks with NHTSA to comply with this standard.

Estimated Annual Burden: 30 hours.

Number of Respondents: 20

(2) Title: 49 CFR 575.104, Uniform Tire Quality Grading Standards.

OMB Control Number: 2127–0519

Affected Public: Business or other for-profit

Abstract: 49 United States Code 30123(e) states: ''the Secretary shall perscribe a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires.'' Additionally, it states that there shall be cooperation between the NHTSA, the industry, and the Federal Trade Commission to the maximum extent practicable in efforts to eliminate deceptive and confusing tire nomenclature and marketing practices.

With this mandate, the agency established 49 code of Federal Regulations (CFR) 575.104—Uniform Tire Quality Grading Standards (UTQGS). To carry out this mandate, NHTSA established a grading system for tires based on three different characteristics—treadwear, traction, and temperature resistance.

Estimated Annual Burden: 1,043,000 hours.

Number of Respondents: 140

(3) Title: Procedures for Selecting Lines to be Covered by the Theft Prevention Standard (49 CFR 542)

OMB Control Number: 2127–0539.

Affected Public: Business or other for-profit.

Abstract: The Anti Car Theft Act of 1992 (amended the Motor Vehicle Theft Law Enforcement Act of 1984 (P.L.98–547) requires this collection of information. One component of the theft prevention package requires the Secretary of Transportation (delegated to the National Highway Traffic Safety

Administration (NHTSA) to promulgate a theft prevention standard for the designation of high-theft vehicle lines. Provisions delineating the information collection requirements include section 33104, which requires NHTSA to promulgate a rule for the identification of major component parts for vehicles having or expected to have a theft rate above the median rate for all new passenger motor vehicles (cars, MPVs, and light-duty trucks—6000 lbs GVWR and below) sold in the United States, as well as with major component parts that are interchangeable with those having high-theft rate.

The specific lines and parts to be identified are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment.

The procedures, contained in Part 542 (1) and (2) will be applied to those lines introduced before or after the 1997 model year (MY).

Estimated Annual Burden: 4216 hours.

Number of Respondents: 34.

(4) Title: Owner's Manual Requirements-Motor vehicle and Motor Vehicle Equipment (49 CFR 571.108, 205, 208, 210 and 575.105).

OMB Control Number: 2127–0541.

Affected Public: Individuals, Households, Business, other for-profit, Not-for-profit, Farms, Federal Government and State, Local or Tribal Government.

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use.

Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the owner's manual to aid the agency in achieving many of its safety goals.

FMVSS No. 108—Lamps, Reflective Devices, and Associated Equipment

This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. In this particular case, a new manner of headlamp aiming is being allowed whereby owners as well as traditional vehicle service personnel could aim their vehicle's headlamps using equipment that is an integral part of the headlamp system. Since the specific manner in which aim is to be performed is not regulated (only the performance of the devices is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

Part 575 section 103—Camper Loading.

This standard requires that manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the owner's manual of the truck.

FMVSS No. 205—Glazing Materials

This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in collision. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield is required to be placed in the owner's manual.

FMVSS No. 208—Occupant Crash Protection

This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210—Seat Belt Assembly Anchorages

This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in collisions. Manufacturers of vehicles that are not equipped with lap belt assemblies at front outboard passenger seating positions suitable for securing child restraints are required to include information in the owner's manual on the correct location and placement of seat belt anchorages which will provide this protection.

Part 575—Section 105—Utility Vehicles

This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. A statement is provided in the regulation which manufacturers shall include, in its entirety or equivalent form, in the owner's manual.

Estimated Annual Burden: 1095.

Number of Respondents: 120.

(5) Title: Petitions for Exemption from the Vehicle Theft Prevention Standard, 49 CFR Part 543.

OMB Control Number: 2127–0542.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. section 33106 provides for an exemption to this identification process by petitions from manufactures who equip covered vehicles with standard original equipment anti theft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as the identification system.

Estimated Annual Burden: 96 hours.

Number of Respondents: 12.

(6) Title: Production Reporting System for Side Impact Protection Compliance 949 CFR Part 586.

OMB Control Number: 2127–0558.

Affected Public: Business or other for-profit.

Abstract: 15 U.S.C. 1392 of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The agency, in prescribing a FMVSS, is to consider available relevant motor vehicle safety data, and to consult with the Vehicle

Equipment Safety Commission and other agencies as it deems appropriate. Further, the Act mandates that in issuing any FMVSS, the agency considers whether the standard is ''reasonable, practicable and appropriate for the particular type of motor vehicles or item of motor vehicle equipment for which it is prescribed,'' and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as she/he deems necessary to carry out this subchapter.

Using this authority, the agency issued the original FMVSS No. 214, ''Side Door Strength,'' in October 30, 1970. On October 30, 1990, NHTSA amended FMVSS No. 214 to require dynamic side impact testing of passenger cars. The requirements was phased-in over a three-year period beginning on September 1, 1993. The title of the new standard is FMVSS No. 214 ''Side Impact Protection.''

Estimated Annual Burden: 936 hours.

Number of Respondents: 26.

(7) Title: Upper Interior Component Head Impact Protection Phase-in Reporting Requirements.

OMB Control Number: 2127–0581.

Affected Public: Business or other for-profit.

Abstract: 15 U.S.C. 1392 of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the isuance of Federal Motor Vehicle Safety Standards (FMVSS). The agency, in prescribing a FMVSS, is to consider available relevant motor vehicle safety data, and to consult with the Vehicle Equipment Safety Commission and other agencies as it deems appropriate. Further, the Act mandates that in issuing any FMVSS, the agency considers whether the standard is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as she/he deems necessary to carry out this subchapter.

Using this authority, the agency issued the original FMVV No. 201 ''Occupant Protection in Interior Impact'' in 1967 for passenger cars. In 1979, the agency extended the standard to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. Under the mandate of the National Highway Traffic Safety Administration Authorization Act of 1991, the agency has amended FMVSS No. 201 to require improved head protection in impacts against the vehicle upper interior components. The final rule proposes three alternative implementation plans at manufacturers' option (1) 100% effective, beginning September 1 or 1999, (2) 10%, 25%, 40%, 70% and 100% phase-in, beginning September 1 of 2002 for final stage manufacturers and alterers only. The phase-in plan requires all manufacturers to report achievement of annual production quotas for the first four years during the phase-in period. The report is due within the 60 days after August 31 or each production year. After the repoort is received, requirements will cease and no further report will be required.

Issued on: April 1, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–8968 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3268; Notice 2]

Panoz Auto Development Company; Grant of Application for Second Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the application by Panoz Auto Development Company of Hoschton, GA., for a second renewal of its exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the reapplication is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on December 30, 1997, and an opportunity afforded for comment (62 FR 67931).

Panoz received NHTSA Exemption No. 93–5 from S4.1.4 of Standard No. 208, an exemption for two years which was initially scheduled to expire August 1, 1995 (58 FR 43007). It applied for, and received, a renewal of this exemption for an additional two years, scheduled to expire on November 1, 1997 (61 FR 2866). On August 28, 1997, NHTSA received Panoz's application for second renewal, which was more than 60 days before the scheduled expiration date of its exemption. In accordance with 49 CFR 555.8(e), Panoz' filing of its application before the 60th day stays the expiration until the Administrator grants or denies the application for second renewal.

Panoz's original exemption was granted pursuant to the representation that its Roadster would be equipped with a Ford-supplied driver and passenger airbag system, and would comply with Standard No. 208 by April 5, 1995 after estimated expenditures of $472,000. As of April 1993, the company had expended 750 man hours and $15,000 on the project.

According to its 1995 application for renewal:

> Panoz has continued the process of researching and developing the installation of a driver and passenger side airbag system on the Roadster since the original exemption petition was submitted to NHTSA on April 5, 1993. To date, an estimated 1680 man-hours and approximately $50,400 have been spent on this project.

At that time, Panoz used a 5.0L Ford Mustang GT engine and five speed manual transmission in its car. Because ''the 1995 model year and associated emission components were revised by Ford'', this caused

> a delay in the implementation of the airbag system on the Roadster due to further research and development time requirements and expenditure of additional monies to evaluate the effects of these changes on the airbag adaptation program.

Shortly before filing its application for first renewal, Panoz learned that Ford was replacing the 5.0L engine and emission control system on the 1996 Mustang and other passenger cars with a modular 4.6L engine and associated emission components. The 1995 system did not meet 1996 On-Board Diagnostic emission control requirements, and Panoz was faced with using the 1996 engine and emission control system as a substitute. The majority of the money and man hours at that time had been spent on adapting an airbag system to the 5.0L engine car, and the applicant had to concentrate on adapting it to a 4.6L engine car. Panoz listed eight types of modifications and testing necessary for compliance that would cost it $337,000 if compliance were required at the end of a one-year period. It asked for and received a two-year renewal of its exemption.

However, Panoz found integration of the 4.6L engine into its existing chassis more difficult than anticipated, primarily because the 4.6L was 10 inches wider than the engine it replaced. This required a total redesign of the chassis, requiring expenditure of ''a significant amount of resources.'' Simultaneously, it designed the vehicle to allow for the integration of the Ford Mustang driver-side and passenger-side

airbag systems. Panoz describes these steps in some detail and estimates that between May 1995 and August 1997 it spent 2200 man-hours and $66,000 on these efforts. In the same time period, it spent $47,000 in static and dynamic crash testing of a 4.6L car related to airbag system development. Panoz concludes by describing the additional modifications and testing required to adapt the Ford system to its car. These costs total $358,000. A two-year renewal of its exemption would provide sufficient time to generate sufficient income (approximately $15,000 a month through sales of vehicles and private funding) to fund the modifications and testing.

Panoz sold 13 cars in 1993 and 13 more in 1994. It did not state its sales in 1995. Because of the effort needed to meet Federal emission and safety requirements, Panoz did not build any 1996 model year vehicles. It reports sales of 23 model year 1997 vehicles in the 12 months preceding its application for second renewal. At the time of its original petition, Panoz's cumulative net losses since incorporation in 1989 were $1,265,176. It lost an additional $249,478 in 1993, $169,713 in 1994, $721,282 in 1995, and $1,349,241 in 1996.

The applicant reiterated its original arguments that an exemption would be in the public interest and consistent with the objectives of traffic safety. Specifically, the Roadster is built in the United States and uses 100 percent U.S. components, bought from Ford and approximately 80 other companies. It provides employment for 45 full time and three part time employees. The Roadster is said to provide the public with a classic alternative to current production vehicles. It is the only vehicle that incorporates ''molded aluminum body panels for the entire car'', a process which continues to be evaluated by other manufacturers and which ''results in the reduction of overall vehicle weight, improved fuel efficiency, shortened tooling lead times, and increased body strength.'' With the exception of S4.1.4 of Standard No. 208, the Roadster meets all other Federal motor vehicle safety standards including the 1997 side impact provisions of Standard No. 214.

No comments were received on the application.

It is unusual for an applicant to request a second renewal of a temporary exemption. By the time the original exemption, or its extension, has expired, an applicant has either been able to bring the exempted vehicle into compliance or it has withdrawn from the market. The statute imposes no limitations on the number of renewals of temporary exemptions that may be granted, leaving the matter to the discretion of the Administrator in his findings. In this regard, NHTSA notes that Panoz has continually applied for two-year exemptions (rather than the three years it is entitled to under the hardship procedures), and that had it applied for three-year exemptions, its first renewal would be expiring at approximately the same time that its second renewal will.

The hardship factors that led to the initial grant and initial renewal of the exemption from S4.1.4 of Standard No. 208 remain. Production remains only a handful of vehicles, approximately 23 being manufactured under the extension to the original exemption. Panoz continues to manifest net losses in its income statements. Design and engineering difficulties continue because of the necessity to accommodate an engine not of its own manufacture. The same public interest and safety factors continue as well, including 100 per cent use of motor vehicle equipment manufactured in the United States, and employment for 45 full time and three part time employees.

In consideration of the foregoing, it is hereby found that to require immediate compliance with S4.1.5 (the now-appropriate paragraph) of Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 208, and that a temporary exemption would be in the public interest and motor vehicle safety. Accordingly, Panoz Auto Development Company is hereby granted an extension of NHTSA Exemption No. 93–5 from S4.1.5 of 49 CFR 571.208 Standard No. 208 *Occupant Crash Protection,* expiring March 1, 2000.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Dated: April 1, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–8967 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3306; Notice 2]

Trinity Trailer Mfg., Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This notice grants the application by Trinity Trailer Mfg., Inc. (formerly Farm Bed Mfg., Inc.), of Boise, Idaho, for a three-year temporary exemption from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published in the **Federal Register** on January 15, 1998 (63 FR 2446).

Trinity Trailer (''Trinity'') manufactures and sells the ''Eagle Bridge,'' a self-unloading bulk trailer that has small conveyor belts at the lower rear of the trailer to unload potatoes and other agricultural products. The rear shaft mount for the conveyor belt protrudes 24 inches to the rear of the trailer so that cargo can drop onto another conveyor belt that is located at the unloading site. Because Standard No. 224 excludes a ''special purpose vehicle,'' Trinity had asked NHTSA on June 28, 1996, for an interpretation that the Eagle Bridge qualified for exclusion as a special purpose vehicle because the trailer was manufactured with ''work-performing equipment.''

On August 22, 1997, NHTSA replied that the Eagle Bridge was not excluded. Paragraph S4 of Standard No. 224 defines a special purpose vehicle as

> a trailer or semi-trailer having work-performing equipment * * * that, *while the vehicle is in transit,* resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard * * *.

(Emphasis added). As NHTSA wrote the applicant,

> [t]he small conveyor belt of the Eagle Bridge at no time passes through the area where the horizontal member of the rear underride guard would be located, and it certainly does not do so while the vehicle is in transit.

Trinity received NHTSA's interpretation approximately seven months before the date for compliance. Standard No. 224 required, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more be fitted with a rear impact guard that conforms to Standard No. 223, Rear impact guards.

Because of the costs involved in re-engineering its trailers to accommodate a rear impact guard, Trinity has asked for an exemption of three years. The company presented cost estimates indicating that the costs to conform at the end of a three-year period would be $637,720 with a corresponding increase in the price of its trailers of $709 (estimate ''based on 300 trailers built per year or 900 trailers''), as compared with a cost to conform of $882,920 and a trailer price increase of $2,943 at the end of a one-year exemption (estimate ''based on 300 trailers built per year''). Trinity represents that an increase of this magnitude would effectively price its trailers out of the market. In the absence of an exemption, Trinity stated that it would be forced to close because the Eagle Bridge is its sole product. The company's net income for 1996 was only $137,798, which represented a decline from 1995's net income of $611,145. The company manufactured 263 trailers in the 12-month period preceding the filing of its application.

Trinity believes that it has made a good faith effort to meet Standard No. 224, saying that, prior to requesting its interpretation from NHTSA, ''hundreds of hours were spent to find an automatically retracting rear impact guard,'' only to find that none are available in the United States. Its engineers have not been successful ''in making a moveable guard or a moveable rear shaft and tail fins.'' The application contains the alternative means of compliance that have been examined, and sets forth the reasons for the rejection of each. It believes that it can achieve full compliance by the end of a three-year exemption period.

Trinity argues that an exemption would be in the public interest and consistent with traffic safety objectives because there is no history of injuries from motor vehicle accidents involving the rear conveyor belt system on its trailers. Further, ''the possibility of injury to occupants of a vehicle impacting the rear of a Trinity trailer is minimal because of Trinity's wheels-back design.'' These trailers are used extensively by the agricultural industry in the Pacific Northwest, and the applicant estimates that ''well over half of all potatoes harvested in the States of Idaho and Washington are hauled in Trinity trailers.''

No comments were received on the application.

NHTSA has analyzed the economic and regulatory situation that confronts Trinity. Before receiving NHTSA's interpretation declining to exempt its kind of trailers from the application of Standard No. 224, Trinity appears to have devoted considerable time looking for a solution to its compliance problem. If the company devoted its entire resources to achieving compliance at the end of a one-year period, it estimates that this would cost it $882,920, and require a price increase of $2,943 per trailer. This cost figure represents more than the total of its combined net income for 1995 and 1996. It is likely that an exemption of only one year might create cash-flow problems for Trinity. To recapture its costs as soon as possible, the company is of the view that it would have to raise the price of its trailers almost $3,000, which would place it beyond the means of its customers. Thus, compliance may not be so much a problem of developing an engineering solution (which apparently is feasible within one year) as it is funding and implementing that solution in a financially realistic manner. The funds generated by three years of production will allow it to recapture its costs in an orderly manner, even though the estimated price of the trailer will still rise by $709 at the end of the exemption period.

It is manifest that the public interest would not be served by denying Trinity an exemption, which the company avers would cause it to close, creating unemployment. The low volume of Trinity's production reduces the risk to safety of the trailers that will be produced under the exemption without a rear underride guard.

In consideration of the foregoing, it is hereby found that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of traffic safety. Accordingly, Trinity Trailer Mfg., Inc., is hereby granted NHTSA Temporary Exemption No. 98–2 from 49 CFR 571.224, Standard No. 224, *Rear Impact Protection*, expiring March 1, 2001.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on April 1, 1998.

Ricardo Martinez,

Administrator

[FR Doc. 98–8966 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–3]

Notice of Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval

SUMMARY: This notice announces OMB approval of information collection requests (ICRs), for OMB No. 2137–0510, entitled Radioactive Materials (RAM) Transportation Requirements, and OMB No. 2137–0034, entitled Hazardous Materials Shipping Papers and Emergency Response Information (Former Title: Hazardous Materials Shipping Papers). These information collections have been extended until March 31, 2001.

DATE: The expiration date for these ICRs is March 31, 2001.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L.104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval of the following ICRs:

Title: Radioactive Materials (RAM) Transportation Requirements
OMB Control Number: 2137–0510
Title: Hazardous Materials Shipping Papers and Emergency Response Information
OMB Control Number: 2137–0034

These information collection approvals expire on March 31, 2001.

Issued in Washington, DC on April 1, 1998.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 98–8948 Filed 4–3–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33574]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between the following points: (1) Shawnee Junction, WY, in the vicinity of UP's milepost 271.4 (North Platte Subdivision) and Northport, NE, in the vicinity of UP's milepost 117.3 (North Platte Subdivision), a distance of approximately 154 miles (Shawnee Junction segment); (2) Fish Lake, WA, in the vicinity of UP's milepost 354.7 (Spokane Subdivision) and Attalia, WA, in the vicinity of UP's milepost 215.7 (Spokane Subdivision), a distance of approximately 139 miles (Fish Lake segment); and (3)(a) Lewisville, AR, in the vicinity of UP's milepost 390.3 (Pine Bluff Subdivision) and Big Sandy, TX, in the vicinity of UP's milepost 525.0, on the Pine Bluff Subdivision (milepost 112.95 Dallas Subdivision), and (b) Longview, TX, in the vicinity of UP's milepost 89.6, on the Dallas Subdivision (milepost 0.0 Palestine Subdivision) and Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision), a distance of approximately 260 miles (Lewisville/Longview segment).[1]

The transaction is scheduled to be consummated on April 1, 1998, for the Shawnee Junction segment, on July 1, 1998, for the Fish Lake segment, and on June 15, 1998, for the Lewisville/Longville segment.

The purpose of the trackage rights is to allow BNSF to operate over an alternate line while BNSF's line is undergoing maintenance and repair.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33574, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

Decided: March 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8850 Filed 4–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub–No. 7X)]

Track Tech, Inc.—Abandonment Exemption—in Adair and Union Counties, IA

On March 17, 1998, Track Tech, Inc. (Track Tech), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad between milepost 1.45 near Creston, IA, and milepost 21.15 at the end of the line in or near Greenfield, IA, which traverses U.S. Postal Service ZIP Codes 50801, 50848, and 50849, a distance of 19.70 miles, in Adair and Union Counties, IA.[1] The line includes the stations of Creston, located at milepost 1.45, Orient, located at milepost 12.2, and Greenfield, located at milepost 21.15.

The line does not contain federally granted rights-of-way.[2] Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.— Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 2, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 27, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 7X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405—Sixth Avenue, Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

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[1] On March 24, 1998, BNSF and UP filed a petition for exemption in STB Finance Docket No. 33574 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF and UP request that the Board permit the overhead trackage rights arrangement described in the present proceeding to expire on July 15, 1998, for the Shawnee Junction segment, on September 1, 1998, for the Fish Lake segment, and on July 31, 1998, for the Lewisville/Longview segment. That petition will be addressed by the Board in a separate decision.

[1] Petitioner acquired this line from The Burlington Northern and Santa Fe Railway Company (BNSF) in June 1997. *Track Tech, Inc.—Acquisition and Operation— The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33434 (STB served Sept. 12, 1997). Petitioner also acquired six other lines from BNSF in November 1996 and filed petitions for exemption to abandon these lines in STB Docket No. AB–493 (Sub-Nos. 1X, 2X, 3X, 4X, 5X, and 6X). The exemptions in Sub-Nos. 1X, 2X, and 5X were granted by decisions served on January 12, 1998. The exemptions in Sub-Nos. 3X, 4X, and 6X were granted by decisions served on February 24, 1998.

[2] Petitioner states that a title search in regard to land ownership is incomplete. Petitioner asserts that, based upon information in its possession, as well as in the possession of BNSF, it does not appear that the line contains any federally granted right-of-way.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 27, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8647 Filed 4–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Articles Assembled Abroad With Textile Components Cut to Shape in the U.S.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

OMB Number: 1515–0207.

Form Number: N/A.

Abstract: This collection of information enables Customs to ascertain whether the conditions and requirements relating to 9802.00.80, HTSUS, have been met.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 750.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 31, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–8941 Filed 4–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Cost Submissions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Cost Submissions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cost Submissions.

OMB Number: 1515–0085.

Form Number: Customs Form 247.

Abstract: These Cost Submissions, Customs Form 247, are used by importers to furnish cost information to Customs which serves as the basis to establish the appraised value of imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 31, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–8942 Filed 4–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Importer's Premises Visit—Significant Importation Report

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Customs Form 213, Importer's Premises Visit—Significant Importation Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 5, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importer's Premises Visit—Significant Importation Report.

OMB Number: 1515–0081.

Form Number: Customs Form 213.

Abstract: The Customs Form 213 constitutes a summary report of an interview and findings of an Importer's Premises Visit by a Customs Officer. This collection ensures uniformity among importers. These interviews are conducted by Customs based on its responsibilities involving the appraisement and admissibility of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,385.

Estimated Time Per Respondent: 2.4 hours.

Estimated Total Annual Burden Hours: 17,724.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 31, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–8943 Filed 4–3–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Mark Rothko'' (see list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from May 3, 1998 to August 16, 1998 and at the Whitney Museum of American Art, New York, N.Y. from September 10, 1998 to November 29, 1998 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: March 31, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–8922 Filed 4–3–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0234]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at (202) 619–6982. The address is U.S. Information Agency, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the veteran's Veterans Mortgage Life Insurance (VMLI) premiums.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0234'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Mortgage Company for Amount of Unpaid Insurance, VA Form Letter 29–712.

OMB Control Number: 2900–0234.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to request the amount of the veteran's unpaid mortgage from the lending institution with which he/she carries his/her mortgage. The information is used by VA to determine the veteran's VMLI premiums.

Affected Public: Individuals or households.

Estimated Annual Burden: 75 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: March 12, 1998.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–8887 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0249.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Loan Servicing Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Extension of a currently approved collection.

Abstract: Loan Service Representatives during the course of personal contacts with delinquent obligors complete VA Form 26–6808. The information documented on the form is necessary for VA to determine whether loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1997 at page 68356.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 65,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0249'' in any correspondence.

Dated: March 10, 1998.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–8884 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0009.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by service-connected disabled veterans and servicepersons awaiting discharge for disability to apply for vocational rehabilitation benefits. The information is used by the VA to evaluate an applicant's claim for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 31, 1996 on page 56268.

Estimated Total Annual Burden: 7,500 hours.

Estimated Total Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 30,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0009'' in any correspondence.

Dated: March 10, 1998.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–8885 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0300.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Extension of a currently approved collection.

Abstract: Grants are available to assist disabled veterans in making adaptations to their current residences or one which they intend to live in as long as the home is owned by the veteran or a member of the veteran's family. The veterans to apply for a grant use VA Form 26–4555d. The information is used by VA in approving or disapproving a veteran's grant application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1997 at page 68358.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0300'' in any correspondence.

Dated: March 10, 1998.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–8886 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0358.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

OMB Control Number: 2900–0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions proscribed by Title 38 U.S.C., 3691. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA records. VBA uses the information to ensure that programs are suitable to a claimant's

aptitudes, interests, and abilities. Without the information, VA could not determine further entitlement to education benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55671.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0358'' in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–8888 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202)273–8015 or FAX (202)273–5981. Please refer to ''OMB Control No. 2900–0188.''

SUPPLEMENTARY INFORMATION:

Title: Prescription, Authorization, Application, Procurement, Repair and Loan of Prosthetic Items.

Form Numbers:

a. VA Form 10–2421, Prosthetic Authorization for Items or Service.

b. VA Form 10–2520, Prosthetic Service Card Invoice.

c. VA Form 10–2914, Prescription and Authorization for Eyeglasses.

d. Form Letter 10–90, Request to Submit Estimate.

e. Form Letter 10–426, Loan Follow-up Letter.

f. VA Form 10–1394, Loan Follow-up Letter.

OMB Control Number: 2900–0188.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services and standardizes the direct procurement authorization process. The form eliminates the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services. Without this form the delivery time for prosthetic appliances and services would be drastically increased.

b. VA Form 10–2520 is used by the commercial vendors, after completing repairs authorized for veterans, to request payment by VA. The use of the form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

c. VA Form 10–2914 is used as a combination prescription, authorization and invoice. It allows veterans to purchase their eyeglasses directly. If the form is not used, the provisions of providing eyeglasses to eligible veterans may be delayed.

d. Form Letter 10–90 is issued to a contractor of the veteran's choice in order to solicit a price quote for a prosthetic device.

e. Form Letter 10–426 is used for the issuance of prosthetic devices that are loaned to eligible veterans. If the information is not collected or maintained, VA would have no information regarding equipment loaned to veterans; i.e., status, recovery, replacement and disposition.

f. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The *Federal Register* Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1997 at page 68359.

Affected Public: Business or other for-profit—Individuals or households.

Estimated Total Annual Burden: 36,496 hours.

a. VA Form 10–2421—16,667 hours.

b. VA Form 10–2520—3,334 hours.

c. VA Form 10–2914—11,667 hours.

d. Form Letter 10–90—1,875 hours.

e. Form Letter 10–426—242 hours.

f. VA Form 10–1394—2,711 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–2421—4 minutes.

b. VA Form 10–2520—5 minutes.

c. VA Form 10–2914—4 minutes.

d. Form Letter 10–90—5 minutes.

e. Form Letter 10–426—1 minute.

f. VA Form 10–1394—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 512,844.

a. VA Form 10–2421—250,000.

b. VA Form 10–2520—40,000.

c. VA Form 10–2914—175,000.

d. Form Letter 10–90—22,500.

e. Form Letter 10–426—14,500.

f. VA Form 10–1394—10,844.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0188'' in any correspondence.

By direction of the Secretary.

Dated: March 10, 1998.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 98–8889 Filed 4–3–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Altered System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Altered System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is altering a system of records entitled ''Accounts Receivable Records—VA'' (88VA244). This system was previously numbered ''88VA20A6''.

DATES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed changes to the system of records. All relevant materials received before May 6, 1998, will be considered. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the altered system of records is effective May 6, 1998.

ADDRESSES: Written comments concerning the altered system of records may be mailed to the Director, Office of Regulations Management (02D), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Daniel D. Osendorf, Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844. The Internet e-mail address for Debt Management Center is: vadmc@mm.com.

SUPPLEMENTARY INFORMATION: Notification of this system of records was originally published under system number 88VA20A6 on November 3, 1994, at 59 FR 55155. To broaden the application of the system of records to a department-wide basis and to reflect consolidation of collection responsibilities for additional types of debts under the administration of VA's Debt Management Center (DMC) in Ft. Snelling, Minnesota, an altered system of records was published November 26, 1996 at 61 FR 60148. The Debt Collection Improvement Act of 1996 (DCIA), section 31001 of Pub. L. 104–134, was enacted April 26, 1996 and provides for a Government-wide system of debt collection managed by the Department of the Treasury.

This system of records has been revised to reflect VA's participation in the Government-wide debt collection program. The revisions include new and modified routine uses to accommodate new means of collection authorized by DCIA, additional Government programs from which debts are created and for which DMC will perform collection services, cross servicing of indebtedness accounts by the Department of the Treasury or other agencies designated by that department and the referral of indebtedness accounts to Government disbursing officials for offset of almost any Government payment. DMC has applied for status as a cross-servicing debt collection center. The new means of collection authorized by DCIA include sale of delinquent debt to the private sector, administrative wage garnishment and dissemination of debtor information. Certain other revisions to the system of records reflect more current terminology and new citations to referenced material.

The debt collection program adheres to VA security and reporting requirements under title 38, Code of Federal Regulations and other Federal regulations, as well as the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the appropriate provisions of the Internal Revenue Code, title 26, United States Code.

Approved: March 26, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

88VA244

SYSTEM NAME.

Accounts Receivable Records-VA.

SYSTEM LOCATION:

Automated indebtedness records for first-party medical billing, pay administration, compensation, pension, educational assistance, survivors' and dependents' educational assistance and most home loan debts are maintained at the VA's Financial Services Center and Automation/Systems Development Center (AA/SDC) in Austin, Texas. Automated records of debts referred to the Department of Veterans Affairs for Government-wide cross-servicing authorized under 31 U.S.C. 3711(g)(4) are maintained at VA's AA/SDC in Austin, Texas. Extracts of benefit and home loan debt automated records are maintained in the Benefits Delivery Network for accounting and adjudication purposes. The Benefits Delivery Network Is administered by the Benefit Delivery Center (BDC). Hines, Illinois. first-party medical billing information is extracted from records maintained at VA medical facilities and in automated media as more fully described in the Privacy Act system of records, 24VA136, ''Patient Medical Records-VA'' as published at 40 FR 38095 (Aug. 26, 1975), and amended as follows: 40 FR 52125 (Nov. 7, 1975); 41 FR 2881 (Jan. 20, 1976); 41 FR 11631 (Mar. 19, 1976); 42 FR 30557 (Jun. 15, 1977); 44 FR 31058 (May 30, 1979); 45 FR 77220 (Nov. 21, 1980); 46 FR 2766 (Jan. 12, 1981); 47 FR 28522 (Jun. 30, 1982); 47 FR 51841 (Nov. 17, 1982); 50 FR 11610 (Mar. 22, 1985); 51 FR 25968 (Jul. 17, 1986); 51 FR 44406 (Dec. 9, 1986); 52 FR 381 (Jan. 5, 1987); 53 FR 49818 (Dec. 9, 1988); 55 FR 5112 (Feb. 13, 1990); 55 FR 37604 (Sept. 12, 1990); 55 FR 42534 (Oct. 19, 1990); 56 FR 1054 (Jan. 10, 1991); 57 FR 28003 (Jun. 23, 1992); 57 FR 4519 (Oct. 1, 1992); 58 FR 29853 (May 24, 1993); 58 FR 40852 (Jul. 30, 1993); and, 58 FR 57674 (Oct. 26, 1993). Automated and paper indebtedness records for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) are maintained at the Health Administration Center (HAC) in Denver, Colorado and are more fully described in the Privacy Act system of records, 54VA136, ''Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA'', as published at 40 FR 38095 (Aug. 26, 1975) and amended at 53 FR 23845 (Jun. 24, 1998), 53 FR 25238 (Jul. 5, 1988) and 56 FR 26186 (Jun. 6, 1992). Pay administration indebtedness records are extracted from other automated and paper records maintained at all VA facilities and the Austin Finance Center and are more fully described in the Privacy Act system of records, 27VA047, ''Personnel and Accounting Pay System—VA'', as published at 40 FR 38095 (Aug. 26, 1975), and amended as follows: 48 FR 16372 (April 15, 1983); 50 FR 23100 (May 30, 1985); 51 FR 6858 (Feb. 26, 1986); 51 FR 25968 (Jul. 17, 1986); 55 FR 42534 (Oct. 19, 1990); 56 FR 23952 (May 24, 1991); 58 FR 39088 (Jul. 21, 1993); 58 40852 (Jul. 30, 1993); and, 60 FR 35448 (Jul. 7, 1995); 62 FR 41483 (Aug. 1, 1997); and, 62 FR 68362 (Dec. 31, 1997). Certain paper records, microfilm and microfiche are maintained at the VA Debt Management Center (DMC), Ft. Snelling, Minnesota. Education loan, miscellaneous home loan and spina bifida monthly allowance automated, paper, microfilm and microfiche records are maintained at DMC. Automated and paper indebtedness records related to the All-Volunteer Force Educational Assistance Program are also maintained at DMC. Paper records related to benefit and home loan accounts receivable may be maintained in individual file folders located at the VA regional office having jurisdiction over the domicile of the claimant or the geographic area in

which a property securing a VA guaranteed, insured or direct loan is located. Similarly, paper and automated records related to first-party medical billing and CHAMPVA are also maintained in individual patient medical records at VA health care facilities and HAC. Generally and with the exception of claims against third-party insurers and certain first-party medical debts, automated records and papers maintained at regional offices, health care facilities and HAC are not used directly in the debt collection process unless they are forwarded by conventional mail, electronic mail or facsimile to DMC. Records provided to the Department of Housing and Urban Development (HUD) for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are located at the HUD Data Processing Center in Lanham, Maryland. Records referred to the Department of the Treasury for inclusion in the Treasury Offset Program (TOP) are located at the Financial Management Service Debt Collection Operations System in Hyattsville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States Government as a result of their participation in benefit programs (including health care programs) administered by VA under title 38, United States Code, chapters 11, 13, 15, 17, 18, 21, 30, 31, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership, contractual obligation or rental of property owned by the Government or encumbered by a VA-guaranteed, insured, direct or vendee loan. Persons indebted to the United States Government as a result of their participation in a benefit program administered by VA under 10 U.S.C. ch. 1606. Persons who received benefits or services under 38 U.S.C. or 10 U.S.C. ch. 1606, but who did not meet the requirements for receipt of such benefits or services. Persons indebted to the United States, a State or local government whose debts are referred to the Department of Veterans Affairs for Government-wide cross-servicing under 31 U.S.C. 3711(g)(4) or any valid interagency agreement. Persons indebted to the United States as the result of erroneous payment of pay or allowances or as the result of erroneous payment of travel, transportation or relocation expenses and allowances (previously and hereinafter referred to as ''pay administration'') under the provisions of title 5, United States Code, part III, subpart D.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the source of the debt. Identifying information including VA claim number, Social Security number, Tax Identification Number (TIN), name and address and, when appropriate, loan reference number, obtained from, among other sources, indebtedness records of Federal agencies other than VA and the following Privacy Act systems of records: ''Debt Collection Operations System—Treasury/Financial Management Service'' (Treasury/FMS .014); ''Compensation, Pension, Education and Rehabilitation Records-VA'' (58VA21/22); ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA'' (55VA26); ''Patent Medical Records-VA'' (24VA136); and, ''Veteran's Spouse or Dependent Civilian Heath and Medical Care Records-VA'' (54V136). Initial indebtedness amount, dates of treatment, amounts claimed for reimbursement type of benefit from which the debt arose, identifying number of the VA regional office with jurisdiction over the underlying benefit claim or property subject to default or foreclosure, station number of the VA health care facility rendering services, name of co-obligor and property address of the defaulted home loan from 58VA21/22, 55VA26, 24VA136 and 54VA136. History of debt collection activity on the person, organization or entity including correspondence, telephone calls, referrals to other Federal, State or local agencies, VA regional counsel, private collection and credit reporting agencies. Payments received, refunds made, interest amount, current balance of debt and indication of status of current VA benefit payments. Federal employment status obtained by computer matching with Government agencies and the United States Postal Service. No personal medical information concerning the nature of disease, injury or disability is transmitted to or maintained in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government records are maintained and managed under the authority set forth in 31 U.S.C. 3101 and 31 U.S.C. 3102. The purpose of the system is consistent with the financial management provisions of title 31, United States Code, chapter 37, the pay administration provisions of title 5, United States Code, chapter 55, and special provisions relating to VA benefits in title 38, United States Code, chapter 53.

PURPOSE(S):

The purpose of this system is to maintain records of individuals, organizations and other entities: (1) Indebted to the United States as a result of their participation in benefit and health care programs administered by VA; (2) indebted as a result of erroneous pay administration; (3) indebted under any other program administered by any agency of the United States Government and whose indebtedness record has been referred to VA for Government-wide cross-servicing under 31 U.S.C. 3711(g)(4); and (4) indebted under any Federal, State or local government program and whose debt was referred to VA for collection under any valid interagency agreement. Information in this system of records is used for the administrative management and collection of debts owed the United States and any State or local government and for which records are maintained in accordance with the preceding sentence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For purposes of the following routine uses:

(a) The term, ''veteran'', includes present, former or retired members of the United States Armed Forces, the reserve forces or national guard;

(b) The term, ''debtor'', means any person falling within the categories of individuals covered by this system, as set forth above. A ''debtor'' may be a veteran, as defined above, a veteran's dependent entitled to VA benefits (including health care) in his or her own right or a person who is neither a veteran nor a veteran's dependent for benefit purposes; and,

(c) The terms, ''benefit'', ''benefit program'' and ''VA program'' include any gratuitous benefit, home loan (including miscellaneous home loan) or health care (including CHAMPVA) program administered by the Secretary of Veterans Affairs.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: the hiring, retention or transfer of an employee; the issuance of a security clearance; the

letting of a contract or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement between the Department of Veterans Affairs and the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed, by computer matching or otherwise, in connection with any proceeding for the collection of an amount owed the United States when, in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper in accordance with 38 U.S.C. 5701(b)(6) for debts resulting from participation in VA benefit programs or pay administration, with 31 U.S.C. 3711(g)(5) for other debts referred to VA in its capacity as a Government-wide cross-servicing facility or with a valid interagency agreement for collection services independent of the cross-servicing provisions of section 3711(g)(4) and (g)(5).

4. The name and address of a person indebted to the United States and other information as is reasonably necessary to identify such person may be disclosed to a consumer reporting agency for the purpose of locating that person or to obtain a consumer report in order to assess the ability of that person to repay an indebtedness, provided the disclosure is consistent with 38 U.S.C. 5701(g)(2) for purposes of debts owed veterans and their dependents as a result of participation in VA benefit programs and 31 U.S.C. 3711(h)(1) for purposes of all other debts to the United States.

5. The name and address of a person indebted to the United States, other information as is reasonably necessary to identify such person, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the person's indebtedness to the United States may be disclosed to a consumer reporting agency for purposes of making such information available for inclusion in consumer reports regarding that person, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met for purposes of indebtedness incurred as the result of participation in VA benefit programs and 31 U.S.C. 3711(f)(1) for purposes of all other types of indebtedness.

6. Any information in this system, including available identifying information regarding a person, such as the person's name, address, Social Security number, VA insurance number, VA claim number, VA loan number, date of birth, employment information or identification number assigned by any Government component, may be disclosed, except to consumer reporting agencies, to a third party in order to obtain current name, address and credit report in connection with any proceeding for the collection of an amount owed the United States. Such disclosure may be made in the course of computer matching having the purpose of obtaining the information indicated above. Third parties may include other Federal agencies, State probate courts, State drivers' license bureaus, State automobile title and license bureaus and private commercial concerns in the business of providing the information sought.

7. Identifying information, including the debtor's name, Social Security number and VA claim number, along with the amount of indebtedness, may be disclosed to any Federal agency, including the U.S. Postal Service, in the course of conducting computer matching to identify and locate delinquent debtors employed by or receiving retirement benefits from those agencies. Such debtors may be subject to offset of their pay or retirement benefits under the provisions of 5 U.S.C. 5514.

8. Any information in this system, including the nature and amount of a financial obligation as well as the history of debt collection activity against a debtor, may be disclosed to the Federal agency administering salary or retirement benefits to the debtor to assist that agency in initiating offset of salary or retirement benefits to collect delinquent debts owed the United States.

9. The name(s) and address(es) of a debtor(s) may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting Government research or oversight necessary to accomplish a statutory purpose of that agency.

10. Information in this system specifically related to debts resulting from participation in VA programs or pay administration, including the amount of debt, may be disclosed at the request of the subject debtor to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid persons indebted to VA in the preparation, presentation and prosecution of debt-related matters under the laws administered by VA. The name and address of a debtor will not, however, be disclosed to these individuals under this routine use if the debtor has not requested the assistance of an accredited service organization, claims agent or an attorney.

11. Information in this system specifically related to debts incurred as a result of participation in VA benefit programs such as the amount of indebtedness and collection history may be disclosed in the course of presenting evidence to a court, magistrate or administrative authority in matters of guardianship, inquests and commitments, to private attorneys representing debtors rated incompetent in conjunction with issuance of Certificates of Incompetence and to probation and parole officers in connection with court-required duties.

12. Information in this system related to debts incurred as a result of participation in VA benefit programs, including the amount of indebtedness and history of collection activity, may be disclosed to a VA or court-appointed fiduciary or a guardian ad litem in relation to his or her representation of the subject debtor only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

13. Any relevant information in this system may be disclosed to the Department of Justice and United States Attorneys in the defense or prosecution of litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733 and other similar claims statutes.

14. Any information concerning a person's indebtedness to the United States, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures include, but are not limited to (a) assisting the Government in collection of debts resulting from participation in Government programs of all categories and pay administration, and (b) initiating legal actions for prosecuting individuals who willfully or fraudulently obtain Government benefits, pay or allowances without entitlement. Third parties may include,

but are not limited to, persons, organizations or other entities with contracts for collection services with the Government.

15. The debtor's name, address, Social Security number and the amount (excluding interest) of any indebtedness waived, compromised or written off may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

16. The name of a debtor, any other information reasonably necessary to identify such individual and any other information concerning the individual's indebtedness under a VA benefit or pay administration program or an individual's indebtedness referred to VA for Government-wide cross servicing under 31 U.S.C. 3711(g)(4), may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of that indebtedness by offset of Federal income tax refunds pursuant to 31 U.S.C. 3720A.

17. Debtors' social security numbers, VA claim numbers, loan account numbers and other information as is reasonably necessary to identify individual indebtedness accounts may be disclosed to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS). Information in CAIVRS may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Records are disclosed to participating agencies and private-sector lenders by an ongoing computer matching program.

18. Name, Social Security numbers and any other information reasonably necessary to ensure accurate identification may be disclosed to the Department of the Treasury, Internal Revenue Service, to obtain the mailing address of taxpayers who are debtors under this system of records. Disclosure is made by computer matching and pursuant to 26 U.S.C. 6103(m)(2).

19. Any information in a record under this system of records may be disclosed to the United States General Accounting Office (GAO) to enable GAO to pursue collection activities authorized to that office or any other activities within their statutory authority.

20. Any information in this system concerning a debt over 180 days delinquent may be disclosed, by computer matching or otherwise, to the Secretary of the Treasury or to any designated Government disbursing official for purposes of conducting administrative offset of any eligible Federal payments under the authority set forth in 31 U.S.C. 3716. Payments subject to offset include those payments disbursed by the Department of the Treasury, the Department of Defense, the United States Postal Service, any Government corporation or any disbursing official of the United States designated by the Secretary of the Treasury. Subject to certain exemptions, Social Security, Black Lung, Railroad Retirement benefits and tax refunds may be included in those Federal payments eligible for administrative offset.

21. Any information in this system of records concerning a debt over 180 days delinquent may be disclosed, by computer matching or otherwise, to the Secretary of the Treasury for appropriate collection or termination action, including the transfer of the indebtedness for collection or termination, in accordance with 31 U.S.C. 3711(g)(4), to a debt collection center designated by the Secretary of the Treasury, to a private collection agency or to the Department of Justice. The Secretary of the Treasury, through the Department of the Treasury, a designated debt collection center, a private collection agency or the Department of Justice, may take any appropriate action on a debt in accordance with the existing laws under which the debt arose.

22. The name and address of a debtor, other information as is reasonably necessary to identify such person, including personal information obtained from other Federal, state or local agencies as well as private sources through computer matching, and other information concerning the person's indebtedness to the United States, may be disclosed to third parties, including Federal, State and local government agencies to determine the debtor's employer. Such information may be used to initiate garnishment of disposable pay in accordance with the provisions of 31 U.S.C. 3720D.

23. The name and address of a debtor, and such other information as may be necessary for identification of that debtor, may be disclosed to a debtor's employer for purposes of initialing garnishment of the disposable pay of that debtor under the provisions of 31 U.S.C. 3720D.

24. The names and addresses of delinquent debtors, along with the amounts of their debts, may be published or otherwise publicly disseminated subject to the provisions of 31 U.S.C. 3720E.

25. Any information in this system may be disclosed to a third-party purchaser of debt more than 90 days delinquent and for which the sale of such debt was conducted pursuant to the provisions of 31 U.S.C. 3711(i).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security number), the amount, status and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. 38 U.S.C. 5701(g) governs the release of names and addresses of any person who is a present or former member of the Armed Forces, or who is a dependent of such a person, to consumer reporting agencies under certain circumstances. Routine uses, above, provide for disclosure under those circumstances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape and disk, microfilm, microfiche, optical disk and paper documents. DMC does not routinely maintain paper records of individual debtors in file folders with the exception of correspondence, and replies thereto, from Congress, the White House, members of the Cabinet and other similar sources. Paper records related to accounts receivable may be maintained in individual file folders located at VA regional offices, health care facilities, HAC and other agencies referring debts to VA in its capacity as a Government-wide cross-servicing debt collection center. Generally and with the exception of claims against third-party insurers and certain first-party medical debts, such papers maintained outside of DMC are not used directly in the debt collection process unless they are first forwarded to DMC. Information stored on magnetic media for most VA benefit debts, including first-party medical, may be accessed through a data telecommunications terminal system designated as CAROLS (Centralized Accounts Receivable On-Line System). Most CAROLS terminals are located in DMC; however, VA regional offices generally each have one terminal for inquiry purposes. Records of debts

referred to VA in its capacity as a Government-wide cross servicing debt collection center will be accessible only to employees of DMC. Information stored on magnetic media and related to the All-Volunteer Force Educational Assistance, education loan, miscellaneous home loan or HAC debt collection programs may be accessed through personal computers. Records provided to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are maintained on magnetic media at the HUD Data Processing Center in Lanham, Maryland. Records provided to the Department of the Treasury for administrative offset or referral to a designated debt collection center, private collection agency or the Department of Justice are maintained on magnetic media at the Financial Management Service Debt Collection Operations System in Hyattsville, Maryland. For VA benefit debts other than miscellaneous home loan, first-party medical and CHAMPVA, identifying information, the amount of the debt are benefit source of the debt may be stored on magnetic media in records that serve as the database for the VA Benefits Delivery Network (BDN). The BDN is operated for the adjudication of VA claims and the entry of certain fiscal transactions. The identifying information, the amount of the debt and benefit source of the debt are transmitted to the Centralized Accounts Receivable System (CARS) or a personal computer local area network system before collection activity commences. When a debtor is awarded gratuitous benefits under VA programs, the BDN may operate to offset all or part of retroactive funds awarded, if any, to reduce the balance of the indebtedness. The Veterans Health Information Systems and Technology Architecture (VISTA), through its various modules, is used to create and store first-party medical charges and debts associated with the provision of health care benefits. The identifying information about the person, the amount of the debt and program source of the debt may be transmitted to CARS as part of the collection process. When a person receives care under the auspices of VA, a VA medical facility may collect all or part of a charge or debt.

RETRIEVABILITY:

Paper documents, microfilm and microfiche related to VA claims and debts are indexed by VA file number or date of receipt. Automated records of VA claims and debts are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Paper documents, microfilm, microfiche and automated records of pay administration debts and debts referred to VA for cross servicing are indexed by Social Security account number or Taxpayer Identification Number. Records in CAIVRS may only be retrieved by Social Security number.

SAFEGUARDS:

1. *Physical Security:* (a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted to VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis. (b) Access to CAROLS data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution. (c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. *CAROLS and Personal Computer Local Area Network (LAN) Security:* (a) Usage of CAROLS and LAN terminal equipment is protected by password access. Electronic keyboard locks are activated on security errors. (b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: programming, auditing and operations.

3. *CAIVRS Security:* Access to the HUD data processing center from which CAIVRS is operated is generally restricted to center employees and authorized contact employees. Access to computer rooms is restricted to authorized operational personnel through locking devices. All other persons gaining access to computer rooms are escorted.

Records in CAIVRS use Social Security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a need-to-know basis.

4. *Department of the Treasury Security:* Access to the system is on a need-to-know basis, only, as authorized by the system manager. Procedural and physical safeguards are utilized to include accountability, receipt records and specialized communications security. The data system has an internal mechanism to restrict access to authorized officials. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Microfilm and microfiche are retained in metal cabinets in DMC for 25 years. CARS records are retained until termination of debt collection (payment in full, write off, compromise or waiver). All other automated storage media are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. DMC generally forwards all substantive paper documents to VA regional offices, health care facilities and CHAMPVA Center for storage in claims files, patient treatment files, imaging systems or loan files. Those documents are retained and disposed of in accordance with the appropriate system of records. Information provided to HUD for CAIVRS is stored on magnetic tape. The tapes are returned to VA for updating each month. HUD does not keep separate copies of the tapes. Information provided to the Department of the Treasury for the Treasury Offset Program is transferred electronically and stored by Treasury on magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such

record, should submit a written request to the system manager indicated above.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records maintained by VA may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

See record access procedures, above.

RECORD SOURCE CATEGORIES:

The records in this system are derived from five other systems of records as set forth in ''Categories of records in the system'', above, persons indebted to the United States by virtue of their participation in programs administered by VA or other Government agencies, dependents of those persons, fiduciaries for those persons (VA or court appointed), other Federal agencies, State and local agencies, private collection agencies, consumer reporting agencies, State, local and county courts and clerks, other third parties and other VA records.

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Corrections

Federal Register

Vol. 63, No. 65

Monday, April 6, 1998

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 DEFENSE

48 CFR Part 252

[DFARS Case 97-D314]

Defense Federal Acquisition Regulation Supplement; Veterans Employment Emphasis

Correction

In rule document 98–6166 beginning on page 11850, in the issue of March 11, 1998, make the following correction:

252.209–7003 [Corrected]

On page 11852, in the first column, in section 252.209–7003, in the second paragraph, in the eighth line, ''more'' should read ''most'' and in the ninth line, ''37'' should read ''38''.

BILLING CODE 1505-01-D

Federal Register

Monday
April 6, 1998

Part II

The President

Proclamation 7077—National Equal Pay Day, 1998

Federal Register
Vol. 63, No. 65
Monday, April 6, 1998

Presidential Documents

Title 3—

The President

Proclamation 7077 of April 2, 1998

National Equal Pay Day, 1998

By the President of the United States of America

A Proclamation

Americans have always believed in the value of work and that, if you work hard, you should be able to provide for yourself and your family with dignity. Today, with more jobs, low unemployment, and real wages rising, America's workers are prospering. Yet, there are many women in the workforce whose work is not being fully valued.

This year, National Equal Pay Day falls on April 3, the day on which the typical woman's 1998 earnings, when added to her 1997 wages, will finally equal what the typical man earned in 1997 alone. In other words, the typical woman who works full-time earns just 74 cents for each dollar that the typical man earns. For women of color, the wage gap is even wider—African American women earn only 63 cents for each dollar earned by white men, and Hispanic women earn only 53 cents. While women now hold almost half of all executive and managerial jobs, their wages are only 70 percent of the average pay of their male counterparts. And, according to the Department of Labor's Glass Ceiling Commission report, women in management jobs generally remain at entry-level and mid-level positions. In part, these differences in treatment exist because of differing levels of experience, education, and skill. But study after study shows that, even after legitimate differences are accounted for, a significant pay gap still persists between men and women in similar jobs.

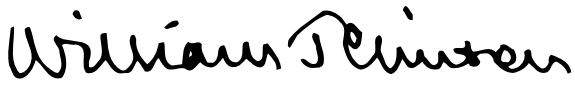
Equal pay not only treats women fairly, it benefits us all—particularly our Nation's families. It empowers women to become more self-sufficient, reducing the dependence of many families on government assistance. It also raises women's purchasing power, increases their pensions, and improves their capacity to save, all of which help to strengthen our economy.

During the past three decades, our Nation has made a strong commitment to ensuring that every American is treated with dignity and equality in the workplace. Legislation such as the Equal Pay Act and Title VII of the Civil Rights Act has helped us make progress in correcting discriminatory practices. But we still have a long way to go before the wage gap between men and women is eliminated. This year, I proposed an additional $43 million for the Equal Employment Opportunity Commission (EEOC) and the Department of Labor in order to strengthen enforcement of the laws that prohibit discrimination, including wage discrimination; to encourage mediation; and to help the EEOC reduce the average time it takes to resolve private sector complaints. This additional funding will help all victims of discrimination, including wage discrimination, obtain relief in a more timely manner. And the Women's Bureau at the Department of Labor will continue to make resources available through the Fair Pay Clearinghouse to highlight model pay practices and educate employers about the practical benefits of assuring equal pay for their employees.

As we observe National Equal Pay Day, I urge businesses and State and local governments across our Nation to make a solemn commitment to recognize the value of women's contributions to the workplace and to reward them appropriately. By doing so, we will help provide opportunity and promote equality and justice for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 3, 1998, as National Equal Pay Day. I call upon Government officials, law enforcement agencies, business leaders, educators, and the American people to recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and to ensure that all their employees, including women, are paid equitably for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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1–39, Vol. I		15.00	[2] July 1, 1984
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1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
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400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
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400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
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38 Parts:			
0–17	(869–032–00131–6)	34.00	July 1, 1997
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
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52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
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61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
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87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
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9		13.00	[3] July 1, 1984
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42 Parts:			
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43 Parts:			
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45 Parts:			
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156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
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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, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.