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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[No. LS–93–006]

RIN 0581–AB07

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fee rates for voluntary Federal meat grading and acceptance services. The hourly fees will be adjusted to incorporate new program costs and ensure that the Federal meat grading program is operated on a financially self-supporting basis as required by law. The new program costs are the result of a congressional budget action which requires the Agency to recover the costs of livestock and meat standardization activities. The change in fees is being implemented on an interim basis because of the Agency's immediate need to increase these rates to cover increased costs of providing service.

DATES: Interim rule effective December 1, 1993. Comments must be received on or before February 7, 1994.

ADDRESSES: Comments must be submitted in duplicate, signed, include the address of the sender, and should reference the date and page number of this issue of the **Federal Register**. Commentors are encouraged to include definitive information which explains and supports the commentors' views. Written comments may be mailed to Larry R. Meadows, Chief, Meat Grading and Certification Branch, Livestock and Seed Division, AMS, USDA, rm. 2636–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours in rm. 2628–S; 14th & Independence Avenue, SW; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, 202/720–1246.

SUPPLEMENTARY INFORMATION:

Executive Order 12778

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies that do not conflict with this interim final rule. This interim final rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this interim final rule or the application of its provisions.

Regulatory Impact Analysis

The Department is issuing this rule in conformance with Executive Order 12866.

Effect on Small Entities

This interim final rule was reviewed under the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). The changes to the hourly fees are necessary to recover directly related costs of livestock and meat standardization activities. The per-hour increase translates to a $.000031 increase in the per-pound unit cost of meat grading and certification services. However, the unit cost for providing meat grading and certification services to all applicants—including the cost to fund directly related livestock and meat standardization activities—has been reduced by cost-reduction actions in both the program and the meat industry to approximately $.0009 per pound. Accordingly, the Administrator of AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act do not apply to this rulemaking as it does not require the collection of any information or data.

Background

The Secretary of Agriculture is authorized under the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and acceptance services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of Federal meat grading and acceptance services, which is approximately equal to the costs of providing these services. Program operating costs for fiscal year (FY) 1993 and previous years have included graders' salaries, fringe benefits, supervision, travel, training, and administrative costs. When the program incurs increases in operating costs which are beyond its control, such cost increases must be recovered through increases in the fee rate charged to users of meat grading and acceptance services so that the program can remain financially self-supporting.

The recent appropriations bill HR 2493, requires collection of fees for standardization activities for FY 1994 and subsequent years as established by regulation pursuant to law (31 U.S.C. 9701). Standardization programs and activities include, but are not limited to, the development, maintenance, and demonstration of the official U.S. standards for carcass grades, live animal grades, and wool and mohair grades and specifications for livestock, meat, and meat products. The congressional action places the obligation of funding standardization programs and activities on those individuals or groups that benefit from such programs or activities. For the livestock and meat industry, those portions of the total costs for standardization activities which support the meat grading and acceptance services or otherwise provide a service to the meatpackers and processors would be recovered through increases in fees charged to users of meat grading and acceptance services. Prior to FY 1994, the total cost to operate the livestock and meat standardization program was funded entirely by congressionally-appropriated funds. However, as a result of the new congressional mandate, all funds appropriated for standardization programs and activities must be reimbursed to the U.S. Treasury

beginning with FY 1994 and for each FY thereafter. Based upon an analysis of standardization programs, activities, and related staffing levels, the Agency has determined that for 1994 the projected costs to operate the livestock and meat standardization program is $885,000, of which $610,500 are attributable to the meatpacking and processing industries. Accordingly, this amount must be recovered through the fees charged to users of meat grading and acceptance services. The remaining portions of the standardization costs not attributable to the meat grading and acceptance services or otherwise not identifiable as providing a service to the meatpacking and processing industry (i.e., wool and mohair standards, a portion of the live standards) will be (1) reimbursed by direct transfers of funds from those programs whose services are supported or dependent on those standards; or (2) terminated if the costs incurred cannot be recovered. The amount to be reimbursed through the meat grading and acceptance user fees includes (1) the costs for the development and maintenance of carcass standards; (2) a portion of the costs for live animal standards; (3) a portion of the costs for the development and maintenance of specifications; and (4) related administrative and management overhead costs.

The Agency recognizes the impact of any user-fee increase on the meat industry. This increase in the user fees implemented by this interim rule is due to the congressional budget action that requires the Agency to recover the costs of funding standardization programs and activities. Accordingly, the Agency has taken action to minimize the amount of the increase in the hourly fee rate necessary to recover the costs for standardization programs and activities which support the meat grading, acceptance, or related services provided to the meatpacking and processing industry. These actions include projected cost reductions in the review and evaluation functions and in employee training and development related to conduct of the meat grading and acceptance services. Additionally, the Agency will continue to review standardization programs and activities which support the meat grading, acceptance, or related services provided to the meatpacking and processing industry to effect further cost reductions wherever possible.

In view of the foregoing considerations, the Agency will increase the base hourly rate for commitment applicants for voluntary Federal meat grading and acceptance services from $35.20 to $36.60. A commitment applicant is a user of the service who agrees, by commitment or agreement memorandum, to the use of meat grading and acceptance services for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and acceptance services will increase from $37.60 to $39.00, and will be charged to applicants who utilize the service for 8 hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants will be increased from $43.20 to $44.60, and will be charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m., and for hours worked from 6 p.m. to 6 a.m., Monday through Friday, and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants will be increased from $70.40 to $73.20, and will be charged to users of the service for all hours worked on legal holidays.

This change is being made on an interim basis since the congressional-budget action requires the Agency to recover the costs of livestock and meat standardization activities effective on and after October 4, 1993. Pursuant to 5 U.S.C. 553, it is hereby found that prior notice and other public procedure with respect to this interim final rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon signature. A final rule will be promulgated after evaluation of comments received in response to this notice.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, 7 CFR part 54 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 54.27 [Amended]

2. Section 54.27(a), the third sentence is amended by revising "$37.60" to read "$39.00", "$43.20" to read "$44.60", and "$70.40" to read "$73.20".

3. Section 54.27(b), the second sentence is amended by revising "$35.20" to read "$36.60", "$43.20" to read "$44.60", and "$70.40" to read "$73.20".

Dated: December 1, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–30051 Filed 12–8–93; 8:45 am]

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7 CFR Part 1220

[No. LS–93–005]

RIN 0581–AA94

Soybean Promotion and Research; Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the interim final rule amending the rules and regulations which implemented the Soybean Promotion and Research Order (Order). The Order established a national industry-funded soybean promotion and research program.

EFFECTIVE DATE: This final rule is effective January 10, 1994.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624–S; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior documents:

Final Rule—Soybean Promotion and Research; Rules and Regulations published July 2, 1992 (57 FR 29436).

Interim Final Rule—Soybean Promotion and Research; Rules and Regulations published July 30, 1993 (58 FR 40730).

Regulatory Impact

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a

petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the District Court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for the purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a Qualified State Soybean Board or State soybean assessment.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule (1) amends the remittance date for assessments from first purchasers, and (2) removes the requirement for certification of nonproducer status for certain transactions. These changes are expected to have a positive economic impact on the first purchasers of soybeans. An estimated 10,000 first purchasers of soybeans are required to collect and remit the assessments, and most of them are small businesses under the criteria established by the Small Business Administration [13 CFR 121.2]. As explained in more detail below, the amendment to the remittance date in this rule makes the date correspond with the date assessments are due to State assessment programs under some State laws. It eliminates the requirement for some first purchasers to examine their records twice each month in order to report and remit commodity assessments. The elimination of the requirement of certification of nonproducer status for certain transactions reduces the expense associated with this recordkeeping burden. The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. chapter 35) the reporting and recordkeeping included in 7 CFR part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Soybean Promotion and Research Rules and Regulations, 7 FR part 1220, published in the **Federal Register** on July 2, 1992 (57 CFR 29436), specify in § 1220.312(d) that assessments shall be remitted not later than the 15th day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed. This final rule requires that assessments be remitted not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed.

This final rule is designed to provide a uniform remittance date for assessments consistent with certain State checkoff programs for other commodities. Several other checkoff programs require payment of the assessments on the last day of the month following the month in which the product was marketed. The requirement to submit soybean checkoff payments on the 15th day of the month following the month in which the soybeans were marketed creates difficulties for collectors and sometimes results in incorrect submissions. A uniform submission date will greatly alleviate these problems and also reduce the paperwork burden imposed on first purchasers as a result of having different reporting requirements.

The Order's Rules and Regulations also specify in § 1220.315 that a person marketing soybeans, processed soybeans, or soybean products on which an assessment has been collected may claim nonproducer status and shall not be required to pay an assessment if such person certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion. Purchasers were required to either collect the assessment or obtain and maintain a "Statement of Non-Producer Status" form on purchases of soybeans. On the nonproducer status form, the seller would certify to the purchaser that the assessment had been collected and remitted or would be remitted in a timely fashion. This requirement caused a paperwork burden for purchasers. This final rule reduces the work load for both the purchaser and the Board. It deletes § 1220.315, Certification of nonproducer status for certain transactions in its entirety. This final rule eliminates the requirement to utilize nonproducer status forms and requires purchasers to utilize their own system to verify collection of assessments on soybeans purchased from producers. Deletion of this provision does not relieve the first purchaser of the requirement to collect an assessment from producers and does not relieve producers of their obligation to pay assessments due. First purchasers may be held liable for failure to collect and remit if they cannot verify nonproducer status for soybeans not assessed.

On July 30, 1993, AMS published in the **Federal Register** (58 FR 40730) an interim final rule which (1) modified the remittance date for assessments, and (2) removed the requirement for certification of nonproducer status for certain transactions. The rule was published with a request for comments to be submitted by August 30, 1993. The U.S. Department of Agriculture received four written comments. The commenters supported the amendments in their entirety. Therefore, this rule adopts without change the interim final rule.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220, is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: Title XIX, Public Law No. 101–624, 104 Stat. 3359, 3881 (7 U.S.C. 6301–6311).

Subpart B—Rules and Regulations

2. Accordingly, the interim final rule amending 7 CFR Part 1220 which was published at 58 FR 40730 on July 30, 1993, is adopted as a final rule without change.

Dated: November 29, 1993.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 93–30050 Filed 12–8–93; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster; Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule redefines a "major source of employment" (MSE) to mean a concern which has one or more locations in the Disaster Area which, individually or in the aggregate, employed at least 10 percent of the work force of the commuting area of a community located within the Disaster Area, not including any area more than 50 miles away from the community; or employed at least 10 percent of the work force in an industry within the Disaster Area and also employed a certain minimum number of people in the Disaster Area; or employed at least 1,000 people in the Disaster Area.

Disaster loans in excess of $1.5 million will be available only to those MSEs which have one or more locations in the Disaster Area which are out of business or in imminent danger of going out of business as a result of a disaster and only if the loan is necessary to avoid substantial unemployment in the Disaster Area.

This rule also conforms the regulations to reflect the higher disaster loan limit for businesses established by the Emergency Supplemental Appropriations for Flood Relief, Public Law 103–75, 107 Stat. 739.

DATES: This rule is effective December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Assistant Administrator for Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: On August 31, 1993, SBA published a proposed rule (58 FR 45855) concerning the definition of a "major source of employment" (MSE) and the criteria for SBA's issuance of a waiver in favor of an MSE. The proposed rule also proposed amending the regulations to conform to the increased disaster loan limitation established by the Emergency Supplemental Appropriations for Flood Relief, Public Law 103–75, 107 Stat. 739 (August 12, 1993).

The public was afforded 30 days to comment on the proposal. No comments were received by SBA during the comment period. Accordingly, SBA is hereby finalizing that proposed rule, without change.

In its current regulations, SBA defines "major source of employment" to mean a concern which satisfies one of three tests, summarized as follows: (a) Employment of at least 10 percent of the entire work force of a geographically identifiable community no larger than a county; (b) employment of at least 10 percent of the work force in an industry in the Disaster Area; or (c) employment of at least 1,000 persons in the Disaster Area. (13 CFR 123.3)

This final rule revises all three tests to more accurately reflect SBA's understanding of the nature of a true major source of employment. The first test (clause (a) of the definition) is changed to require employment of at least 10 percent of the entire work force of the commuting area of a geographically identifiable community no larger than a county. Under the first test in the current regulation, SBA has limited its analysis to the work force residing in the community itself. This analysis is incomplete when, as is common today, a significant portion of a community's work force resides in the community's suburbs or across state lines. If a concern is to qualify as a major source of employment by virtue of the percentage of a community's work force it employs, the true work force available to the community must be the relevant base. SBA believes that the true work force available to a community may be found only by disregarding city and state boundaries and considering instead the working population of the commuting area of the community.

Under this final rule, the determination of an actual "commuting area" for any given community within a Disaster Area will be made by SBA on a case-by-case basis at the time of a concern's application for major source of employment status. The "commuting area" will ordinarily include the community itself, plus those geographically identifiable areas from which significant numbers of people commute to the community for employment. However, in no event would the "commuting area" include any area located more than 50 miles from the community itself.

This final rule also amends the second alternative test for MSE status (clause (b) of the definition) by requiring that a concern employing at least 10 percent of the work force in an industry within the Disaster Area also employ a certain minimum number of employees in order to qualify as a major source of employment. In the case of a manufacturing concern, the minimum number of employees will be 150; for a non-manufacturing concern, the minimum number will be 50.

This revision is necessary because certain industries may, in the aggregate, employ only a small number of people in the Disaster Area. Yet under the current regulation, a business in one of those industries would be considered a major source of employment for purposes of SBA's disaster assistance if it employed just 10 percent of that small number of people. SBA does not believe that special treatment (*i.e.*, larger loans) should be available to very small employers just to help preserve the existence of an industry. Rather, the larger disaster loans for which major sources of employment are potentially eligible are intended to ensure that larger numbers of jobs are preserved.

SBA utilized certain census data to determine the minimum numbers of employees that businesses will be required to employ under the second alternative test. SBA determined that non-manufacturing concerns with at least 50 employees and manufacturing concerns with at least 150 employees are concerns of significant size in the majority of counties in this country. Accordingly, SBA believes it is reasonable and appropriate to narrow the second part of the major source of employment definition to concerns that can meet these minimum levels of employment.

This final rule also makes a technical revision to the third test for MSE status. The revision clarifies that in order to qualify as an MSE under clause (c) of the definition, the applicant must employ 1,000 persons in the Disaster Area. This should make clear that a concern located in the Disaster Area which employs thousands of people nationwide but fewer than 1,000 in the Disaster Area does not qualify as an MSE under clause (c) of the definition.

This final rule also makes clear that, under all three tests, a business concern's qualification as an MSE is based on its employment figures in the Disaster Area. In that regard, the business concern may aggregate employment levels at separate locations in the Disaster Area, including those of its affiliates (as defined in part 121), *provided* that the employees are located in the Disaster Area.

It should be emphasized that qualification of a concern as a major source of employment does not mean that such concern is automatically eligible for disaster assistance in excess of $1.5 million. SBA has the authority to waive the $1.5 million limitation for a major source of employment, but is not required to do so. Under this final rule, SBA limits its issuance of a waiver to those circumstances where the damaged location(s) of the major source of employment is/are out of business or in imminent danger of going out of business as a result of the disaster and the large loan is necessary to permit the location(s) to reopen or stay open in order to avoid substantial unemployment in the Disaster Area.

This policy is consistent with the original grant of authority to SBA to make loans to MSEs found in Public Law 91–606, the Disaster Relief Act of 1970. That legislation authorized SBA to make a loan to any major source of employment "which is no longer in substantial operation as a result of [a] disaster", such loan to be in an amount "necessary to enable such enterprise to resume operation in order to assist in restoring the economic viability of the disaster area". Public Law No. 91–606, section 237(a). This provision has been superseded by section 7(c)(6) of the Act, which gives SBA the discretion to determine whether to waive the $1.5 million limitation. SBA has decided that in all cases it will exercise its discretion in a manner that is consistent with Congress' original intent that such loans should only be available to restore the economic viability of a Disaster Area. Therefore, SBA's waiver will only be granted where the waiver is necessary to permit an MSE to reopen or keep open one or more location(s) which employ large numbers of people in the Disaster Area.

If a concern aggregates the employment levels of separate locations (its own or its affiliates) in order to qualify as a major source of employment, under this final rule SBA will require such locations to be out of business or in imminent danger of going out of business before a waiver will be considered.

Remaining unchanged from the current regulations is the requirement that a major source of employment have used all of its own funds and all available Credit Elsewhere before SBA will consider a waiver of the $1.5 million limitation. (13 CFR 123.28) Regardless of whether a concern aggregates its employment levels with those of its affiliates in order to qualify as an MSE, SBA's practice has been to consider the Credit Elsewhere available to a concern's affiliates as Credit Elsewhere available to the concern itself. This practice will continue unchanged.

SBA understands that this final rule will tighten the criteria for MSE status and reduce the number of companies that could so qualify. In practice, SBA has received very few requests for MSE status under the current rule. It is not expected that this final rule will produce a significant change in the number of companies eligible for or requesting such status. SBA believes that changes to the current regulation are necessary and warranted for the reasons discussed above. Furthermore, it should be emphasized that those funds for which a company might have been eligible under the present regulation, but not under this final rule, will now be available to assist other needy disaster victims.

In addition to the regulatory changes discussed above, SBA is also conforming the relevant regulatory sections to reflect the increase in the disaster loan limitation for businesses from $500,000 to $1.5 million, as established by Public Law 103–75. The $1.5 million limit is effective for all disasters commencing on or after April 1, 1993.

Compliance With Executive Orders 12866, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

SBA certifies that this final rule will not be a significant regulatory action for purposes of E.O. 12866 and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

1. It will not result in an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

4. It will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Executive Order 12612

SBA certifies that this final rule will have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, SBA hereby certifies that this final rule will impose no new reporting or recordkeeping requirements.

Executive Order 12778

SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small businesses.

For the reasons set forth above, part 123 of title 13, Code of Federal Regulations, is amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 is revised to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act; Pub. L. 102–395, 106 Stat. 1828, 1864 and Pub. L. 103–75, 107 Stat. 739 (15 U.S.C. 634(b)(6), 636 (b), (c), (f)).

2. Section 123.3 is amended by revising the definition of "Major Source of Employment" to read as follows:

§ 123.3 Definitions.

* * * * *

Major Source of Employment. (a) A concern which has one or more locations in the Disaster Area which, individually or in the aggregate,

(1) employed 10 percent or more of the entire work force of the commuting area of a geographically identifiable community, no larger than a county; *provided* that the commuting area shall not extend more than 50 miles from such community; or

(2) employed 10 percent or more of the work force in an industry within the Disaster Area and, if the concern is a

non-manufacturing concern, employed no less than 50 employees in the Disaster Area or, if the concern is a manufacturing concern, employed no less than 150 employees in the Disaster Area; or

(3) employed no less than 1,000 employees within the Disaster Area.

(b) For disasters commencing on or after October 1, 1983, employees of concerns sharing common business premises shall be aggregated to determine *major source of employment* status for a non-profit applicant owning such premises.

* * * * *

3. Section 123.24 is amended by revising paragraph (a) to read as follows:

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount.* The amount of a loan is limited to the Eligible Physical Loss sustained and amounts permitted under paragraphs (f), (g), (h), (i), and (j) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, together with its affiliates as defined in part 121 of this chapter, resulting from a single disaster, exceed $1.5 million, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

* * * * *

4. Section 123.26 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 123.26 Special conditions—Business loans.

(a) *Limits.* Disaster business loans (for the aggregate of physical disaster and economic injury loans) are limited by statute to a ceiling of $1.5 million per applicant for SBA's share in any one disaster commencing on or after April 1, 1993, for direct, immediate participation, or the guaranteed portion of guaranteed loans, unless the Administration finds that an applicant is a Major Source of Employment (as defined in § 123.3) in the Disaster Area, and the Administration waives the $1.5 million limitation. * * *

* * * * *

5. Section 123.28 is amended by revising it to read as follows:

§ 123.28 Loans to major sources of employment.

Loans to Major Sources of Employment (as defined in § 123.3) shall be made under the authority of the Small Business Act and the provisions of this part. In such cases, the Administration, in its discretion, may waive the $1.5 million limitation of § 123.26(a) if (i) the damaged location(s) of the Major Source of Employment is/are out of business or in imminent danger of going out of business as a result of the disaster and the waiver is necessary to permit such location(s) to reopen or stay open in order to avoid substantial unemployment in the Disaster Area, and (ii) the applicant concerned has used all funds from its own resources and all a vailable Credit Elsewhere (see § 123.3) to alleviate the physical damage and/or economic injury sustained plus eligible refinancing.

6. Section 123.41 is amended by revising paragraph (e) to read as follows:

§ 123.41 General provisions.

* * * * *

(e) *Loan amount.* Loans under this subpart may be approved in addition to any disaster loan under subpart B; *Provided, however,* that the aggregate amount of these loans to a single applicant, together with its affiliates as defined in part 121 of this chapter, in a single disaster shall not exceed $1.5 million, unless the applicant qualifies as a Major Source of Employment (see § 123.3) and satisfies the conditions in § 123.28 of this part.

* * * * *

Dated: November 8, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–30110 Filed 12–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 799

[Docket No. 931220–3320]

"Digital Computers": Removal of National Security-Based Validated License Requirements for "Digital Computers" With a CTP Not Exceeding 67 Mtops; Expanded Administrative Exceptions and Favorable Consideration Treatment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule amends Export Control Classification Number (ECCN) 4A03A to remove national security-based validated license requirements for "digital computers" with a CTP (composite theoretical performance) not exceeding 67 Mtops (million theoretical operations per second). This action conforms with recent changes in the International Industrial List (IL) maintained by the Coordinating Committee for Multilateral Export Controls (COCOM).

This rule also revises Advisory Notes for Category 4 to increase the number of items that are eligible for administrative exceptions treatment and favorable consideration treatment to Country Groups Q, W, Y and the People's Republic of China.

Finally, this rule clarifies which computer equipment is eligible for GFW and amends General License GFW provisions to clarify that GFW eligibility is not always tied to the administrative exceptions level contained in the Advisory Notes.

The net effect of this rule will be a significant reduction in the number of export license applications that will have to be submitted for computers, thereby reducing the paperwork burden on exporters.

EFFECTIVE DATE: December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Young, Office of Technology and Policy Analysis, Telephone: (202) 482–0706.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends Export Control Classification Number (ECCN) 4A03A to remove national security-based validated license requirements for "digital computers" with a CTP (composite theoretical performance) not exceeding 67 Mtops (million theoretical operations per second). Previously, ECCN 4A03A controlled "digital computers" with a CTP exceeding 12.5 Mtops.

National security-based validated license requirements continue to apply to: (1) Exports of "digital computers" with a CTP exceeding 67 Mtops to controlled destinations and to all other destinations not eligible for General License GFW and (2) exports of "digital computers" with a CTP equal to or exceeding 195 Mtops to destinations eligible for General License GFW (i.e., Country Groups T and V, except the People's Republic of China, Iran, Syria, and the South African military and police).

A validated export license also continues to be required, for foreign policy reasons, for exports of computers with a CTP of 6 Mtops or greater to Iran

and Syria and for exports of all computers to Country Groups S and Z, and South African military and police entities. Exporters should also be aware that the Department of the Treasury maintains embargoes against other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

In international negotiations with our partner in the supercomputer regime, which took place in October, we proposed raising the supercomputer definition significantly. In future regulations revising the supercomputer definition, we will raise the GFW level to 500 Mtops. In negotiations with our COCOM partners this fall, we will propose raising the decontrol level for sales to COCOM proscribed destinations to 500 Mtops, as well. As with the current liberalization, we do not expect these proposed changes to affect controls to the embargoed destinations or to those countries identified by the Secretary of State as supporting acts of international terrorism.

This rule also amends 4A03.g to raise the control level on computers for "signal processing" and "image enhancement" from a CTP exceeding 8.5 Mtops to a CTP exceeding 40 Mtops. In addition, 4A03.l is added to control equipment, specially designed to provide for the external interconnection of "digital computers" or associated equipment, that allows communications at data rates exceeding 80 Mbytes/s.

In addition, this rule revises Advisory Notes 1, 3, and 6 to increase the number of items in ECCN 4A03A that are eligible for administrative exceptions treatment and favorable consideration treatment to Country Groups Q, W, Y and the People's Republic of China. Advisory Note 1 is revised to increase the administrative exceptions level for exports of "digital computers" to Country Group W from a CTP not exceeding 41 Mtops to a CTP not exceeding 100 Mtops. Advisory Note 3 is revised to increase the administrative exceptions level for "digital computers" from a CTP not exceeding 20 Mtops to a CTP not exceeding 100 Mtops. Advisory Note 6 is revised to increase the favorable consideration level for "digital computers" from a CTP not exceeding 23 Mtops to a CTP not exceeding 194 Mtops.

This rule does not revise Note 3 in ECCN 4A03A, which describes controls on medical equipment, or Advisory Notes 2 and 7, which contain administrative exceptions or favorable consideration levels that are specific to the People's Republic of China and Country Group Q, respectively. In addition, the favorable consideration level for "signal processing" equipment in Advisory Note 6 has not been revised. Changes in these levels to conform with the new control level in 4A03.c and the new administrative exceptions and favorable consideration levels for "digital computers" identified in Advisory Notes 3 and 6, respectively, will be discussed when COCOM considers the U.S. proposal to raise the decontrol level for digital computers to COCOM proscribed destinations to 500 Mtops. Until then, the current levels will prevail.

Finally, this rule makes certain changes that clarify General License GFW eligibility requirements. Section 771.23(c) is revised to clarify that GFW eligibility is not always tied to the administrative exceptions levels contained in the Advisory Notes. The GFW paragraphs for certain CCL entries contain eligibility levels that are either broader or more restrictive than the levels described in the Advisory Notes.

In response to inquiries from the public, the GFW paragraph in ECCN 4A03A is revised to clarify the eligibility levels for related equipment, "assemblies" and specially designed components for "digital computers". Related equipment and "assemblies" for eligible computers may be exported under GFW if they are exported with such computers as part of a system. Disk drives described in Advisory Note 4 and specially designed components for eligible computers can be shipped separately under General License GFW.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before December 23, 1993, may be exported under the previous general license provisions up to and including January 6, 1994. Any such items not actually exported before midnight January 6, 1994, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, and 0694–0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 771 and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735

of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 771—[AMENDED]

2. Section 771.23 is amended by revising the section heading and by revising paragraph (c) to read as follows:

§ 771.23 General License GFW.

* * * * *

(c) *Eligible commodities.* The commodities eligible for export under this general license are identified in the "GFW" paragraphs under the Requirements heading of the entries on the Commerce Control List. The "GFW" paragraph in most of these entries will identify which commodities are eligible by referring exporters to the appropriate Advisory Notes in the Commerce Control List that provide administrative exceptions treatment for Country Groups QWY and the People's Republic of China. The Advisory Notes that apply specifically to Country Group W or the People's Republic of China or that provide favorable consideration treatment are *not* applicable for determining GFW eligibility. The GFW paragraphs in certain entries include eligibility criteria that are either broader or more restrictive than the parameters contained in the appropriate Advisory Notes. When this occurs, the eligibility criteria in the GFW paragraphs take precedence. In addition to any restrictions contained in the GFW paragraphs or the appropriate Advisory Notes, shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c) of this subchapter.

* * * * *

PART 799—[AMENDED]

3. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A03A is revised to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason for Control: NS, MT, NP, FP (see Notes)
GLV: $5,000
GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan); see Notes
GFW: Yes, except MT and FP (see Notes), for the following items:
a. Equipment described in Advisory Note 4; and
b. Computers with a CTP less than 195 Mtops and specially designed components therefor, exported separately or as part of a system, and related equipment therefor when exported with these computers as part of a system.

N.B. 1: General License GFW is *not* available for the export of commodities that the exporter knows will be used to:

a. Enhance the performance capability (i.e., CTP) of a computer to the "supercomputer" level; or

b. Enhance the performance capability of a "supercomputer" (see § 776.11 of this subchapter for definition of "supercomputer").

N.B. 2: To determine whether General License GFW may be used to export related equipment controlled under another entry in the CCL, consult the GFW paragraph under the Requirements heading of the appropriate entry.

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.

4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, logic processors, and equipment for "image enhancement" or signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; and

N.B. 1: The control status of "signal processing" or "image enhancement" equipment described in 4A03.g and specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The technology for the "digital computers" and related equipment is governed by 4E.

Note 3: "Digital computers" or related equipment are not controlled by 4A03 provided:

a. They are essential for medical applications;

b. The equipment is substantially restricted to medical applications by nature of its design and performance;

c. The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

d. The "composite theoretical performance" of any "digital computer" that is not designed or modified but essential for the medical application does not exceed 20 million composite theoretical operations per second (Mtops); and

e. The technology for the "digital computers" or related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:

a. Designed for combined recognition, understanding and interpretation of image or continuous (connected) speech;

b. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.b, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:

a. Error detection or correction algorithms in "main storage";

b. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

c. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

d. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

c. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 67 million theoretical operations per second (Mtops);

d. "Assemblies" specially designed or modified to enhance performance by

aggregation of "computing elements", as follows:

d.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements"; *or*

d.2. Having a sum of maximum data rates on all data channels available for connection to associated processors exceeding 40 MBytes/s;

Note 1: 4A03.d applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.c, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.e to 4A03.k.

Note 2: 4A03.d does not control "assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.c.

e. Disk drives and solid state storage equipment:

e.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" ("MBTR") exceeding 47 Mbit/s;

e.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" ("MBTR") exceeding 80 Mbit/s;

f. Input/output control units designed for use with equipment controlled by 4A03.e;

g. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" ("CTP") exceeding 40 million theoretical operations per second (Mtops);

h. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note: The provisions of 4A03.h do not apply to work stations designed for and limited to:

a. Graphic arts (e.g., printing, publishing); *and*

b. The display of two-dimensional vectors.

i. Color displays or monitors having more than 12 resolvable elements per mm in the direction of the maximum pixel density;

Note 1: 4A03.i does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

j. Equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits in 3A01.a.5;

k. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.k, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

l. Equipment, specially designed to provide for the external interconnection of "digital computers" or associated equipment, that allows communications at data rates exceeding 80 Mbytes/s.

Note: 4A03.l does not control internal interconnection equipment (e.g., backplanes, buses) or passive interconnection equipment.

4. In Category 4 (Computers), following ECCN 4E96G, under the heading "Notes for Category 4", Advisory Notes 1, 3, and 6 are revised to read as follows:

Notes for Category 4

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by Category 4 for national security reasons, except:

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.c having a "CTP" exceeding 100 Mtops and specially designed components therefor;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in .a, .b, or .c of this Advisory Note that are controlled by 4D or 4E.

* * * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" controlled by 4A03.c, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. The "CTP" of the "digital computers" does not exceed 100 Mtops;

d. They do not contain any related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

f. They are not exported as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

Note: This does not preclude the enhancement of such computers when they are used by civil end-users in civil applications.

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers";

h. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; and

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons.

* * * * *

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" or related equipment therefor controlled by 4A03.c, .e, .f, or .g, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. "CTP" of the "digital computers"—194 Mtops;

2. "Maximum bit transfer rate" ("MBTR") of disk drives or input/output control units controlled by 4A03.e or 4A03.f—110 Mbit/s; or

3. "CTP" of the "signal processing" or "image enhancement" equipment—12.5 Mtops;

d. They do not contain any other related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 6.c;

f. They are not shipped as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment;

h. Exports of items covered by this Advisory Note 6 shall be subject to the following restrictions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency describing the end-use and certifying that:

a. The "digital computers" or related equipment will:

1. Be used only for civil applications; and

2. Not be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

b. Responsible Western representatives of the supplier will:

1. Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; and

2. Be furnished information demonstrating continued authorized application of the equipment; and

3. Be notified of any significant change of application or of other facts, on which the license was based;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment and its intended application and workload; and

b. A complete identification of all end-users and their activities.

* * * * *

Dated: December 3, 1993.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 93–30140 Filed 12–6–93; 4:03 pm]

BILLING CODE 3510–DT–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS KIDD (DDG 993) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 18 November 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS KIDD (DD 993) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a naval ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of 706.2 is amended by revising the existing entry for USS KIDD (DD 993) to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS KIDD	DD 993	X	X	X	39.8

Dated: November 18, 1993.

J.E. Dombroski,

Capt, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–29987 Filed 12–8–93; 8:45 am]

BILLING CODE 3810–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI5–2–6032; FRL–4811–9]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency is disapproving revisions to the Michigan State Implementation Plan (SIP) for ozone which were submitted to the U.S. EPA by the Michigan Department of Natural Resources (MDNR) on April 28, 1989. The intent of these revisions was to establish a monitoring program for leaking components of process equipment at synthetic organic chemical and polymer manufacturing plants and natural gas processing plants. These rules are being disapproved because they contain deficiencies and as a result, do not meet the provisions of the Clean Air Act as amended in 1990 (Act). As a result of this disapproval, the U.S. EPA will be required to impose highway funding or emission offset sanctions under the Act unless the State submits and the U.S. EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, the U.S. EPA will be required to promulgate a federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective January 10, 1994.

ADDRESSES: Copies of the SIP revision request and the U.S. EPA's analysis are available for inspection at the following location: (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.) United States Environmental Protection Agency, Region V, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: On July 30, 1993 (58 FR 40759), the U.S. EPA published a notice proposing disapproval of revisions to the Michigan SIP for ozone which were submitted on April 28, 1989. Today the U.S. EPA is taking final action to disapprove these revisions.

Background

On April 28, 1989, the MDNR submitted R 336.1628 (Rule 628), "Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program", and R 336.1629 (Rule 629), "Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program", of Michigan's Administrative Rules. These rules were submitted to satisfy outstanding commitments in its 1982 ozone SIP for southeast Michigan (Wayne, Oakland, and Macomb Counties). In addition, the MDNR chose to expand the applicability of these rules to all of the counties listed in the U.S. EPA's 1988 request to Michigan that deficiencies in the existing SIP be corrected (U.S. EPA's SIP-Call), which included the Detroit, Grand Rapids, and Muskegon areas. This submittal, therefore, also responds to the U.S. EPA's SIP-Call, the requirement of section 182(a)(2)(A) of the Act that the State correct its reasonably available control technology (RACT) rules for ozone nonattainment areas (Wayne, Oakland, and Macomb Counties), and the requirement of section 182(b)(2) of the Act that nonattainment areas not previously required to adopt VOC RACT do so (for Livingston, Monroe, St. Clair, Washtenaw, Kent, Ottawa, and Muskegon Counties). A detailed discussion of the background for the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

The United States Environmental Protection Agency has evaluated the rules for consistency with the requirements of the Act, U.S. EPA regulations and the U.S. EPA's interpretation of these requirements as expressed in the various U.S. EPA policy documents referenced in the NPR. The United States Environmental Protection Agency is today disapproving the rules, thus requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided in the NPR and in technical support documents available at the U.S. EPA's Region V office.

Public Comments

A 30-day public comment period was provided in the NPR. The United States Environmental Protection Agency received no comments on the proposed action.

U.S. EPA Action

The United States Environmental Protection Agency is today disapproving the above-referenced rules because they contain deficiencies that have not been corrected as required by sections 182(a)(2)(A) and 182(b)(2) of the Act, and, as such, the rules do not fully meet the requirements of part D of the Act. As stated in the NPR, upon the effective date of this notice of final rulemaking (NFR), the 18 month clock for sanctions and the 24 month FIP clock will begin. See sections 179(a) and 110(c) of the Act. If the State does not submit the required corrections within 18 months of the NFR, either the highway sanction or the offset sanction will be imposed at the 18 month mark (See 58 FR 51270). If U.S. EPA does not approve a State plan within 24 months, U.S. EPA must promulgate a FIP. U.S. EPA acknowledges that Michigan has made a submittal in a letter dated November 12, 1993 which is expected to address the required corrections from this notice. Upon U.S. EPA's finding this submittal complete, the sanctions clock will stop.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The United States Environmental Protection Agency has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on the U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 22, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–30058 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 88

[FRL–4810–6]

RIN 2060–AD32

Clean Fuel Fleet Program; Definitions and General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The provisions of subpart C of title II of the Clean Air Act require certain states to revise their State Implementation Plans (SIP) to incorporate a Clean Fuel Fleet Program. Under this program, specified percentages of the new vehicles acquired in model year 1998 and after by certain fleet owners must meet clean-fuel fleet vehicle (CFFV) emission standards. This requirement can be met by the purchase of new CFFVs, the conversion of conventional vehicles to CFFVs, or through purchases of credits pursuant to a credit program. The revised SIPs for affected states must also include provisions to implement a credit program and to exempt CFFVs from certain transportation control measures. These revisions must be submitted to EPA by May 15, 1994.

This final rule contains definitions for certain key terms and provisions, for use by the states in determining the requirements of their programs. These terms and provisions will be used to determine which fleet operators are covered by the requirements of the program and to determine which fleet vehicles will be counted for the purchase requirements of the program

EFFECTIVE DATE: This final rule is effective January 10, 1994.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–92–30, located at room M–1500,

Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. Under 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Bryan Manning, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: 313–741–7832.

SUPPLEMENTARY INFORMATION:

I. Background

According to section 246(b) of the Clean Air Act (the "Act"), beginning in model year 1998 "each covered fleet operator in each covered area" shall include a certain portion of clean-fuel fleet vehicles in new vehicle purchases. Under section 246(c) of the Act, the date for the commencement of the program may be delayed until as late as model year 2001 if vehicles meeting the CFFV standards are not offered for sale in California in model year 1998. At this time, however, EPA expects that vehicles meeting the CFFV standards will be offered for sale in California in model year 1998.

There are three terms included in the Act that are pivotal in determining which fleet vehicles and ultimately which fleets will be covered by the fleet program. These are "covered fleet operator," "centrally fueled," and "capable of being centrally fueled." In addition, several other terms used in sections 241 and 246 of the Act need to be defined to determine which fleet vehicles are subject to the purchase requirements. These terms are: Control; dealer demonstration vehicle; emergency vehicle; law enforcement vehicle; model year; motor vehicles held for lease or rental to the general public; new covered fleet vehicle; nonroad vehicles and engines; owned or operated, leased, or otherwise controlled; person; vehicle used for motor vehicle manufacturer product evaluations and tests; under normal conditions garaged at personal residence at night. Also, EPA believes that one additional issue requires further clarification: How to promote uniformity for multi-state nonattainment areas.

EPA proposed definitions for these terms and regulations dealing with these issues in a Notice of Proposed Rulemaking (NPRM) published on June 10, 1993 in the **Federal Register** (58 FR 32474), and held a public hearing on that NPRM on July 15, 1993. Comments were accepted at that time and for thirty days thereafter, until August 16, 1993. Comments were submitted at the hearing by seven entities representing both the industry and the states being regulated. Written comments after the hearing were submitted by these commenters and several others. Interested readers are referred to the docket for this rulemaking for the transcript of the hearing and copies of all written comments (see the **ADDRESSES** section of this final rule for information about the docket).

II. Public Participation

The development of proposed definitions for Clean Air Act terms involved significant participation from the public, especially states and fleets. This participation resulted first in EPA's decision to propose regulations containing standardized key definitions for all State clean-fuel fleet programs under part C of title II of the Act, and then in the development of definitions that responded to many of the concerns and suggestions that emerged. The draft definitions were coordinated with state and fleet interests prior to release of the NPRM and, during the public hearing and public comment period, EPA received a number of comments on the proposed definitions. In response to those comments, the Agency has prepared a document entitled "Summary and Analysis of Comments: Proposed Clean Fuel Fleet Definitions," which may be found in the docket for this rule. The following paragraphs review several of the most significant issues raised in the comments and discuss the reasoning behind EPA's final decisions on these issues.

Several commenters addressed EPA's proposed definitions for "centrally fueled" and "capable of being centrally fueled." The proposed definition for centrally fueled meant a vehicle that is refueled at least 75 percent of the time at a central location. The proposed definition for capable of being centrally fueled meant it is practically and economically feasible to refuel the vehicle centrally. "Practical" meant that the vehicle does not travel farther than its operational range more than 50 percent of the time, and "economical" meant that central fueling for those vehicles would not cause undue economic hardship.

Commenters representing heavy-duty engine manufacturers suggested that the program should only apply to those vehicles that are refueled centrally 100 percent of the time or are capable of being refueled centrally 100 percent of the time. They argue that vehicles purchased by heavy-duty vehicle fleet operators in order to comply with clean-fuel fleet programs will be dedicated to a single fuel that may not be widely available. These commenters suggested that to require fleet operators to replace vehicles that currently spend some time out of range of the central fueling facilities with dedicated vehicles may require fleet operators to change their business significantly or acquire more vehicles in order to keep more vehicles closer to the fuel.

Other commenters, primarily those representing natural gas interests, made an opposing point. For the "centrally fueled" definition, they suggested that the 75 percent criterion was too high and that vehicles that currently operate at least 50 percent of their time inside the range of a central facility should also be considered centrally fueled. This position was based on the expectation that, by 1998, the natural gas fueling infrastructure would be sufficiently widespread that vehicles need not always return "home" for fueling. They supported EPA's proposed definition for "capable of being centrally refueled" with minor revisions. Finally, several other commenters, including light-duty vehicle manufacturers, petroleum interests, and light-duty vehicle fleet operators, commented that the proposed 75 percent criterion was appropriate. However, with regard to the definition for capable of being centrally fueled, they believed that the proposed criterion of 50 percent of operation within reach of the fueling facility was too low and would include many vehicles that would not in fact be capable of central fueling. These commenters believed that the threshold for capable of being centrally fueled should be raised to at least the 75 percent criterion, to bring it in line with the threshold for central fueling.

EPA is persuaded by the comments suggesting that the definition of "centrally fueled" be limited to vehicles that are centrally fueled 100 percent of the time and that the definition of "capable of being centrally fueled" be limited to vehicles that could be fueled centrally 100 percent of the time. EPA also believes that similar logic applies to both heavy-duty and light-duty vehicles. First, EPA agrees that, in many cases, the required fuel may not be widely available. While it is not clear whether special diesel fuel will be required for heavy-duty vehicles, special gasoline will be required for vehicles certified on California reformulated gasoline sold outside California or for vehicles certified on federal reformulated gasoline operated outside areas covered by reformulated gasoline programs.

Since fleet vehicles will need to use the fuel on which they are certified, and that fuel may not always be easily available, it therefore makes sense to use a 100 percent threshold. Alternative fuels, including compressed natural gas, may increase in availability, but they are likely to remain much less available than gasoline.

Second, as suggested by some commenters, EPA believes that revising the definition of "central fueled" will enhance regulatory efficiency. With the recent enactment of the Federal Energy Policy Act (EPAct), requirements to purchase vehicles capable of using alternative fuels will be phasing at or near the same time as when the fleets program becomes effective, and EPAct will likely apply to many of the same fleets as the Clean Fuel Fleet program. Dedicated alternative fueled vehicles capable of meeting very low exhaust and evaporative emission standards are the best choice from the environmental and energy perspectives of both programs because there is no option to operate such a vehicle on a fuel that is less clean or that results in less replacement of imported petroleum fuel.

As the commenters pointed out, a program that would require the replacement of vehicles now operated in "mixed service" (i.e., vehicles that are refueled centrally most of the time but that operate outside the range of the central facilities some of the time) with vehicles requiring central fueling all the time seems unnecessarily burdensome. Under such a program, heavy-duty vehicle fleet operators that operate mixed service fleets would be faced with two options. They can replace mixed service vehicles with clean fuel vehicles that meet the CFFV emission standards on gasoline or diesel fuel. The disadvantage with this solution is that the technology might not be available for heavy-duty vehicles to meet the heavy-duty CFFV standards operating on gasoline or diesel fuel, and reformulated fuels may not be readily available each time a mixed service vehicle travels farther than its operation range. Alternatively, fleet operators who operate mixed service fleets can replace mixed service vehicles with vehicles that operate on reformulated diesel fuel and conventional diesel fuel (i.e., dual-fuel vehicles). The problem with this solution, according to these commenters, is that dual-fuel technology may not be available. If dual-fuel vehicles are not available, fulfilling the tasks now served by mixed-service vehicles with dedicated vehicles would be very difficult. Further, the Clean Air Act requires that clean-fuel fleet vehicles must use clean fuel when operating in the nonattainment area, and forcing the use of dual-fuel vehicles in these mixed service applications would unnecessarily create the potential for misfueling (i.e., operating on the wrong fuel while in the covered area), and would result in the loss of environmental benefits.

Similarly, as the definitions were proposed, operators of light-duty vehicle and light-duty truck fleets would be encouraged to purchase vehicles that operate on or are capable of operating on conventional (or reformulated) petroleum fuels. Fleet operators who buy these vehicles would have to either:

(1) Purchase separate vehicles to satisfy the alternative fuel vehicle requirements of the Energy Policy Act, or

(2) Purchase flexible-fuel or dual-fuel vehicles, which would achieve significantly less emission reductions than clean, dedicated alternative fuel vehicles. Even though fleet operators using dual-fuel vehicles are required to operate these vehicles on "clean fuel" while in the nonattainment area, dual-fuel vehicles that also operate on conventional gasoline would contribute more evaporative emissions in the nonattainment area than clean, dedicated alternative fuel vehicles. For example, vehicles capable of operating on both ethanol and gasoline have more evaporative emissions because when these two fuels are mixed in the gas tank, the mixture is more volatile than either ethanol or gasoline separately. Also, when such a vehicle returns to the covered area, there is a problem of what to do with the gasoline in the tank, since the vehicle is required to operate on a clean fuel (in this case, ethanol) when operating in the covered area. In the case of a dual-fuel clean-fuel vehicle that uses compressed natural gas, such a vehicle has greater emissions than a dedicated CNG vehicle. This is because a dedicated CNG vehicle has no evaporative emissions, while a dual-fuel CNG vehicle will have evaporative emissions due to the presence of the second fuel. Both of these unproductive choices will be avoided if the Clean Fuel Fleet program does not require the replacement of mixed-use vehicles with clean-fuel vehicles but, rather, aims the program toward those vehicles that are or could reasonably be centrally fueled all of the time.

EPA believes that focusing these two definitions more clearly on vehicles that are or could be centrally fueled all the time will help resolve fleet concerns about fuel availability and will facilitate compliance with both Clean Air Act and EPAct fleet requirements. These revisions of "centrally fueled" and "capable of being centrally fueled" would encompass fewer vehicles than the previous definitions, but would remove impediments to fleets selecting the use of dedicated alternative fuel vehicles, which EPA believes are the best choice to meet the requirements of the program, these vehicles would inherently have less emissions (exhaust and evaporative emissions) than mixed-use vehicles. Furthermore, based on the rapid evolution of federal, state, and local policy initiatives relating to alternate fuel vehicles, EPA believes that these revised definitions are a necessary part of a coordinated framework for promoting dedicated clean alternate fuel vehicles. The purchase of dedicated alternate fuel vehicles by fleet operators could lead to advances in the development of an alternate fuel refueling infrastructure and the optimization of alternate fuel vehicle technology (engines designed with the expectation of operating on only one fuel and then optimized for that fuel). As incentives are implemented and economic barriers are reduced for fleet operators to purchase dedicated alternate fuel vehicles, the revised definitions would allow for the development of a growing market demand for these vehicles that would then lead to even greater and sustained emission benefits. Finally, EPA intends that the revised definitions enable a fleet owner to easily choose a single vehicle type to satisfy their entire purchase requirement for the Clean Fuel Fleet Program (and perhaps the fleet requirements of the EPAct) since it will make the program both easier for fleets to comply with and easier for states to enforce.

While most of the significant comments addressed the key definitions relating to whether a vehicle is or can be centrally fueled, EPA received a number of comments on the remaining proposed definitions as well. These remaining comments have resulted in revisions in several areas, but no major changes from the proposal have occurred. EPA's reasoning supporting the final definitions in light of the full range of comment is discussed in detail in the Summary and Analysis of Comments document.

III. Content of the Rule

As a result of comments and further analysis by EPA, three definitions are being changed in a substantive way from the proposed definitions. They are "covered fleet operator," "centrally fueled," and "capable of being centrally fueled." In addition, another definition is being added: "can be centrally

fueled." This definition describes the group of fleet vehicles that are centrally fueled or that are capable of being centrally fueled (the sum of both of these). These four terms are pivotal in determining which fleet vehicles and which fleets will be covered by the fleet program; therefore, EPA will discuss these terms together. This will facilitate the reader's understanding of their interdependence and, consequently, of their meaning. Fleet operators can determine whether they are covered fleet operators if their fleets or fleet vehicles meet the criteria of these definitions. Final definitions for the other terms EPA had proposed to define are presented following the discussion of these four terms.

A. Definitions of Covered Fleet Operator, Can Be Centrally Fueled, Centrally Fueled, and Capable of Being Centrally Fueled

1. Covered Fleet Operator

In this rule, EPA is defining "covered fleet operator" as meaning a person who operates a fleet of at least ten covered fleet vehicles, and that fleet is operated in a single covered area, even if the covered fleet vehicles are garaged outside of it. Under section 241(6) of the Act, a "covered fleet vehicle" is one for which clean-fuel vehicle standards apply and which is in a "covered fleet" that is centrally fueled or capable of being centrally fueled. Thus, the definition of "covered fleet operator" is dependent on the definitions of "centrally fueled" and of "capable of being centrally fueled." As noted above, the sum of the vehicles that are centrally fueled or are capable of being centrally fueled are referred to as vehicles that can be centrally fueled. These terms are further defined below.

This definition is intended to clarify the criteria that determine if a fleet operator is a covered fleet operator. According to this definition, the determination is based on whether three major criteria are satisfied by an operator's fleet or the vehicles in his/her fleet:

(1) If the fleet can be classified as a "covered fleet";

(2) If 10 or more fleet vehicles are operated in a single covered area; and

(3) If at least 10 of those fleet vehicles that are operated in the covered area can be centrally fueled as defined below (i.e. they are currently centrally fueled or they are capable of being centrally fueled), thereby making them covered fleet vehicles. If these criteria are met, the fleet or that portion of the fleet that meet these criterion is subject to the purchase requirements specified in the Act. These conditions are discussed in more detail below.

(a) *Covered Fleet.* The term "covered fleet" is defined in section 241(5) of the Act as "10 or more motor vehicles which are owned or operated by a single person * * *." That section also contains a list of vehicles that are not covered and are not to be counted in determining a covered fleet (exempt vehicles). These are: "motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles)." Many of these terms are defined below. Those motor vehicles that are not specifically exempt under section 241(5) are "nonexempt" fleet vehicles.

Any fleet operator who owns or operates a fleet of 10 or more nonexempt fleet vehicles may be subject to the purchase requirements of the Act. However, the actual determination of whether or not that fleet operator must purchase clean fuel vehicles hinges on whether or not the fleet operator has a fleet of 10 or more covered fleet vehicles. By the same token, any fleet operator who operates a fleet of 9 or fewer motor vehicles is not subject to the purchase requirements under the Act.

(b) *In the Covered Area.* Although section 246(a)(2) of the Act defines the term "covered area" and section 246(b) specifically limits the program's application to "each covered fleet operator in each covered area," the Act does not clearly define what the term "in" means. It is clear that fleet vehicles garaged in the covered area are affected by the Clean Fuel Fleet Program; however, the issue of fleet vehicles operated in but garaged outside the covered area needs to be addressed further. EPA believes that Congress intended for those fleet vehicles operated in, but garaged outside, the covered area to be included in the Clean Fuel Fleet Program since vehicle miles travelled in the covered area clearly affect air quality in the covered area.

In the NPRM, EPA proposed to address the issue of fleet vehicles operated in, but garaged outside, the covered area by defining the term "operated in a covered area" as meaning a fleet which is operated from a covered area, or spends 75 percent or more of total fleet operating time in a covered area. However, during the comment period, EPA became aware of problems with this definition.

The proposed definition could have created competitive inequities. Specifically, for fleets of ten or more vehicles that can be centrally fueled, fleets located in the covered area would have been affected by the program no matter how much of their operating time was spent in the covered area. As long as they had ten or more vehicles that can be centrally fueled, they would have been subject to the purchase requirements of the Act. However, for similar fleets located outside the covered area, fleets of ten or more vehicles that can be centrally fueled would have been affected by the program only if they spent 75 percent or more of total fleet operating time in the covered area. If they did not meet that high standard of operating time in the covered area, they would not have been subject to the purchase requirements of the Act.

The proposed definition also would have treated differently fleets with similar impacts on a covered area's ambient air quality based merely on whether the fleets were operating from a location inside or outside the covered area. Vehicle miles travelled in a covered area affect the air quality the same regardless of where the vehicle is garaged.

Second, the proposed definition could have created administrative and enforcement problems for states and EPA. EPA believes that it should be less of an administrative burden to determine whether a fleet that can be centrally fueled operates at all in a covered area rather than determining whether such a fleet operates 75 percent of total operating time in a covered area.

Therefore, rather than promulgate a flawed definition, EPA is withdrawing the proposed definition of the term "operated in a covered area". Although it might be useful to define this term by regulation for purposes of uniformity, EPA is constrained in finalizing an improved definition by notice and comment concerns.

EPA believes that states would achieve the maximum available air quality benefits of the fleet program by defining the term "operated in a covered area" such that a vehicle will be covered if it operates in a covered area at any time during the year, and EPA suggests that States consider this approach. However, since the Clean Fuel Fleet Program is a State program administered through SIPs and since EPA is not finalizing a definition for this term, States will have some flexibility in defining "operated in a covered area" subject to EPA approval. During the SIP approval process, EPA will consider how much emission reduction to credit

to States based on the broadness of their definition for "operated in the covered area." Obviously, the larger the number of vehicles included in the program the greater the benefits available. EPA may in the future propose to define this term by regulation in a separate rulemaking.

(c) *Covered Fleet Vehicle.* Section 241(6) of the Act defines "covered fleet vehicle" as meaning a motor vehicle that is: "(i) In a vehicle class for which standards are applicable under this part; and (ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled)," with the exception that "* * * no vehicle which under normal operations is garaged at a personal residence at night shall be considered to be * * * capable of being centrally fueled * * *" To determine if the fleet consists of 10 or more covered fleet vehicles, then, the fleet operator who owns or operates a fleet of 10 or more non-exempt vehicles that are operated in a covered area must determine if at least 10 of those vehicles can be centrally fueled (i.e., they are centrally fueled or capable of being centrally fueled, as defined below.)

2. Can be Centrally Fueled

During the comment period, it became apparent to EPA that it would be useful to define a single term that would encompass those vehicles that are currently centrally fueled and those that are capable of being centrally fueled. Such a term would be useful both to clarify certain definitions, such as covered fleet operator, and to simplify the program for the states and the thousands of potentially affected fleet owners.

Therefore, EPA is defining "can be centrally fueled" as meaning the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. Thus, this definition encompasses those vehicles that are known to be able to be centrally fueled, either because they already are or they could be, pursuant to the definitions and determinations of centrally fueled and capable of being centrally fueled, defined below.

3. Centrally Fueled

As discussed in the response to comments section of this rule, EPA is defining "centrally fueled" as a fleet, or that part of a fleet, consisting of vehicles that are fueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. Any vehicle that under normal operations is garaged at a personal residence at night but that is, in fact, centrally fueled 100 percent of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more vehicles in a fleet is/are not centrally fueled does not exempt an entire fleet from the purchase requirements under the Act; those non-exempt vehicles that are centrally fueled or capable of being centrally fueled will count as covered fleet vehicles and will be applied toward the 10-vehicle minimum covered fleet size threshold.

This definition of "centrally fueled" is intended to clarify the criteria that determine if a fleet is centrally fueled. As described above, the determination of whether a vehicle is a covered fleet vehicle depends, in part, on whether the vehicle is in a covered fleet that is centrally fueled.

It should be noted that the fact that a fleet vehicle is not centrally fueled does not mean it is exempt from the program, since the part of the fleet that is affected by the program are those vehicles that are centrally fueled or could be centrally fueled. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Vehicles that are not centrally fueled, pursuant to this definition, and that are not specifically exempt, pursuant to section 214(5), may still be capable of being centrally fueled. Therefore, a fleet operator who has determined his or her fleet vehicles are not centrally fueled must still determine if they are capable of being centrally fueled. If they are, then the total of these vehicles, i.e., those vehicles that can be centrally fueled, may constitute a fleet that may be subject to the purchase requirements of the Act.

Also, a covered fleet is any group of at least ten covered fleet vehicles that can be centrally fueled; the entire fleet of nonexempt vehicles need not be centrally fueled or capable of being centrally fueled. Therefore, if only a portion of the fleet of nonexempt vehicles (a subfleet) can be centrally fueled, and that subfleet consists of ten or more nonexempt vehicles, then that subfleet is a covered fleet. So, for example, if a fleet consists of 20 vehicles, 18 of which are nonexempt, and if 14 of those nonexempt vehicles can be centrally fueled, then that subfleet of 14 vehicles is a covered fleet and is subject to the purchase requirements under the Act.

(a) *Contract Fueling.* Contract fueling is deemed to exist if a fleet vehicle is required to be refueled at a service station or other facility with which the fleet owner has entered into a contract for such refueling purposes. If this is the case, then that fleet vehicle would be considered to be centrally fueled. However, if there is no such contract, and the fleet vehicle receives no special refueling benefits at the service station (i.e., it is treated as a normal retail customer), then that vehicle would not be considered centrally fueled. Retail credit card purchases are not considered to be a refueling agreement. However, commercial fleet credit cards are considered to be a refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone.

(b) *Determination of Central Fueling.* EPA intends that determination of whether a vehicle is centrally fueled be made based on the refueling patterns for that vehicle, regardless of where it is kept when not in use. It should be relatively easy to determine if a vehicle is centrally fueled 100 percent of the time. First, the fleet operator must have central fueling facilities or have arrangements for contract fueling with a fuel provider. Second, the vehicle must receive all of its fuel from those central fueling facilities or through that fuel provider, regardless of where that vehicle is parked when it is not in use. Again, just because a vehicle is not centrally fueled 100 percent of the time does not mean that vehicle is exempt from the program. It may be capable of being centrally fueled, as described below.

EPA intends that states require that fleet operators report to them the number of their fleet vehicles that are centrally fueled in the manner described in the section on reporting requirements, below.

(c) *Location.* For the purpose of this definition (and the definition of "capable of being centrally fueled" below), "location" means any building, structure, facility, or installation, which; (i) Is owned or operated by a person, or is under the control of a person; (ii) is located on one or more contiguous properties and (iii) contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person. This definition is meant to encompass all of the facilities of the fleet operator in a single covered area, in their entirety. Location is not meant to be interpreted narrowly, e.g., as a single refueling pump.

4. Capable of Being Centrally Fueled

EPA is defining a fleet that is "capable of being centrally fueled" as a fleet, or that part of a fleet, consisting of vehicles that could be refueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. The fact that one or more vehicles in a fleet is/are not capable of being centrally fueled does not exempt an entire fleet from the

program; those vehicles that are capable of being centrally fueled will count toward the 10-vehicle minimum fleet size threshold.

(a) *Determination of Capable of Being Centrally Fueled.* EPA intends that the determination of whether a fleet is centrally fueled will be made based on the refueling patterns for that portion of the fleet consisting of nonexempt vehicles that are not centrally refueled 100 percent of the time, excluding those vehicles that are garaged at a personal residence at night. This determination will not be done on a vehicle-by-vehicle basis, since it would be too easy to evade the program. For example, trips among vehicles could be shifted so that no vehicle is capable of central fueling.

For the portion of the fleet operated in the covered area that includes vehicles that are not centrally refueled 100 percent of the time and are not garaged at a personal residence at night, there are two different cases in which the fleet operator would need to determine whether these vehicles are capable of being centrally fueled: (1) If the fleet operator already owns, operates, or controls a location that contains central fueling facilities or has an arrangement for contract fueling, but some fleet vehicles are not refueled at those facilities 100 percent of the time; or (2) if the fleet operator does not currently own, operate, or control central fueling facilities or does not have an arrangement for contract fueling. EPA intends that the methods for making these determinations with respect to each of these cases be performed as described below.

(i) *When fleet has refueling facilities.* In the first case, when a fleet operator already owns, operates, or controls central fueling facilities, or has an arrangement for contract fueling, the portion of the fleet operated in the covered area that is capable of being centrally fueled 100 percent of the time is equal to the ratio of the number of miles from trips that could be centrally fueled to the total number of miles travelled by that portion of the fleet, averaged over all nonexempt fleet vehicles (excluding those vehicles which are centrally fueled or which are garaged at a personal residence at night). For the purpose of this calculation, miles from trips that could be centrally fueled are those miles from trips that would not require a vehicle to travel outside of its operational range. The operational range is the distance a vehicle is able to travel on a round trip with a single refueling; however, the operational range should be: (1) No less than 50 percent of the average range of the existing fleet but (2) in any case no less than 300 miles.

The calculation should be based on a sample trip profile for that portion of the fleet operated in the covered area that is not centrally fueled 100 percent of the time or garaged at a personal residence at night, in the following way. Each fleet operator will choose at least two, but not more than four, noncontinuous weeks during the year or two preceding the year in which the purchase requirements go into effect (i.e., 1996 or 1997).

Each of those weeks should be representative of normal travel patterns for the fleet and should consist of seven continuous days. The first day of the first week and the last day of the last week should not be more than 365 days apart. For example, one week during each of the four seasons can be chosen, or one week during each of two seasons, to capture any differences that may occur in fleet operating patterns due to seasonal fluctuations in business. The seven-continuous-day period is meant to reflect the fleet's travel patterns for a week. If the normal days of operation for a fleet are only Monday through Friday, or Monday through Saturday, the fleet would obviously not record trips for those days if, in fact, no trips occur.

For each of those weeks, a sample fleet will be chosen from among the fleet vehicles operated in the covered area that are not centrally fueled, not exempt pursuant to section 241(5), and not garaged at a personal residence at night. The sample fleet will consist of at least 5 vehicles for fleets of up to 20 nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night, and at least 30 percent of the number of nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night for fleets of 21 or more such vehicles, rounded up to the closest integer value (i.e., .30×21 vehicles=7 vehicles). The purposes for which these sample vehicles are used should reflect actual business operations (i.e., the sample fleet should contain the same proportion of vehicles used for sales, deliveries, etc., as in the fleet as a whole).

During each of the sample weeks, detailed travel logs will be kept for each sample vehicle. Those travel logs will contain information about the trips taken by each of the sample vehicles including, but not limited to, the originating point of each trip and, for each destination point the vehicle visits before returning to the place of origination, the location of the destination point and the odometer reading of the vehicle at that location. The originating point is assumed to be the location of the fleet's central fueling facilities. In the case when a fleet has more than one location with central fueling facilities, the originating point is the one where the vehicle typically refuels or the one that makes the most sense for the needs of that particular vehicle. Each time the vehicle leaves the originating point, it is beginning a new trip.

The fleet operator will use this information to calculate the miles from trips that could be centrally fueled. As noted above, a trip that could be centrally fueled is one that would not require a vehicle to travel outside of its operational range. In other words, these are trips for which miles travelled from the vehicle's departure until its return to the same place would not exceed the operational range of the vehicle. To calculate this, a fleet operator would have the drivers of the sample vehicles make note of their vehicle's odometer reading when they set off on a trip and when they return, and each time they stop to make a delivery or visit a customer. Using this information, the fleet operator can calculate the miles from trips that could be centrally fueled in one of at least two ways.

In the first method, the fleet operator will begin by tabulating the miles the vehicle travelled on each trip, in the order they were driven, until the total miles, from the point of departure, equals one-half of the operational range of the vehicle. These represent the miles from a trip that could be centrally fueled. These miles are summed over all trips made by a sample vehicle for the sample week. Then, the fleet operator will calculate the total number of miles driven for that vehicle over the sample week. Third, the fleet operator will calculate the ratio of miles from trips that could be centrally fueled to total miles, for that sample vehicle and for that sample week. For example, if the mileage accumulated within the operational range of a vehicle, on a trip basis, over the sample week is 360, and the total number of miles travelled on all trips by that vehicle over that week is 720, then the ratio of miles from trips that could be centrally fueled to total miles, for that vehicle, is 360/720=.50.

The ratio of trips from miles that could be centrally fueled to total miles for the fleet of nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night is determined by averaging the above ratio over the sample vehicles and the sample weeks. So, for example, if there are 10 vehicles in the sample fleet that operate in the covered area, and their ratios for one sample week are .45, .68, .53, .94,

.72, .59, .78, .34, .22, and .54, then the fleet average for that sample week is .58. This weekly ratio is then averaged with the ratios from the other sample weeks.

Finally, this average fleet ratio is used to calculate the number of vehicles that are not centrally refueled 100 percent of the time and are not garaged at a personal residence at night that are capable of being centrally fueled. This is determined by multiplying the number of nonexempt vehicles that are not centrally fueled and are not garaged at a personal residence at night by that ratio. So, if there are 15 nonexempt fleet vehicles that are not centrally fueled and are not garaged at a personal residence at night and the average ratio for the fleet is .55, then number of fleet vehicles capable of being centrally fueled is .55×15=8.

Alternatively, miles travelled within operational range can be calculated after trips are completed, based on some reasonable algorithm for the destinations and fleet trips involved. However, it will still be necessary for the vehicle driver to keep a record of the destinations visited, on a trip basis, and in the order in which they were made. The fleet operator could select his or her own algorithm, subject to review by the state.

(ii) *When fleet does not have refueling facilities.* In the case where a fleet operator does not own, operate, or control central fueling facilities, or is not under contract with a fuel provider, the determination of the number of miles from trips that could be centrally fueled would be based on trips that would not require the vehicle to travel outside of its operational range, using as a base the fleet's operating facility or, in the case where the fleet operates from more than one facility, the point of departure for the sample fleet vehicle for each trip. The operational range is defined as: (1) No less than 50 percent of the average range of the existing fleet but (2) in any event no less than 300 miles.

This calculation should be made based on information about the fleet trip profile accumulated in the same way as described above for fleets operated in the covered area that have central fueling facilities, either explicitly tabulating vehicle mileage or by using an algorithm. Again, the fleet operator could select his or her own algorithm, subject to review by the state. This method will also require the vehicle driver to keep a record of the destinations visited, on a trip basis, and in the order in which they were made.

(b) *Rounding Convention.* The following rounding convention will apply when calculating the number of vehicles in a fleet that are capable of being centrally fueled. When the calculated percentage of a fleet operator's vehicles for this determination is not a whole number, i.e., when a fraction of a vehicle is involved, the number will be rounded down to the closest integer value. Thus, the numbers 7.75 or 7.25 is rounded to 7. This rounding convention was chosen to avoid the situation where a fleet operator would have to purchase more clean-fuel vehicles that are needed for trips within operational range of the fleet's central refueling facility.

However, as specifically noted above, the number of vehicles in the sample fleet, when calculated based on 30 percent of the number of total nonexempt vehicles that are not garaged at home at night, shall be rounded up to the closest integer value.

(c) *Trips reflect actual operations.* It is important to note that these calculations for the determination of "capable of being centrally fueled" are intended to be based on the actual travel patterns of fleets and do not require or intend the fleet operator to change the order of the destinations on any trips, or to split up trips into smaller units. After the operational range is reached in the calculations, it is not necessary to begin summing again as if the vehicle returned to the central fueling location. The miles travelled after the operational range is reached are considered to be miles travelled outside the operational range of the vehicle.

5. Reporting Requirements

EPA recommends that, for enforcement purposes, states require that fleets submit an annual report that would include, but not be limited to, the number and identification of all fleet vehicles classified as: (i) Those that are exempt pursuant to section 241(5); (ii) those that are vehicles that are garaged at a personal residence at night; and (iii) all other fleet vehicles, by type. EPA further recommends that states include appropriate reporting requirements to support the state's determination of operation in a covered area.

In addition to requiring the reporting of the general information described above, EPA believes that states should require that each fleet consisting of 10 or more nonexempt fleet vehicles report information concerning whether the fleet has 10 or more vehicles that operate in a covered area and which of these fleet vehicles can be centrally fueled, as described in the previous sections. States should require the submission of this information sufficiently in advance of the effective date of the program so as to make the necessary determinations, e.g., 30 days before the effective date.

For the determination of operation in a covered area, the additional information states should require to be reported should include, to the extent it is not already reported above, the number of vehicles in the entire fleet, by type; the number of vehicles that operate in the covered area, by type; the number of vehicles that operate in the covered area and can be centrally fueled (covered fleet vehicles), by type; identity of covered fleet vehicles (vehicle identification number), trip records of covered fleet vehicles (origination and destination points).

For the determination of "can be centrally fueled" (centrally fueled or capable of being centrally fueled), the additional information reported to the state shall be used to determine whether vehicles are either centrally fueled or capable of being centrally fueled. For centrally fueled, the additional information to be reported to the state shall include, to the extent it is not already reported above, the number of fleet vehicles that operate in the covered area and are centrally fueled 100 percent of the time and their identity (vehicle identification number). For capable of being centrally fueled, the additional information to be reported shall include, to the extent it is not already reported above, the number of vehicles in the entire fleet, by type; the number of vehicles operated in the covered area, by type; the number of vehicles that are garaged at a personal residence at night and their vehicle identification numbers; the number of exempt vehicles and their vehicle identification numbers; the number of centrally fueled vehicles and their vehicle identification numbers; the number of vehicles in the sample fleet, by type and their vehicle identification numbers; the operational range of the vehicles in the sample fleet; the dates included in the sample weeks; the total mileage accumulated by the sample vehicles, by sample week; the total mileage accumulated in their operational range by the sample vehicles, by sample week; how mileage was calculated; the ratio of miles from trips that could be centrally fueled to total miles, estimated using the sample results; and, if available, the total mileage accumulated during the sample periods by all nonexempt fleet vehicles that are not garaged at a personal residence at night.

The operational range for the sample fleet vehicles should be reported to the state by the fleet operator along with the other characteristics of those vehicles. Again, the state may, at its discretion,

request a detailed explanation of how the operational range was determined and/or require the fleet operator to recalculate miles from trips that could be centrally fueled using a different operational range for the fleet vehicle if the operational range seems to be unusually low.

States, of course, would be able to review the information submitted to them regarding the determinations for operation in a covered area or "can be centrally fueled," and take action to assure the accuracy of the information.

Because fleet operations can change over time, EPA recommends that states require that these calculations be repeated periodically. For example, a state could require that the calculations be performed again when the fleet size changes substantially, perhaps by 20 percent or every three years, whichever first occurs, and that a new trip profile be filed with the state. This should provide a reasonable mechanism to assure that the determinations are up to date without imposing unreasonable burdens on fleet operations.

To permit states to keep track of changes in fleet size, all fleets with 10 or more covered fleet vehicles that are located or operate in the covered area shall be required to file a simplified annual report. This annual report should contain the total number of vehicles in the fleet, by vehicle type; the number of vehicles purchased during the prior year and the number of clean-fuel vehicles purchased, by vehicle type; and the number of anticipated vehicle purchases for the coming year and the number of anticipated clean-fuel vehicle purchases, by vehicle type. States should choose to make the reporting of obligation less than annual, e.g., every two years, and cover more years.

A state may develop a way or ways of easing reporting requirements, as long as the level of certainty achieved with these methods is equivalent to the methods discussed above.

B. Other Definitions

1. Control

The term "control" is used in three ways in section 241(5) of the Act, which defines covered fleet. First, it is used to join all entities under common management (e.g., different divisions of the same company), to ascertain which vehicles are subject to the requirements of the fleet program. Second, it is used to refer to the management of vehicles, to ascertain who decides how and when the vehicles are used. Third, it is used to refer to the management of employees. The term "control" is thus crucial to the program, but its use in three different contexts indicates that it needs three different definitions. The term control is also used to aggregate any building, structure, facility, and/or installation, as they pertain to a location, as that term is defined in the definition of can be centrally fueled, above. Therefore, EPA intends that these three definitions of control also be used in conjunction with the definition of location, to aggregate any building, structure, facility, or installation, controlled by the same person, that are on one or more contiguous properties.

(a) *Joining Entities Under Common Management.* Section 241(5) of the Act specifies that "in determining the number of vehicles owned or operated by a single person * * * all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person." It is clear that the overall intent of this provision is to join all entities that are under common management. In this case, EPA is defining "control" as a function of ownership rights in the entities. These ownership rights can take at least three forms: Controlled stock, controlled management, or controlled facilities.

The first form of control with regard to joining all entities under common management is when a third person or firm has equity ownership of 51 percent or more in each of two or more firms. When this is the case, the vehicles of those firms shall be aggregated. Thus, if firm A owns 51 percent of firm B and 51 percent of firm C, the sum of the vehicles of all three firms will be considered in determining the number of vehicles subject to the fleet program.

The second form of control with regard to joining all entities under common management is when two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies. When this is the case, the vehicles of those firms shall be aggregated. Thus, if firm A and firm B have the same corporate officers, in whole or in substantial part, acting in either the same or different capacities, then the sum of the vehicles of those firms will be considered in determining the number of vehicles subject to the fleet program.

The third form of control with regard to joining all entities under common management is when one firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm. When this is the case, the combined vehicles of both firms (or multiple firms in the case of three or more) shall be used to determine the number of vehicles owned by the entities that are subject to the fleet program. Thus, for example, if firm A owns 51 percent of firm B's facilities or stock, then the combined total of both firms' vehicles will be used to determine if they must comply with the requirements of the fleet program and how many clean fuel vehicles they must purchase.

"Lease, operate, or supervise," means that a firm leases and/or operates equipment or facilities, or operates and/or supervises the business of other firms as its primary business activity. A firm that engages in these activities for the general public or members of the broad business community, under contract with those entities, is not considered to control the firm to which it renders these services. However, a firm whose primary business is to supply these kinds of services to one or more specific firms and not to the general public is not considered to be independent of the firms to which it supplies the services and can be considered to control, or to be controlled, by them. Thus, EPA would consider fleet management companies that are established to supervise the fleet of one specific company or a set of interrelated companies, and not to service the general business community, to control all the vehicles they supervise.

"Supervision" is characterized as residing in a person or committee at any time after November 15, 1990 and involves but is not restricted to the following responsibilities: Vehicle purchasing and supplier negotiations; day-to-day maintenance and fuel purchase management; specification and engineering decisions; monitoring of operation costs; and/or coordination of vehicle salvage or retail.

These provisions are necessary to combine vehicles among firms that are closely related for the purposes of the fleet program, based on either ownership of facilities, equity ownership, or common corporate officers. This is necessary because some fleets are organized among a variety of corporate entities, and section 241(5) requires that these fleets be covered as an aggregation. The intent of these provisions is to recombine, for the purposes of determining whether a fleet is a covered fleet and whether a vehicle is a covered vehicle, the parts of a firm that is split up for tax, accounting, or other reasons.

It is not the intent of this provision to combine parts of large fleets that operate out of different locations, as that term is defined above. If, because of the nature of a particular business operation, the vehicles in a fleet are distributed across several locations, either within a covered area or among location inside and outside a covered area, then the determination of whether or not the purchase requirements apply to vehicles at each such location will be made on the basis of the portion of the fleet operated from each such location. As noted above, the intent is to recombine those fleets operated from the same location but that are split among separate ownership entities for tax purposes.

Additionally, unless the fleets are controlled by one person or firm as described above, this provision does not intend to combine subsidiaries of large companies that operate independently of one another into one encompassing fleet for the purpose of the purchase requirements. These provisions seek only to combine those fleets that are controlled by the same entity, as required by the Act. Thus, independently run subsidiaries that can demonstrate their operating independence are not required to be aggregated with those other subsidiaries. Independence is demonstrated by showing that:

(a) No person or firm has equity ownership of 51 percent or more of the subsidiary and one or more other firms,

(b) the subsidiary does not share, in whole or in substantial part, common corporate officers with other subsidiaries, and

(c) no person or firm leases, operates, supervises, or in 51 percent or greater part owns facilities and/or equipment used by the subsidiary, or has equity ownership of 51 percent or greater part of the subsidiary. If, on the other hand, any one of those three conditions is true, then this means that another person or firm has control over the subsidiary and it should be aggregated with that controlling entity for the purposes of the program.

EPA intends that, for the purpose of the definition of location, all buildings, structures, facilities, and/or installations owned or controlled by the same person be aggregated in the same way as that for aggregating vehicles, provided that those buildings, structures, facilities, and/or installations are located on or consist of contiguous properties.

(b) *Management of Vehicles.* Section 241(5) of the Act refers to "* * * all motor vehicles owned or operated, leased or otherwise controlled by such person* * * " When used in this sense, i.e., with regard to the management of vehicles, EPA is defining "control" as a function of the authority to make decisions about vehicle use. A person has control over a vehicle when that person has the authority to decide who can operate a particular vehicle and the purposes for which the vehicle can be operated. Under the Act, vehicles owned or controlled are those "owned or operated, leased or otherwise controlled" by a person. Therefore, leased vehicles are to be considered in the same way as owned vehicles under the program. Thus, an operator of a fleet of 10 or more leased vehicles is a covered fleet operator.

At the same time, EPA realizes that a person does not have the same level of control over a vehicle leased for a short period of time, especially regarding vehicle choice, compared to vehicles leased for a long period of time. As a result, only vehicles leased for 120 days or longer will be considered relevant to the program. This 120-day period is slightly longer than a calendar season, to take into account short-term variations in fleet operations and seasonal fluctuations in the number of fleet vehicles. On the other hand EPA does consider longer-term vehicle exchanges that sometimes occur within fleets to be events triggering the fleet purchase requirements, just as they affect an area's air quality.

(c) *Management of Employees.* Section 241(5) of the Act provides that "* * * all motor vehicles owned or operated, leased or otherwise controlled by* * * any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person." When used in this sense, i.e., with regard to the management of employees, EPA is defining "control" as a function of who decides how or when an individual's time is used. A person has control over an individual or an employee when that person has the authority to direct the activities of that individual or employee in a precise situation, such as at the workplace.

These two definitions of control, with respect to the management of vehicles and employees, are intended to clarify whether or not a vehicle comes under the requirements of the fleet program when a person or firm does not hold beneficial title to it. For example, a leased vehicle is controlled by the lessee, since it is the lessee who determines who can use the vehicle and for what purposes. On the other hand, an employee's personal vehicle is not considered to be controlled by his or her employer. Although the employer controls the employee in a business sense, the employer cannot determine who uses the employee's vehicle and for what purposes, despite the fact that the employee may use the vehicle for business purposes as well as personal purposes. This distinction is important because, in addition to ownership, control is one of the tests for determining if a vehicle comes under the requirements of the fleet program.

Similarly, a person who leases a building, structure, facility, and/or installation is deemed to control that building, structure, facility, and/or installation for the purpose of the definition of location, above.

2. Dealer Demonstration Vehicle

EPA is defining "dealer demonstration vehicle" as any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicles sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for prepurchase or pre-lease evaluation. The intent of this definition is to exempt the vehicles held on the lot of a motor vehicle dealer as stock from which potential purchasers or lessees can choose.

Vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles kept for the convenience of persons having repair work done on their vehicles, or other repair or business-related vehicles are not exempt, unless they are also offered for retail sale as part of the dealer stock or are rotated through the fleet back to dealer stock. Also, vehicles that are allocated to employees as part of a compensation package are not considered exempt, unless they are also offered for retail sale as part of the current dealer stock of new vehicles. However, if these employee vehicles are typically rotated back into dealer stock as used vehicles, they would not be considered exempt from the program.

The term "dealer" is defined in section 216(4) of the Act as "any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser."

3. Emergency Vehicle

EPA is defining "emergency vehicle" as meaning any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance. These

vehicles normally have red and/or blue flashing lights and sirens.

EPA is relying on the speed limit criterion because this is the way many states define "emergency vehicles." The requirement for legal authorization to exceed the speed limit may be problematic for localities that authorize tow trucks and certain utility vehicles to exceed the speed limit in special circumstances. However, those vehicles are not normally considered emergency vehicles in that their primary function does not include exceeding the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, their response to an emergency does not usually require them to exceed the speed limit, and they are not usually equipped with blue and/or red flashing lights and sirens for use when exceeding the speed limit. Therefore, those vehicle types are not considered exempt for the purposes of this program. Thus, for example, for-hire tow trucks are not considered to be exempt vehicles. A utility maintenance vehicle is not considered to be considered an emergency vehicle unless, on a vehicle-by-vehicle basis, it is specifically and legally authorized by a governmental authority to respond to emergencies as described above.

4. Law Enforcement Vehicle

EPA is defining "law enforcement vehicle" as meaning any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government, or by state highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies, shall apply. A Federal law enforcement vehicle is defined as follows:

Any vehicle which is specifically approved in an agency's appropriation act for use in apprehension, pursuit, patrol, or protection, or is routinely used for other law enforcement activities such as surveillance. If not specified in the agency's appropriation act, the vehicle should be covered by the current version of item 17 or 17a, Federal Standard Number 122, Automobiles. Leased vehicles should be equipped with at least the following components to qualify as a law enforcement vehicle: (1) For passenger automobiles, heavy-duty electrical, cooling, and suspension systems and at least the next higher cubic inch displacement (CID) or more powerful engine than is standard for the automobile concerned; and (2) for light trucks, emergency warning lights or the vehicle must be identified with markings such as "police." Vehicles which have been seized by a Federal Agency for the purpose of performing law enforcement activities are considered to be law enforcement vehicles. This definition also includes vehicles which are unmarked and certified by the head of the agency as essential for the safe and efficient performance of intelligence, counterintelligence, protective, or other law enforcement duties.

This definition is intended to clarify the difference between law enforcement vehicles and vehicles used for other security purposes. Under this definition, a vehicle is considered to be a law enforcement vehicle and is exempt from the Clean Fuel Fleet Program, by virtue of its use for official and legal law enforcement purposes, as conveyed by local, state, or federal government mandate. Security company vehicles do not generally comply with this definition, and as such are not exempt from the fleet program unless they are contracted by a law enforcement agency for the purposes described above. Vehicles operated by law enforcement agencies largely for staff or administrative purposes would not be covered under this exemption.

5. Model Year

EPA is defining "model year" for purposes of fleet purchase requirements as September 1 through August 31. For each model year, states must ensure that fleet operators purchase (or lease) the number of clean-fuel vehicles, as a percentage of total new vehicles purchased (or leased), required under the Act. According to this definition, for purposes of compliance, fleets would compute their annual purchases (or leases) during the period from September 1 until August 31.

This definition of model year coincides with the period in which most automobile manufacturers introduce their new annual models, which should facilitate compliance since fleets can make their purchase plans regarding clean-fuel vehicles when they make their plans for purchasing all new model vehicles.

It is not the intent of this definition to require motor vehicle manufacturers to change their model years to reflect this definition of model year. This definition is only intended to clarify which vehicles count towards a fleet operator's required annual purchases under the program, to ensure that all fleet operators purchase vehicles based on the same annual period. This is important to facilitate enforcement of the program. Thus, any new vehicles purchased by a fleet operator between September and August are counted toward the purchase requirement of the same year, and are considered of the same model year as the January that falls between them. Otherwise, fleet operators could evade the requirements of the program, particularly in the initial years when the difference between purchase requirements is substantial (30% of new model year 1998 light-duty vehicles; 50% of new model year 1999 light-duty vehicles, and 70% of new model year 2000 light-duty vehicles). Also, without this requirement, it would be much more difficult for states to keep track of annual purchases, since fleets could spread them out over a period longer than 12 months by purchasing their vehicles based on the manufacturer's model year.

6. Motor Vehicles Held for Lease or Rental to the General Public

EPA is defining "motor vehicles held for lease or rental to the general public" as meaning a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

This definition is intended to clarify whether a fleet falls under the exemption for leased or rented vehicles contained in section 241(5). According to this definition, the vehicles must be owned primarily for the purpose of renting or leasing them without a driver, effectively granting someone else control over them in exchange for money or other compensation. In addition, this exchange must be based on a contract. Thus, a firm cannot be found to "lease" its vehicles to its employees unless the vehicles are owned primarily for leasing them to the general public and they are leased pursuant to formal contracts which give control of the vehicle to the lessee.

The exemption for fleet vehicles held for lease or rental to the general public provides an exemption for fleets of vehicles from which potential lessees or renters can choose. This is important because not all potential lessees or renters are covered fleet operators who are required to rent or lease clean-fuel

vehicles as part of the purchase requirements of the Act.

According to this definition, as long as vehicles held for lease or rental to the general public remain under the control of the lessor or renter (the "rental fleet operator"), they are not covered vehicles in a covered fleet and are not subject to the program. However, once control of any such vehicle is transferred from the rental fleet operator to a lessee or a renter for more than 120 days, the vehicle is counted as part of the lessee's or renter's fleet for purposes of determining whether the fleet is a covered fleet and subject to the purchase requirements of the program.

The 120-day period is slightly longer than a calendar season, and is meant to take into account short-term variations in fleet operations and seasonal fluctuations in the number of fleet vehicles. Covered fleet operators, as described above, who intend to lease or rent a vehicle for more than 120 days will be required to follow the purchase requirements of the Act, which may require leasing or renting clean-fuel vehicles. As a result, although vehicles held for lease or rental to the general public are exempt from clean-fuel vehicle fleet purchase requirements, rental fleet operators will want to consider purchasing clean-fuel vehicles for renting or leasing to covered fleet operators.

7. New Covered Fleet Vehicle

EPA is defining a "new covered fleet vehicle" as a vehicle that has not been previously controlled by the current purchaser, regardless of the model year, except as follows: (1) Vehicles that were manufactured before the start of the fleet program for such vehicle's weight class, (2) vehicles transferred due to the purchase of a company not previously controlled by the purchaser or due to a consolidation of business operations, (3) vehicles transferred as part of an employee transfer, or (4) vehicles transferred for seasonal requirements (i.e., for less than 120 days) are not considered new. States are permitted to discontinue the use of the fourth exception for fleet operators who abuse the discretion afforded them. This definition of new covered fleet vehicle is distinct from the definition of new vehicle as it applies to manufacturer certification, including the certification of vehicles to the clean fuel standards.

The definition is intended to describe vehicles which are new to the fleet rather than newly manufactured. It would not be appropriate to define "new covered fleet vehicle" as a "new motor vehicle" as that term is defined under section 216(3) of the Act, i.e., as a vehicle for which "the equitable or legal title has never been transferred to an ultimate purchaser." To do so would allow fleet operators to avoid the requirements of the program simply by purchasing barely used vehicles that have already been titled to an ultimate purchaser.

At the same time, it is not the intent of this definition to consider all newly-purchased vehicles as new covered fleet vehicles. There are four exceptions to this general principle; otherwise, all vehicles leased or purchased for a fleet are considered in determining the number of new covered fleet vehicles purchased by a covered fleet operator for purposes of calculating percentage purchase requirements.

The first exception is for vehicles manufactured before the start of the fleet program. This applies on a vehicle class basis. Thus, if the program does not begin until model year 1998 for light-duty vehicles, then the exception would apply for LDVs manufactured in model years through 1997. Since the program is statutorily required to begin in 1998 for heavy-duty vehicles, the exception for HDVs would apply to model years through 1997. Pursuant to this exception, a purchase of a vehicle manufactured in a model year before the program begins for that class would not be considered a purchase of a new vehicle for the purpose of calculating percentage purchase requirements. The purpose of this exception is to allow fleet operators who have consistently purchased used vehicles to continue that practice by not being required to purchase CFFVs until used CFFVs become available.

The other three exceptions are for vehicles transferred into the covered fleet: (1) As part of a takeover, consolidation, or other merger, (2) with a transferred employee, or (3) for less than 120 days. These types of transfers would be extraordinarily difficult to consider when calculating percentages. It is not EPA's intent to force fleet operators to change practices more than necessary to comply with the statutory requirements. However, this definition is designed to limit the ability of fleet operators to circumvent the program's requirements simply by purchasing vehicles outside of the covered areas and transferring them into the covered areas through fictional mergers or acquisitions. These three exceptions are discussed individually below.

First, vehicles transferred as part of a takeover or consolidation of operations, through a merger or the closing of a division, will be excluded from the requirements of the program. If these vehicles were considered to be new, they could substantially increase the number of "purchases" in the year of acquisition and thus the requirement for the purchase of clean-fuel vehicles for that year. Moreover, in most cases the complying fleet operator does not choose the vehicles that are transferred as a result of a takeover, and such vehicles would not necessarily meet the clean-fuel vehicle emission standards. Including such transferred vehicles may require covered fleet operators to purchase a substantial number of unneeded vehicles, credits, or vehicle conversions.

Second, vehicles transferred with employees will be excluded from program requirements. This is because it is not the intent of these provisions to affect company personnel decisions (e.g., basing transfers or promotions on what company car the person drives), or to force the early sale of vehicles because the driver is moving and must be given a new car because of the location. However, any vehicle purchased for the use of a transferred employee after the transfer will be considered a new covered fleet vehicle.

Third, vehicles transferred for seasonal requirements (i.e., less than 120 days) are also exempted from the requirements of the program. The 120-day period is intended to allow transfers for slightly longer periods of time than a calendar season. This will allow companies to respond to different "high seasons" without unnecessary confusion. Because this exception may be subject to more abuse than the other two, since it would allow companies to avoid the program by continuously rotating vehicles, states may, at their discretion, discontinue the use of this exception for fleet operators who abuse it.

8. Nonroad Vehicle; Nonroad Engine

EPA intends for the terms "nonroad vehicle" and "nonroad engine" to have the same meaning as defined by EPA in a rulemaking concerning emission standards for nonroad engines (See Notice of Proposed Rulemaking, 58 FR 28809, May 17, 1993). Until such time as those definitions are finalized, the definitions of these terms contained in section 216 of the Act shall apply.

9. Owned or Operated, Leased, or Otherwise Controlled by Such Person

The phrase "owned or operated, leased or otherwise controlled by such person" appears in section 241(5) of the Act, in connection with the determination of the vehicles to be included in a covered fleet. EPA is defining this phrase as meaning that: (1) Such person holds the beneficial title to

such vehicle; or (2) such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control, above.

The intent of this definition is to include, for purposes of the determination of participation in the program, any vehicles controlled by a fleet operator, whether by ownership or lease. The 120-day period is intended to reflect the fact that the leasing of vehicles can occur for short periods of time, and such short term, temporary leases should not be subject to the terms of the program.

10. Person

The Act refers to all fleets of ten or more vehicles which are owned by a person, or "by any person who controls such person, by any person controlled by such person, [or] by any person under common control with such person." EPA is defining the term "person" in accordance with section 302(e) of the Act, according to which "the term 'person' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

11. Under Normal Circumstances Garaged at Personal Residence

EPA is defining the phrase "under normal circumstances garaged at personal residence" as meaning a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, and/or business location.

This definitions is intended to extend the "at night" exemption specifically provided by Congress to those people who work at night. Under this definition, a vehicle that is owned by a business entity but treated as personal vehicle or an employee's vehicle and that is normally kept at the user's place of residence when not in use is exempt from the program, notwithstanding the timing of the periods of use and non-use.

It is not the intent of this definition to exempt those vehicles which are garaged at a personal residence at night but which are, in fact, centrally fueled 100 percent of the time. Section 241(6) of the Act provides that vehicles garaged at a personal residence are not to be considered "capable of being centrally fueled." The Act does not exempt these vehicles if they are in fact centrally fueled. An example of a nonexempt vehicle is a centrally-fueled repair truck that the fleet operator sends home with an employee so that the employee can go directly to her/his repair jobs in the morning.

12. Vehicles Used for Motor Vehicle Manufacturer Product Evaluations and Tests

EPA is defining "vehicles used for motor vehicle manufacturer product evaluations and tests" as vehicles that are owned and operated by a motor vehicle manufacturer or motor vehicle component manufacturer, or owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicles for engineering, research and development, or quality control reasons.

It is the intent of this definition to exempt from the program vehicles used by a motor vehicle manufacturer for production control or quality control reasons, as well as those vehicles covered under an EPA testing exemption issued under 40 CFR part 85, subpart R.

C. Multi-state Nonattainment Areas

In addition to the above definitions, clarification of the issue of multi-state nonattainment areas is needed to ensure consistency among different SIPs. Clarification of this issue will facilitate fleet compliance and enhance implementation of the fleet program.

Multi-state nonattainment areas are nonattainment areas that cross state lines. If each state included in the nonattainment area regulates its fleets differently, the program compliance requirements for fleet operator would become much more complex than if they had to comply with one set of requirements for the entire area.

In addition, the Act specifies that "credits may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area." This legislative language supports a requirement that fleet programs in multi-state nonattainment areas be consistent to ensure that credits can be freely traded throughout the nonattainment area.

Therefore, to limit the number of fleets affected by conflicting requirements, and to ensure that the credits earned through the credits program uniformly apply across states, this action requires that, to the greatest extent possible, multistate nonattainment areas promulgate consistent clean-fuel vehicle programs. For example, the credit programs and TCM exemptions should be the same to optimize vehicle use and credit exchange among fleets. Also, the determination of program elements raised in the above definitions, such as average operating period and the criteria for determining the degree of operation within a covered area, should be substantially the same for states in a multi-state nonattainment area.

IV. Environmental and Economic Impacts

To the extent that there are impacts due to incorporating today's final definitions into the larger Clean Fuel Fleet program, they are best analyzed in the context of the full program. EPA will address the environmental and economic impact of the entire Clean Fuel Fleet program in the final Regulatory Impact Analysis (RIA) for this program. The RIA will be released with the rule finalizing CFFV emission standards and conversion regulations and will be available in the docket for that rule (A92–30) at the time of publication.

V. Statutory Authority

The statutory authority for this proposal is provided by sections 241, 246, and 301(a) of the Act.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that this rule is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VII. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to consider potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis.

As with other impacts, EPA will examine the impact of this regulation on small entities as a part of assessing the impacts of the overall fleet program for the later fleet final rule.

VIII. Paperwork Reduction Act

EPA has determined that the definitions and general provisions promulgated in this rulemaking do not create any new information collection requirements separate from the larger Clean Fuel Fleet program. The information collection requirements of the entire Clean Fuel Fleet program have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IX. Consultation With DOE and DOT

As per section 250(d) of the Clean Air Act, this rulemaking has coordinated with the Department of Energy and the Department of Transportation. Interagency review documents are contained in section II–F and IV–H of this rulemaking's docket.

X. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review of the United States Court of Appeals for the District Of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in the judicial proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 88

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 30, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of the Federal Regulations is amended as follows:

PART 88—[AMENDED]

1. The authority citation for part 88 continues to read as follows:

Authority: Secs. 241, 246, 249, 301(a), Clean Air Act as Amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

2. A new § 88.302–94 is added to subpart C to read as follows:

§ 88.302–94 Definitions.

The definitions in § 88.302–93 and 40 CFR part 86 also apply to this part. All terms used in this part, but not defined in this section or in § 88.302–93 and 40 CFR part 86 shall have the meaning assigned to them in the Clean Air Act.

Can be centrally fueled means the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled.

(1) *Capable of being centrally fueled* means a fleet, or that part of a fleet, consisting of vehicles that could be refueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. The fact that one or more vehicles in a fleet is/are not capable of being centrally fueled does not exempt an entire fleet from the program.

(2) *Centrally fueled* means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. Any vehicle that is under normal operations garaged at home at night but that is, in fact, centrally fueled 100 percent of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more vehicles in a fleet is/are not centrally fueled does not exempt an entire fleet from the program. The fact that a vehicle is not centrally fueled does not mean it could not be centrally fueled in accordance with the definition of "capable of being centrally fueled."

(3) *Location* means any building, structure, facility, or installation which; is owned or operated by a person, or is under the control of a person; is located on one or more contiguous properties and contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person.

Control means: (1) When it is used to join all entities under common management, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two or more firms;

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies.

(iii) One firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

(3) When it is used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as at the workplace.

Covered fleet operator means a person who operates a fleet of at least ten covered fleet vehicles (as defined in section 241(6) of the Act) and that fleet is operated in a single covered area (even if the covered fleet vehicles are garaged outside of it). For purposes of this definition, the vehicle types described in the definition of *covered fleet* (section 241(5) of the Act) as exempt from the program will not be counted toward the ten-vehicle criterion.

Dealer demonstration vehicle means any vehicle that is operated by a motor vehicle dealer (as defined in section 216(4) of the Act) solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation.

Emergency vehicle means any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck, or ambulance.

Law enforcement vehicle means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug

Enforcement Administration, or other agencies of the federal government, or by state highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies, shall apply.

Model year, as it applies to the clean fuel vehicle fleet purchase requirements, means September 1 through August 31.

Motor vehicles held for lease or rental to the general public means a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

New covered fleet vehicle means a vehicle that has not been previously controlled by the current purchaser, regardless of the model year, except as follows: Vehicles that were manufactured before the start of the fleet program for such vehicle's weight class, vehicles transferred due to the purchase of a company not previously controlled by the purchaser or due to a consolidation of business operations, vehicles transferred as part of an employee transfer, or vehicles transferred for seasonal requirements (i.e., for less than 120 days) are not considered new. States are permitted to discontinue the use of the fourth exception for fleet operators who abuse the discretion afforded them. This definition of new covered fleet vehicle is distinct from the definition of new vehicle as it applies to manufacturer certification, including the certification of vehicles to the clean fuel standards.

Owned or operated, leased or otherwise controlled by such person means either of the following:

(1) Such person holds the beneficial title to such vehicle; or

(2) Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control, paragraph (c) of this section.

Person includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

Under normal circumstances garaged at personal residence means a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, and/or business location. Such vehicles are not considered to be capable of being central fueled (as defined in this subpart) and are exempt from the program unless they are, in fact, centrally fueled.

Vehicle used for motor vehicle manufacturer product evaluations and tests means a vehicle that is owned and operated by a motor vehicle manufacturer (as defined in section 216(1) of the Act), or motor vehicle component manufacturer, or owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons.

3. Section 88.308–94 of subpart C is revised to read as follows:

§ 88.308–94 Programmatic requirements for clean-fuel fleet vehicles.

(a) [Reserved]

(b) *Multi-State Nonattainment Areas.* The states comprising a multi-State nonattainment area shall, to the greatest extent possible, promulgate consistent clean-fuel fleet vehicle programs.

[FR Doc. 93–29835 Filed 12–8–93; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7017

[ID–943–4210–06; IDI–010828 01]

Partial Revocation of Public Land Order No. 2634; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as if affects 162.97 acres of public land withdrawn by the Bureau of Land Management for a stock driveway. The land is no longer needed for the purpose for which it was withdrawn. This action will open 162.97 acres to surface entry and will permit the sale of the land to Twin Falls County for a sanitary landfill. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2634, which withdrew land for the Bureau of Land Management's stock driveway, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 12 S., R. 17 E.,
Sec. 5, lots 3, 4 and W½ lot 2;
Sec. 6, lot 1 and E½ lot 2.

The area described contains 162.97 acres in Twin Falls County.

2. At 9 a.m. on January 10, 1994, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 10, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–29993 Filed 12–8–93; 8:45 am]
BILLING CODE 4310–GG–M

43 CFR Public Land Order 7018

[ID–943–4210–06; IDI–15704 01]

Partial Revocation of Secretarial Order Dated December 19, 1933; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 0.83 acres of National Forest System land withdrawn for the Bureau of Land Management's Powersite Classification No. 280 within the Boise National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open 0.83 acres to surface entry and mining and will permit the disposal of the land by exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated December 19, 1933, which withdrew National Forest System land for the Bureau of Land Management's Powersite Classification No. 280 is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 18 N., R. 8 E.,
Sec. 32, lot 6.

The area described contains 0.83 acre in Valley County.

2. At 9 a.m. on January 10, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–29994 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–GG–M

43 CFR Public Land Order 7019

[ID–943–4210–06; IDI–29461]

Withdrawal of National Forest System Land for the Crooked River Satellite Fish Hatchery Facilities; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws a 0.27-acre parcel of National Forest System land from surface entry and mining for a period of 20 years for the Army Corps of Engineers to protect the Crooked River Satellite Fish Hatchery Facilities within the Nez Perce National Forest. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), to protect the Army Corps of Engineers Crooked River Satellite Fish Hatchery Facilities:

Boise Meridian

A parcel of land located near the west bank of the Crooked River, being westerly of Forest Road No. 233 (County Road No. 121) and easterly of the range line, located within the NW¼ of sec. 30, T. 28 N., R. 8 E., more particularly described as follows:

Beginning at a point on the existing Army Corps of Engineers, Crooked River Fish Hatchery, project boundary line and the east side of Forest Road No. 233 (County Road No. 121), local grid coordinates of said point being North 16,690.000 feet and East 14,076.132 feet, being South 11°40'25.4" East a distance of 20.422 feet from the Corps of Engineers project boundary monument No. 11–R3–13;

North 90°00" West to a point on the unsurveyed West line of Range 8 East;

Southerly on the West line of Range 8 East to a point of intersection with local grid coordinate North 16,560 feet;

South 90°00" East to a point on the existing Army Corps of Engineers project boundary line and east side of Forest Road No. 233, said point being North 8°07'48.4" West, a distance of 77.782 feet from the Army Corps of Engineers project boundary monument No. 11–R3–15;

North 8°07'48.4" West, a distance of 29.294 feet on the existing Army Corps of Engineers project boundary line and the east side of Forest Road No. 233 to a point, said point being Army Corps of Engineers project boundary monument No. 11–R3–14;

North 11°40'25.4" West, a distance of 103.134 feet on the existing Army Corps of Engineers project boundary line and the east side of Forest Road No. 233 to the point of beginning.

There is excepted there from all that part of the above described parcel lying within the right-of-way of said Forest Road No. 233 (County Road No. 122) subject to the installation of a 6" sewer line crossing with the centerline at local grid coordinate North 16,580 feet. The land described contains 0.27 acre in Idaho County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other that under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–29995 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–GG–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 509 and 552

[APD 2800.12A, CHGE 50]

General Services Administration Acquisition Regulation; ISO 9000, International Standards for Quality Management

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is revised to allow contractors to use ISO 9001 (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing) or ISO 9002 (Quality Systems—Model for Quality Assurance in Production and Installation) as alternates to Federal Standard 368. GSA's Office of Quality and Contract Administration (FQ) has determined that contractor inspection systems that meet certain International Organization for Standardization (ISO) standards and are appropriately registered are acceptable alternatives to inspection systems complying with Federal Standard 368.

This change also makes miscellaneous changes in the contracting officer warrant program and in the procedures for preaward surveys.

EFFECTIVE DATE: December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501–1.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) for review because the rule is not a significant regulatory action as defined in Executive Order 12866, Regulatory Planning and Review, and therefore was not required to be submitted.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1.

D. Paperwork Reduction Act

The clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, which is being modified by this change, does contain an information collection. However, the revision to the clause does not affect the information collection requirements of the clause which have previously been approved by OMB and assigned control number 3090–0027.

The GSA Form 353, Performance Evaluation & Facilities Report, is used by GSA's Federal Supply Service in lieu of the Standard Forms 1403 through 1406 under an approved exception to the standard forms. The Standard Forms 1403 through 1406 have been approved by OMB under the Paperwork Reduction Act and assigned control under 9000–0011. The GSA Form 353 does not impose any additional information collection requirements beyond those approved by OMB in connection with the standard forms.

List of Subjects in 48 CFR Parts 501, 509 and 552

Government procurement.

Accordingly, 48 CFR parts 501, 509 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 509 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.603–70 is amended by revising paragraph (h)(1)(v) to read as follows:

501.603–70 Contracting officer warrant program (COWP).

* * * * *

(h) * * *

(1) * * *

(v) * * * *Senior level (over $100,000).* (Does not apply to realty leasing and sales personnel.)

(A) Executive Seminar in Acquisition—24–40 hours

(B) Advanced Contract Administration—40 hours

(C) Contracting for Multiple Award Federal Supply Schedules—40 hours (Applicable to Federal Supply Service personnel handling multiple award schedule contracts.)

* * * * *

PART 509—CONTRACTOR QUALIFICATIONS

3. Section 509.106–2 is revised to read as follows:

509.106–2 Requests for preaward survey.

The contracting officer or a designee requests a preaward survey by forwarding the Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408) to the surveying activities. The Federal Supply Service is authorized to use GSA Form 353, Performance Evaluation & Facilities Report, for preaward surveys instead of Standard Forms 1403 through 1406. The contracting officer shall complete Section I of the GSA Form 353 in accordance with instructions in 553.370–353–I.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 552.246–70 is amended by revising the date of the clause and paragraph (a), (a)(1) and (a)(2) to read as follows:

552.246–70 Source Inspection by Quality Approved Manufacturer.

* * * * *

Source Inspection by Quality Approved Manufacturer (Dec 1993)

(a) *Inspection system and inspection facilities.*

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246–2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001 (ANSI/ASQC Q 91) (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing), or ISO Standard 9002 (ANSI/ASQC Q 92) (Quality Systems—Model for Quality Assurance in Production and Installation). ISO quality systems must be registered by a third party registrar accredited by either the Registrar Accreditation Board (RAB) or an organization recognized as equivalent by the RAB. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001 or ISO 9002 records shall include the date when inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

* * * * *

Dated: November 30, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–29991 Filed 12–8–93; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 58, No. 235
Thursday, December 9, 1993

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 210a

[INS No. 1635–93]

RIN 1115–AB05

Expiration of the Replenishment Agricultural Worker Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) relating to Replenishment Agricultural Workers (RAWs) under section 210A of the Immigration and Nationality Act (Act). Specifically, this rule proposes to remove all regulations pertaining to the RAW program, as the program expired at the end of Fiscal Year 1993.

DATES: Written comments must be submitted on or before January 24, 1994.

ADDRESSES: Please submit written comments in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1635–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jane R. Gomez, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington DC, 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: Section 210A of the Immigration and Nationality Act, the Replenishment Agricultural Worker (RAW) program, was added by the Immigration Reform and Control Act of 1986, Public Law 99–603, dated November 6, 1986. According to section 210A(a)(1) of the Act, the RAW program was to be effective from Fiscal Year 1990 through Fiscal Year 1993. The program was enacted as a means of providing additional seasonal agricultural workers to United States agricultural employers to alleviate possible shortages of workers for perishable crops. The program allows the government to replenish the supply of farmworkers by providing foreign workers with legal resident status if the Secretaries of Agriculture and Labor determine that a shortage of such workers exists.

Pursuant to Service regulations published in the **Federal Register** on July 17, 1989, at 54 FR 29882, and on September 1, 1989, at 54 FR 36277, the Immigration and Naturalization Service (Service) conducted a one-time registration for the RAW program beginning on September 1, 1989, and ending on November 30, 1989. During the registration period, 610,700 aliens registered with the RAW program. The registrants were assigned to one of four priority categories. If the Secretaries of Agriculture and Labor had declared that a shortage of agricultural workers existed, registrants chosen at random from the first priority category would have been invited to file petitions for temporary resident status as a RAW.

In the three years during which the program has been in place, however, a shortage of agricultural workers has never been found to exist. The RAW registration list has not been used, and as a result, the registrants have derived no immigration benefits from the RAW program. Moreover, Congress has given no indication that it wishes to extend the RAW program beyond the Fiscal Year 1993 expiration date set forth in section 210A(a)(1) of the Act. Now that Fiscal Year 1993 and the RAW program have drawn to a close, the service finds it appropriate to propose that the regulations pertaining to the RAW program be removed from title 8 of the Code of Federal Regulations.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. Since the RAW program was never implemented because a shortage of agricultural workers was never found to exist, any adverse economic impact on small entities would be minimal, if any. This is not a major rule as defined in section 1(b) of E.O. 12992, nor does this proposed rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Lists of Subjects in 8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

Accordingly, under the Commissioner's Authority, 8 U.S.C. 1101, part 210a of chapter I of title 8 of the Code of Federal Regulations is proposed to be removed.

Dated: October 15, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–29984 Filed 12–8–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 510

[No. 93–148]

RIN 1550–AA66

Release of Unpublished Information

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations pertaining to release of unpublished OTS information. OTS proposes, in certain circumstances, to make records available that are exempt from disclosure under the Freedom of Information Act.

The purpose of this proposed rule is to provide an orderly mechanism for expeditiously processing requests from the public for unpublished information while preserving the OTS's need to maintain confidentiality. The proposed regulation applies to record and testimony requests. The records covered include those created or obtained in connection with OTS's performance of its statutory responsibilities, such as supervision, regulation, examination, and law enforcement duties. The testimony covered includes requests for current and former OTS employees,

officers, and agents (and from former employees, officers and agents of OTS's predecessor, the Federal Home Loan Bank Board) to testify in judicial and administrative proceedings, including depositions and informal interviews, about information obtained in their official OTS capacities. The proposed regulation does not apply to requests for records that are required to be disclosed under FOIA.

The records generated by the OTS's supervisory, regulatory examination and enforcement activities are generally confidential. The FOIA specifically exempts from disclosure OTS's records related to the examination, operations, and conditions of savings associations, records containing confidential commercial or financial information, and records compiled for law enforcement purposes. Such OTS records include, among other things, examination and related reports, information relating to the business operations and finances of individual savings associations, savings and loan holding companies, other affiliates, and their customers, and information compiled in connection with OTS's enforcement investigations. Nevertheless, OTS receives numerous requests from the public each year for these types of records and testimony.

The proposed amendments are based upon OTS's experience during the last three years in responding to the large volume of requests by the public for such OTS information. They describe in detail the procedures that requesters must follow in seeking the release of unpublished information from OTS. The proposed amendments further describe the criteria on which OTS will evaluate requests for unpublished information. The proposed amendments also provide for reimbursement to the OTS for producing records and witnesses.

DATES: Comments on the proposed rule must be received on or before February 7, 1994.

ADDRESSES: Comments should be sent to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. 93–148. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Trial Attorney, (202) 906–7398, Litigation Division; Donna Miller, Program Manager, (202) 906–7488, Affiliates Programs; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The proposed amendments would completely revise 12 CFR 510.5, and while they incorporate most of the existing regulations, the OTS requests public comment on any portion of the proposal.

I. Background

The principal mission of the OTS is the regulation, examination and supervision of savings associations. The OTS's supervision has always been performed in an atmosphere of statutorily sanctioned confidentiality. For example, when Congress enacted FOIA (5 U.S.C. 552), it specifically exempted from disclosure under FOIA records relating to examinations, operations, and conditions of financial institutions. This exemption both (1) protects the security of financial institutions by withholding from the public reports that contain frank evaluations of an institution's stability and (2) promotes cooperation and frank communication between financial institution employees and their regulators. Also, the records generated by the OTS's supervisory activities frequently contain confidential information exempt from disclosure under FOIA relating to the business operations and finances of individual savings associations and their customers. These records are created by or for OTS and remain the property of OTS, regardless of where such reports or information are physically located. The courts have recognized the need for confidentiality in the performance of supervisory and regulatory activities of financial institution regulators. See, *e.g.*, In Re: Subpoena Served Upon The Comptroller of the Currency, 967 F.2d 630 (DC Cir. 1992).

In considering requests for disclosure of unpublished information, the OTS must carefully weigh the need demonstrated by a member of the public for access to OTS's records and testimony against the public interest in maintaining the confidentiality of the unpublished information. Among the factors OTS will consider in weighing the public interest in confidentiality is the impact on OTS's supervisory, examination, and enforcement responsibilities of releasing such information. It must balance these considerations with the requester's interest in obtaining such information. Therefore, the proposed regulation requires that release of unpublished records and testimony will be based, among other things, upon a showing by the requester that the information requested is highly relevant to the purpose for which it is sought, that the information is not available from other sources, and that the requester's need for the information clearly outweighs the need to maintain the confidentiality of the information and the burden the OTS would incur in assembling and producing such information.

The OTS's authority to govern the custody and use of its records and the testimony of its personnel derives from 5 U.S.C. 301 and 12 U.S.C. 1462a. Section 301 authorizes an agency head to prescribe regulations governing the conduct of its employees and the custody, use and preservation of its records. Section 1462a(b)(2) authorizes the Director of OTS to prescribe such regulations as he may determine to be necessary for carrying out his responsibilities.

The proposed amendment in no way affects the rights and procedures governing access to records that are required to be disclosed under FOIA. The proposed amendment incorporates much of existing § 510.5, and proposes the procedures for the public to request release of unpublished OTS information.

In addition, the proposed amendment grants, for the first time, authority to savings associations to release their examination reports and related supervisory correspondence to their holding companies, and similarly authorizes holding companies to release their examination reports and related supervisory correspondence to their subsidiary savings associations. The OTS is proposing this expanded authority because it believes that the exchange of examination reports between savings associations and their holding companies will promote the safety and soundness of the thrift industry.

The proposal is described section by section below.

Section 510.5(a)

Paragraph (a) identifies the types of requests covered under this rule. This paragraph applies to requests from the public for unpublished OTS information; unpublished information includes records and testimony. The covered records include those created or

obtained in connection with OTS's performance of its responsibilities such as its supervisory, regulatory, examination, and enforcement-related duties. The covered testimony includes that of present and former employees, officers, and agents for information obtained in their official OTS capacities. The paragraph does not apply to records required to be released under FOIA.

Section 510.5(b)

Paragraph (b) sets out the purpose of this regulation. The purpose of this proposed rule is to provide an orderly mechanism for expeditiously processing requests for OTS's unpublished information while preserving OTS's need to maintain confidentiality of certain information.

Section 510.5(c)

Paragraph (c) describes the procedures that must be followed when making a request for unpublished OTS information. Paragraph (1) describes general procedures that apply to all requests by members of the public for unpublished information (i.e., records and testimony). It sets forth the types of information that must be contained in such requests, including a showing by the requester that the information sought is highly relevant to the purpose for which it is sought. In addition, the requester must demonstrate that the information requested is not available from another source and that the need for such information clearly outweighs the need to maintain the confidentiality of OTS unpublished information and the burden on OTS in producing the information, such as the disruption to OTS's supervisory and other responsibilities that is occasioned by reviewing a large volume of records and loss to the OTS of the services of employees while they testify at depositions or hearings. This paragraph also requires a requester who seeks a response in less than 30 days to include an explanation of why the request was not submitted earlier and why the expedited handling of the request is necessary.

Paragraphs (2) and (3) set forth additional requirements for certain types of requests. Paragraph (2) pertains to requests for records. It requires that requesters of unpublished OTS records specifically list the types and categories of records sought and the relevant time period. Paragraph (3) describes special requirements for requests for testimony from OTS employees. This paragraph states that requests for testimony by OTS employees or former employees must specifically describe the substance of the testimony sought and show a compelling need for the testimony. Such requests shall also include a demonstration that the information sought is not available from any other source. This paragraph also prohibits OTS employees from testifying as expert witnesses for private parties, requests that litigants anticipate their need for OTS testimony in time for such testimony to be taken in deposition form, and states that OTS shall specify the scope of any authorized testimony.

Paragraph (4) specifies that unpublished OTS information made available to savings associations and state and Federal agencies shall remain the property of the OTS and shall not be disclosed to any other party without OTS authorization. In addition, the paragraph authorizes a savings association to provide a copy of its examination report and related supervisory correspondence to parent holding companies. Similarly, a savings and loan holding company is authorized to provide a copy of its examination report and related supervisory correspondence to its subsidiary savings association(s) without further authorization from the OTS. The OTS is specifically seeking comment on disclosure of examination reports and related correspondence between thrifts and their holding companies.

Paragraph (5) provides that requests for unpublished OTS information shall be sent to the OTS at 1700 G Street, NW., Washington, DC 20552, to the attention of the Secretary.

Section 510.5(d)

Paragraph (d) describes the process by which OTS will consider requests for unpublished information, both records and testimony, and the factors OTS may consider in denying such requests.

Section 510.5(e)

Paragraph (e) sets forth restrictions on the dissemination of unpublished OTS information. Paragraph (1) prohibits any current or former OTS employee from disclosing any unpublished OTS information to anyone other than an employee or agent of the OTS properly entitled to such information for the performance of their official duties.

Paragraph (2) requires any person with unpublished OTS information who is served with a subpoena, order, or other process requiring their attendance as a witness or for production of records, to advise the issuer of such notice of the substance of this regulation. In addition, this paragraph prohibits any person with unpublished OTS information from disclosure of such information in response to a subpoena without prior OTS authorization.

Paragraph (3) provides that if a person is required to appear in response to a subpoena or other legal process and is asked to disclose unpublished OTS information, that person shall decline to produce such information or give any testimony concerning such information. Upon receiving such a request or subpoena to testify, the individual is required to contact promptly the OTS Litigation Division.

Paragraph (4) specifies that the possession of unpublished OTS information by savings associations, their holding companies, and state and Federal agencies shall not waive any privilege the OTS might have to such information.

Section 510.5(f)

Paragraph (f) imposes requirements to protect the confidentiality of unpublished OTS information that is made available to requesters. Paragraph (1) provides that the release of records will normally be conditioned upon entry of an acceptable protective order by the court or administrative tribunal presiding in a particular case or, in non-litigated matters, upon execution of an acceptable confidentiality agreement. Paragraph (2) states that the OTS may condition its authorization of deposition testimony on an agreement of the parties that the transcript of the testimony shall remain confidential. This paragraph also requires the party who requested the testimony to furnish the OTS with a copy of the transcript of the testimony at its expense.

Section 510.5(g)

Paragraph (g) sets forth procedures designed to limit the burden on the OTS in connection with releasing records. Paragraph (1) states that requesters who require authenticated records should request certified copies at least 30 days prior to the date the records are needed. Paragraph (2) specifies the responsibility of litigants to share and safeguard OTS records. This paragraph provides that the party to whom records are released has the responsibility of notifying the other parties, providing them with copies of the records, retrieving any records from the court's file when they are no longer required, and returning such records to OTS.

Section 510.5(h)

Paragraph (h) sets forth the fees for records searches, records copying and records certification. Specifically, it provides that the fees charged to the requester of OTS records shall be the fees set forth in the Treasury

Department regulations, 31 CFR 1.7. Paragraph (2) requires that witness fees and allowances will be paid by the requester of testimony of current OTS employees in accordance with 28 U.S.C. 1821.

II. Comment Solicitation

Comments are sought on all aspects of the proposed regulation.

III. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The reporting requirements in this proposed rule are found in 12 CFR 510.5(c)–(g). The information is needed by the OTS to provide a more efficient mechanism for expeditiously processing requests for unpublished information.

Estimated number of respondents: 500
Estimated average annual burden per respondent: 5 hours
Estimated annual frequency of responses: 1
Estimated total annual reporting burden: 2500

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations, or other small entities. This regulation simply sets forth the procedures utilized by the OTS in its handling of requests for unpublished OTS information and imposes fees in connection with such requests. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

The OTS has determined that this regulation does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 510

Administrative practice and procedure.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 510, subchapter A, chapter V, title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

1. The authority citation for part 510 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1462a, 1463, 1464.

2. Section 510.5 is revised to read as follows:

§ 510.5 Release of unpublished OTS information.

(a) *Scope*—(1) This section applies to requests by the public for unpublished OTS information, such as requests for records or testimony arising in lawsuits in which OTS is not a party.

(2) Unpublished OTS information includes records created or obtained in connection with OTS's performance of its responsibilities, such as records concerning supervision, regulation, and examination of savings associations, their holding companies, and affiliates, and records compiled in connection with OTS's enforcement responsibilities. Unpublished OTS information also includes information that current and former employees, officers, and agents obtained in their official capacities. Examples of unpublished information include:

(i) Information from a current or former employee, officer, or agent of the OTS (or the Federal Home Loan Bank Board, the predecessor agency of the OTS), by testimony or informal interview, that was acquired in the course of performing official duties or because of the employee's, officer's or agent's official status;

(ii) Reports of examination, supervisory correspondence, internal agency memoranda and investigatory files compiled in connection with an investigation, whether such records are in the possession of the OTS or some other individual or entity; and

(iii) Unpublished OTS records obtained by third parties, including other government agencies, in the course of their official duties.

(3) This section does not apply to:

(i) Requests for records or testimony in proceedings in which the OTS is a party;

(ii) Requests for information by other government agencies; and

(iii) Requests for records that are required to be disclosed under the Freedom of Information Act, see 5 USC 552, and 31 CFR 1.1–1.6.

(b) *Purpose*—The purposes of this section are:

(1) To afford an orderly mechanism for OTS to expeditiously process requests for unpublished OTS information and, where appropriate, for OTS to assert evidentiary privileges in litigation;

(2) To balance the need for confidentiality of unpublished OTS information with the private party's interest in obtaining disclosure of that information;

(3) To ensure that the time of OTS employees is utilized in the most efficient manner consistent with the OTS's statutory mission;

(4) To prevent undue burdens on the OTS;

(5) To limit the expenditure of public funds for private purposes; and

(6) To maintain the impartiality of the OTS among private litigants.

(c) *Procedure*—(1) *Requests for records and testimony in general.* A request for unpublished OTS information must be in writing, furnish the caption of the lawsuit if the request arises in the course of litigation, and support the requester's claim that the information sought is highly relevant to the purpose for which it is sought. In demonstrating that the information is highly relevant, the requester must explain, in as detailed a description as is necessary under the circumstances, how the requested OTS information relates to the issues in the case or the matter.

(i) For requests arising in lawsuits, the submission also must include:

(A) A copy of the complaint or equivalent document in the case and any other pleadings necessary to show relevance;

(B) A description of any prior decisions or pending motions in the case that may bear on the asserted relevance of the information being sought from the OTS; and

(C) The names, addresses and phone numbers of counsel to all other parties in the case.

(ii) In all instances, in addition to demonstrating that the information sought is highly relevant to the purpose for which it is sought, the requester must:

(A) Demonstrate that the information sought is not available from any other source; and

(B) Demonstrate that the need for the information clearly outweighs the need to maintain the confidentiality of the OTS information and the burden on the OTS to produce the information.

(iii) If a request seeks a response in fewer than 30 days, it must include an explanation of why the requester was unable to submit the request earlier and why expediting the request is required.

(2) *Additional provisions relating to requests for records.* In addition to the

requirements of paragraph (c)(1) of this section, the following provisions apply to requests for disclosure of records.

(i) A request for records must list the categories of records sought and describe the specific information sought, including the relevant time period.

(ii) When the OTS believes that another party to the lawsuit has a claim of privilege regarding the information in the records and the records are in the possession of that party, such as reports prepared by a savings association's attorneys that are shared with OTS, the OTS may respond to the request by authorizing that party to release the records pursuant to an appropriate confidentiality order rather than by releasing the records directly to the requesting party. This will enable the party possessing the records to argue the issue of privilege to the appropriate court.

(3) *Additional provisions relating to requests for testimony from OTS employees.* In addition to the requirements of paragraph (c)(1) of this section, the provisions in paragraphs (c)(3)(i) through (iv) of this section apply to requests that current or former OTS employees be authorized to give testimony.

(i) Requests for testimony by OTS employees or former employees must specifically describe the substance of the testimony sought and show a compelling need for the testimony. A showing of compelling need should include a demonstration that the requested information is not available from any other source, such as the books and records of other persons or entities, OTS records that have been or might be released, or the testimony of other non-OTS persons, including retained experts.

(ii) OTS employees will not be authorized to provide expert or opinion testimony for private parties.

(iii) OTS expects litigants to anticipate their need for OTS testimony in sufficient time to request and obtain that testimony in deposition form. A request for testimony at a trial or hearing may not be granted unless the requester shows that properly developed deposition testimony could not be used or would not be adequate at the trial or hearing.

(iv) The OTS shall specify the scope of any authorized testimony and may take steps to ensure that the scope of testimony taken adheres to the scope authorized. Parties to the case who did not join in the request and who wish to question the witness beyond the authorized scope should request expanded authorization pursuant to this regulation. The OTS will attempt to render decisions on such requests in an expedited manner.

(4) *Information available to savings associations, holding companies and state and Federal agencies.* (i) A copy of each report of the regular examination of a savings association, savings and loan holding company, or affiliate is made available by the appropriate Regional Office to the institution or entity examined.

(ii) Any subsidiary savings association of a savings and loan holding company may reproduce and furnish a copy of any report of examination and related supervisory correspondence of the savings association to its parent holding company(ies) without prior approval of the OTS. Any savings and loan holding company may reproduce and furnish a copy of any report of examination and related supervisory correspondence to its subsidiary savings association(s) without prior approval of the OTS. This paragraph does not require such disclosure by a parent savings and loan holding company or subsidiary savings association.

(iii) Reports of examination and other information relating to state-chartered savings associations and affiliates are made available, upon request, by the OTS to the state governmental authority having general supervision of such state-chartered savings associations.

(iv) Reports of examination and other information may be made available by the OTS to other agencies of the United States, a state, or to the Federal Home Loan Banks, for use where necessary in the performance of their official duties.

(v) All reports or other information made available to savings associations, holding companies, affiliates, or other governmental agencies shall remain the property of the OTS and, except as permitted by this section or otherwise by OTS, no person, company, agency, or authority to whom the information is made available, or any officer, director, employee or agent thereof, shall disclose any such information except published statistical material that would not disclose the identity of any individual or corporation.

(5) *Where to submit requests.* In all matters covered by this section, notification of the issuance of subpoenas or compulsory process and requests for records or testimony covered by this section must be sent to the OTS at 1700 G Street, NW., Washington, DC 20552, to the attention of the Secretary, and should be labelled "Request for Release of Unpublished Information Under Section 510.5." Requesters may furnish copies of the request or subpoenas simultaneously to the appropriate OTS Regional Office, but the furnishing of such copies does not constitute service on the OTS.

(d) *Consideration of requests*—(1) *In general.* The OTS will generally process requests in the order in which they are received. OTS will endeavor to respond to requests within 30 days, but this may vary depending on the scope and precision of the request. The OTS will weigh requests for processing in less than 30 days against the burden to the OTS of expedited processing and the unfairness to other parties whose pending requests may be delayed.

(2) *Consultation with requester.* The OTS may consult with the requester to:

(i) Refine and limit the scope of the request so as to reduce the burden and expense on the OTS; or

(ii) Obtain additional information necessary for the OTS to make an informed determination on the request. To the extent necessary to reach an informed determination on the request, the OTS may inquire into the circumstances of the underlying matter and rely on sources of information beyond the requester, including other interested parties.

(3) *Final determinations.* Final determinations on requests will be made by the Director or his delegate. All such determinations are the sole discretion of the Director or his delegate. Requesters will be notified in writing of the disposition of the request.

(4) *Denial of requests.* (i) The OTS may deny requests for records or testimony that seek information that OTS deems to be:

(A) Not highly relevant;

(B) Privileged;

(C) Available from other sources; or

(D) Information that should not be disclosed for reasons that warrant restriction of discovery under the Federal Rules of Civil Procedure.

(ii) The OTS may also deny a records or testimony request when it considers production of the information to be overly burdensome or contrary to the public interest.

(5) *Confidentiality orders and agreements.* As is set forth in paragraph (f) of this section, the OTS may condition release of information on the entry by the relevant tribunal of an order satisfactory to OTS or, in a non-litigated matter, the execution of a confidentiality agreement that limits access of third parties to the unpublished OTS information. It shall be the duty of the requesting party to obtain such an order or to execute a confidentiality agreement.

(e) *Parties with access to OTS information; restriction on dissemination*—(1) *Current and former*

employees. Except as otherwise authorized by this section or otherwise by the OTS, no current or former employee, officer or agent of the OTS or a predecessor agency shall disclose or permit the disclosure of any unpublished information of the OTS to anyone (other than an employee, officer or agent of the OTS properly entitled to such information for the performance of their official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect, examine, or copy such information or copy thereof, or otherwise.

(2) *Duty of person served.* If any person, whether or not a current or former employee, officer or agent of the OTS, has information of the OTS that may not be disclosed under the regulations of the OTS or other applicable law, and in connection therewith is served with a subpoena, order, or other process requiring personal attendance as a witness or production of records or information in any proceeding, that person shall promptly advise the OTS of such service or request for information. Upon such notice the OTS will take appropriate action to advise the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued, if known, of the substance of this section. Such notice to the OTS shall be made by contacting the Litigation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. As provided in paragraph (e)(3) of this section, a person so served with process may not disclose OTS information without OTS authorization. To obtain OTS authorization, a request must be sent to OTS in Washington, DC, in accordance with paragraph (c) of this section.

(3) *Appearance by person served.* Except as the OTS has authorized disclosure of the relevant information, or except as authorized by law, any person who has information of the OTS that may not be disclosed under this section and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and respectfully decline to produce such records or give any testimony with respect thereto, basing such refusal on this part. If, notwithstanding, the court or other body orders the disclosure of such records or the giving of such testimony, the person having such information of the OTS shall continue respectfully to decline to produce such information and shall promptly advise the Litigation Division of the Chief Counsel's Office, Office of Thrift Supervision. Upon such notice the OTS will take appropriate action to advise the court or tribunal which issued the order, of the substance of this section.

(4) *Non-waiver of privilege.* The possession by any entity or individual described in paragraph (c)(4) of this section of OTS records covered by this section shall not waive any privilege of the OTS or the OTS's right to supervise the further dissemination of these records.

(f) *Orders and agreements protecting the confidentiality of unpublished OTS information*—(1) *Records.* Unless otherwise permitted by OTS, release of records authorized pursuant to this section will be conditioned by the OTS upon entry of an acceptable protective order by the court or administrative tribunal presiding in the particular case, or, in non-litigated matters, upon execution of an acceptable confidentiality agreement. In cases where protective orders have already been entered, the OTS reserves the right to condition approval for release of information upon the inclusion of additional or amended provisions.

(2) *Testimony.* The OTS may condition its authorization of deposition testimony on an agreement of the parties that the transcript of the testimony will be kept under seal, or will be made available only to the parties, the court and the jury, except to the extent that the OTS may allow use of the transcript in related litigation. The party who requested the testimony shall, at its expense, furnish to the OTS a copy of the transcript of testimony of the OTS employee or former employee.

(g) *Limitation of burden on the OTS in connection with released records*—(1) *Authentication for use as evidence.* The OTS will authenticate released records to facilitate their use as evidence. Requesters who require authenticated records should request certified copies at least 30 days prior to the date they will be needed. The request should be sent to the OTS Secretary and shall identify the records, giving the office or record depository where they are located (if known) and include copies of the records and payment of the certification fee.

(2) *Responsibility of litigants to share released records.* The party who has sought and obtained OTS records has the responsibility of:

(i) Notifying other parties to the case of the release and, after entry of a protective order, of providing copies of the records to the other parties who are subject to the protective order; and

(ii) Retrieving any records from the court's file as soon as the records are no longer required by the court and returning them to OTS. Where a party may be involved in related litigation, the OTS may, upon a request made to it pursuant to this section, authorize such party to transfer the records for use in that related case.

(h) *Fees*—(1) *Fees for records searches, copying and certifications.* Requesters shall be charged fees in accordance with Treasury Department regulations, 31 CFR 1.7. With certain exceptions, the regulations in 31 CFR 1.7 provide for recovery of the full direct costs of searching, reviewing, certifying and duplicating the records sought. An estimate of the statement of charges will be sent to requesters, and fees shall be remitted by check payable to the OTS prior to receipt of the requested records. Where it deems appropriate, the OTS may contract with commercial copying concerns to copy the records, with the cost billed to the requester.

(2) *Witness fees and allowances.* (i) Litigants whose requests for testimony of current OTS employees are approved, shall, upon completion of the testimonial appearance, promptly tender a check payable to the OTS for the witness fees and allowances in accordance with 28 U.S.C. 1821.

(ii) All litigants whose requests for testimony of former OTS employees are approved, shall tender witness fees and allowances to the witness in accordance with 28 U.S.C. 1821.

Dated: August 5, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–30009 Filed 12–8–93; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–91; Notice No. SC–93–7–NM]

Special Conditions: SAAB Model 2000 Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the SAAB Model 2000 airplane. This airplane will utilize certain fully hydraulically powered electronically controlled flight control

systems which are design features that are novel and unusual when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before January 24, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM–7), Docket No. NM–91, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–91. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–91." The postcard will be date stamped and returned to the commenter.

Background

On April 28, 1989, Saab Aircraft AB of Sweden applied for an FAA Type Certificate through the Swedish Luftfartsverket (LFV) to the FAA, AEU–100, for the SAAB Model 2000 airplane. (The application for FAA Type Certificate was dated June 9, 1989).

The SAAB Model 2000 is a twin-engined, low-wing, pressurized turboprop aircraft that is configured for approximately 50 passengers and is intended for short to medium haul (100 nm to 1,000 nm). The airplane will have two new Allison GMA–2100 engines rated at 3650 shp. The propeller is a new 6 bladed Dowty Rotol swept shaped propeller. A single lever controls each prop/engine combination. An auxiliary Power Unit (APU) will be installed in the tail. The fuselage cross-section will be the same as the SAAB Model 340. The fuselage skin will be thicker to handle greater pressures. The wing and empennage are new and larger in all dimensions and the fuselage is longer when compared to the SAAB Model SF–340B. The new cockpit will be a 5 or 6 screen CRT display with new Collins systems. There will be provisions for a Microwave Landing System (MLS). Global Positioning System (GPS), Selective Calling (SELCAL), Engine Indicating and Crew Alerting System (EICAS), and Traffic Collision and Avoidance System (TCAS). The landing gear system will be new. The airplane will have provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There will be a forward and aft stowage compartment and an aft cargo compartment. The airplane will have a maximum operating altitude of 31,000 feet.

The SAAB Model 2000 will have a fully hydraulically powered electronically controlled rudder for initial certification and will have fully hydraulically powered electronically controlled elevators as a follow-on design modification.

The rudder is hydraulically powered and electronically positioned without manual reversion modes. Pilots position the rudder by pedal position transducers connected to the rudder pedals. The transducers supply rudder pedal position to two electronic rudder control units which have two channels each. The rudder control units position two rudder servos which control two actuators that drive the rudder. Parallel and cross channel signals provide redundancy. The rudder limiting function is built into the rudder control units. The rudder system is checked by a preflight built in test system (PBIT) and a continuous built in test system (CBIT). One pedal force cam unit (spring and cam) generates artificial pedal forces. The pedal force cam unit is controlled by the trim actuator which in turn is controlled by a relay connected to manual trim or automatic trim from the autopilot.

The rudders two hydraulic actuators are supplied by two hydraulic circuits and each circuit is driven by an engine driven pump. To protect against common cause failures including engine burst, fire and tire/wheel failures, two back-up pumps, two emergency shut-off valves, together with a transfer valve, have been added aft of the debris zones. The back-up pumps are driven by a common motor with shear out features. Accumulators aft on both hydraulic circuits provide further reserves against hydraulic power loss and loss of damping.

The rudder system is electrically supported by two redundant system sides, a left hand (LH) and a right hand (RH) side. The electrical system is normally powered by two AC generators, each driven by a propeller gear box. An APU equipped with a standby generator is optional. Each system side includes a DC system with a Transformer Rectifier Unit (TRU). When only one TRU unit is working, the LH and RH buses are tied together with power being received from the remaining TRU. Two DC feeders in addition to two AC feeders provide power aft of the debris zone. The DC feeders are supplied by battery or a TRU unit. The LH side is routed through the ceiling and the RH side is routed through the floor.

The proposed elevator system, to be introduced for follow-on certification, is in many respects similar to the rudder design. Control columns, connected to Linear Variable Differential Transducers (LVDT), provide signals to two Powered Elevator Control Units (PECU). The PECUs are connected to the Flight Control Computer, Air Data Computers and servo actuators. Each PECU has built in test circuitry and two channels for direct control and crossmonitoring.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 21.16, 21.17, 21.19, 21.29, and 21.101 of the Federal Aviation Regulations (FAR). Accordingly, based on the application date of June 9, 1989, the TC basis for the SAAB Model 2000 airplane is as follows:

Part 25 as amended by Amendments 25–1 through 25–66, except where superseded by the following:

Section 25.963(e) as amended by Amendment 25–69, Design Standards for Fuel Tank Access Covers.

Section 25.1423 as amended by Amendment 25–70, Independent Power Sources for the Public Address Systems.

Part 25 as amended by Amendment 25–71.

Section 25.365, Pressurized Compartment Loads.

Part 25, the following sections as amended by Amendment 25–72:

Section 25.361 Engine torque.

Section 25.365 Pressurized compartment loads.

Section 25.571 Damage tolerance and fatigue evaluation of structure.

Section 25.772 Pilot compartment doors.

Section 25.773 Pilot compartment view.

Section 25.783(g) Doors.

Section 25.905(d) Propellers.

Section 25.933 Reversing systems.

Part 25, the following sections as amended by Amendment 25–73:

Section 25.903(a) Engines.

Section 25.951(d) Fuel System—General.

Part 34, as amended on the date of issuance of the type certificate.

Part 36, as amended on the date of issuance of the type certificate.

Special Conditions No. ANM–25–66, dated 1/12/93, for Lightning and HIRF Protection.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

Effect of Flight Control Systems on Structure

The SAAB Model 2000 incorporates certain fly-by-wire (FBW) electronic flight control systems (EFCS). The rudder system includes a yaw damper, rudder limiter, and an auto-trim function which can affect loads. The follow-on design for the elevators has many similar features. System failures can lead to design load conditions not envisioned by the certification rules for transport airplanes. This special condition is proposed to ensure the same level of safety by providing comprehensive criteria in which the structural design safety margins are dependent on systems reliability.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air Transportation, Aircraft, Aviation Safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the SAAB Model 2000 airplane:

1. Interaction of Systems and Structures

(a) General

For an airplane equipped with certain fully hydraulically powered electronically controlled flight control systems, which directly, or as a result of a failure or malfunction, affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with subparts C and D of part 25 of the Federal Aviation Regulations (FAR).

(b) System Fully Operative

With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the systems from all the deterministic limit conditions specified in Subpart C, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of Part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure the behavior of the systems presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that make it impossible to exceed those limit conditions.

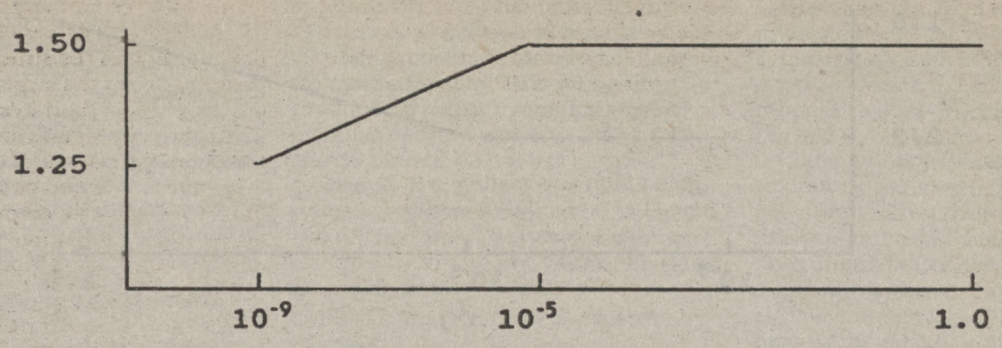
(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) System in the Failure Condition

For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1–g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered as ultimate loads for this evaluation. The factor of safety is defined as follows:

Factor of Safety at Time Occurrence



(i) The loads must also be used in the damage tolerance evaluation required by § 25.571(b) if the failure condition is probable. The loads may be considered as ultimate loads for the damage tolerance evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to V_D or 1.15 V_C, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to M_D, as defined by § 25.335(b). For failure conditions which result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown at increased speeds, so that the above margins are maintained.

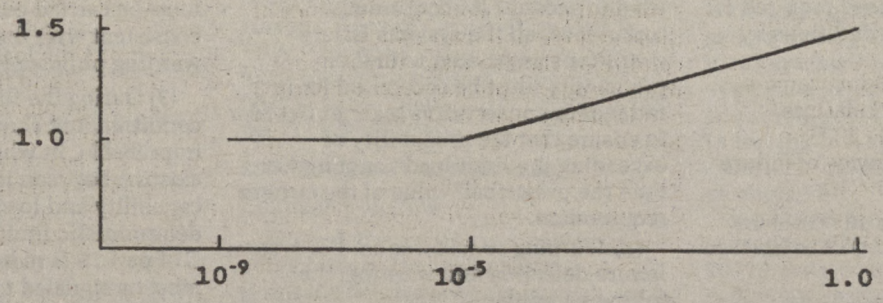
(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system which result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) For the continuation of the flight. For the airplane, in the failed configuration and considering any appropriate flight limitations, the following apply:

(i) Static and residual strength must be determined for loads induced by the failure condition if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in subpart C.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a safety factor depending on the probability of being in this failure state. The factor of safety is defined as follows:

Factor of Safety for Continuation of Flight



$Q_j = T_j * P_j$ where:

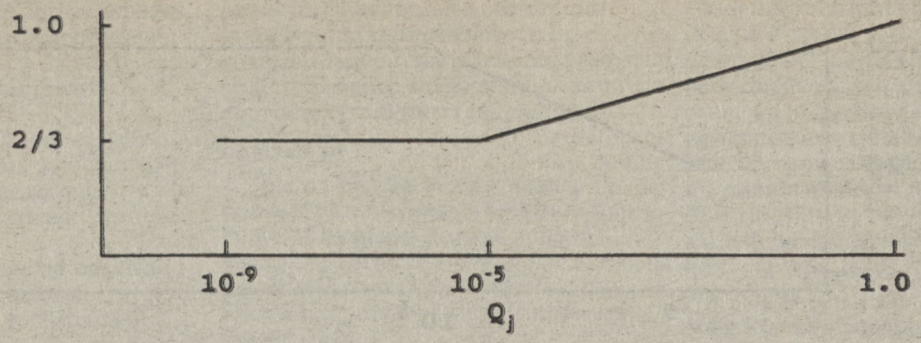
T_j=Average time spent in failure condition

P_j=Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3}, per flight hour then a safety factor of 1.5 must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), for structures also affected by failure of the system and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must not be less than the 1-g flight load combined with the loads introduced by the failure condition plus two-thirds of the load increments of the conditions specified in § 25.571(b) in both positive and negative directions (if appropriate). The reduction factor is defined as follows:

Residual Strength Reduction Factor



$Q_j = T_j * P_j$ where:

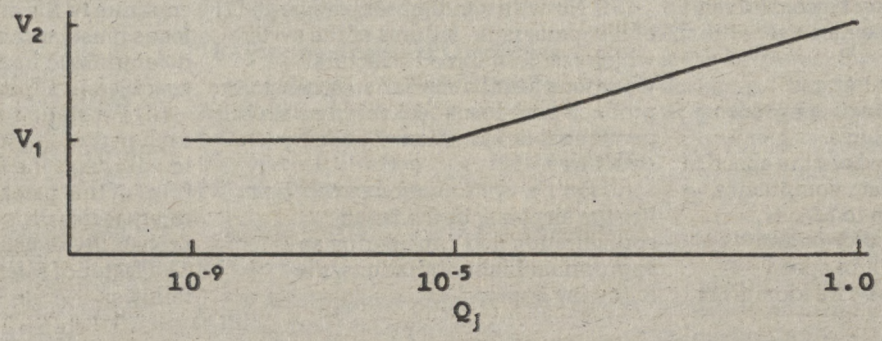
T_j=Average time spent in failure condition

P_j=Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3}, per flight hour then a safety factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

Flutter Clearance Speed



$V_1 = V_D$ or 1.15 V_C whichever is greater

V_2=Flutter clearance speed required for normal (unfailed) conditions by § 25.629.

$Q_j = T_j * P_j$ where:

T_j=Average time spent in failure condition

P_j=Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3} then the flutter clearance speed must not be less than V_2.

(v) Freedom from flutter and divergence must also be shown up to V_1 in the above figure, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(d) Warning consideration. For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level as intended in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) An evaluation must be made of the necessity to signal, during the flight, the existence of any failure condition which could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations. The assessment of the need for such signals must be carried out in a manner consistent with the approved general warning philosophy for the airplane.

(3) During the flight, any failure condition, not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) Dispatch with failure conditions. If the airplane is to be knowingly dispatched in a system failure condition that reduces the structural performance, then operational limitations must be provided whose effects combined with those of the failure condition allow the airplane to meet the structural requirements as described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

Discussion: This special condition is intended to be applicable to certain fully hydraulically powered electronically controlled flight controls. The criteria provided by the special condition only address the direct structural consequences of the systems responses and performances and therefore cannot be considered in isolation but should be included into the overall safety evaluation of the airplane. The presentation of these criteria may in some instances duplicate standards already established for this evaluation. The criteria are applicable to structure, the failure of which could prevent continued safe flight and landing.

The following definition are applicable to this special condition.

1. Structural performance: Capability of the airplane to meet the requirements of Part 25.

2. Flight limitations: Limitations which can be applied to the airplane flight conditions following an inflight occurrence and which are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. Operational limitations: Limitations, including flight limitations, which can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

5. Failure condition: The term failure condition is defined in AC 25.1309–1, however this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

Issued in Renton, Washington, on November 29, 1993.

Darrell M. Pederson,

Transport Airplane Directorate, Acting Manager, Aircraft Certification Service, ANM–100.

[FR Doc. 93–30069 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–ANE–52]

Airworthiness Directives; Allied-Signal Aerospace Co., Garrett Engine Division, TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines, that currently requires installing a clamp assembly to support the fuel line. This action would remove engine models from the AD's applicability and refer to the latest revision of a service bulletin that clarifies procedures for the fuel line clamp installation. This proposal is prompted by a comment that engine installations on Learjet Models 35, 36, and 55 aircraft do not use a starter generator. The actions specified by the proposed AD are intended to prevent leaking fuel from spraying in or around electrical components, which can cause an engine fire.

DATES: Comments must be received by February 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–52, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 643/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

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 should 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 93–ANE–52." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–52, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 3, 1993, the Federal Aviation Administration (FAA) issued AD 93–10–10, Amendment 39–8589 (58 FR 32835, June 14, 1993), applicable to Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines. That AD requires installing a clamp assembly to support the fuel line. That action was prompted by six reports of fuel lines cracking and failing, resulting in fuel spillage in the engine accessory gearbox and five inflight engine shutdowns. These cracks were caused by failures of the starter generator bearing, which created an unacceptably high vibration of the associated gearbox components. That condition, if not corrected, could result in leaking fuel spraying in or around electrical components, which can cause an engine fire.

Interested persons have been afforded an opportunity to comment on AD 93–10–10, issued as a Final rule, request for comments, without prior notice. Due consideration in drafting this proposal has been given to the comments received.

One comment supports the rule as published.

One comment states that engine installations on Learjet Models 35, 36, and 55 aircraft do not use a starter generator. The comment further states that no generator bearing failures have resulted in reported engine damage, as the generator usually stops rotation due to shaft shear section flexure resulting from the bearing failure. Additionally, the Learjet Model 31, as well as the Learjet Models 35, 36, and 55 aircraft,

use ejector fuel boost pumps which utilize excess fuel from the engine fuel pump. Failure of the line results in engine shutdown, which causes loss of motive flow to the ejector pumps so that fuel would not continue to be discharged in the engine nacelle. The comment concludes that there is not sufficient justification for an AD, since the engine will probably shutdown after a fuel line failure.

The FAA concurs that starter generators are not used on Learjet Models 35, 36, and 55 aircraft and that it has received no reports of fuel line failures due to generator bearing failures in these engine installations. Based on this service experience, the FAA proposes to revise the AD's applicability by removing the engines installed on Learjet Models 35, 36, and 55 aircraft.

The FAA disagrees, however, with the comment's conclusion. The FAA has determined that an engine fire is probable after a fuel line failure, whether or not the engine shuts down. This unsafe condition warrants the issuance of an AD.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, Service Bulletin (SB) No. TFE731–73–3107, dated June 21, 1991; Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3107, Revision 1, dated September 23, 1992; Allied-Signal Propulsion Engines SB No. TFE731–73–3107, Revision 2, dated July 21, 1993; Allied-Signal Propulsion Engines SB No. TFE731–73–3107, Revision 3, dated September 22, 1993; Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3118, dated September 3, 1992; and Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3118, Revision 1, dated February 16, 1993. These SB's describe procedures for installing a clamp assembly to support the fuel line.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 93–10–10 to require installing a clamp assembly to support the fuel line. Installing a clamp assembly minimizes unacceptable vibration and possible cracking of the fuel line. In addition, this proposed revised AD would remove engines installed on Learjet Models 35, 36, and 55 aircraft from the applicability and would refer to Revision 3 of Allied-Signal Propulsion Engines SB No. 73–3107, dated September 22, 1993, that clarifies procedures for fuel line clamp installation. All engines that have the fuel line clamp installed in accordance with any of the listed revisions of the applicable service bulletins comply with the requirements of this AD, and no further action is required.

There are approximately 1,600 Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that no more than 800 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $160 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $172,000.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8589 (58 FR 32835, June 14, 1993) and by adding a new airworthiness directive, to read as follows:

Allied-Signal Aerospace Company, Garrett Engine Division: Docket No. 93–ANE–52. Revises AD 93–10–10, Amendment 39–8589.

Applicability: Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731–2–1C, –2–3B, –3–1C, –3–1H, –3R–1D, –3R–1H, –3B–100S, –3BR–100S, –3C–100S, –3CR100S, –4R–2S turbofan engines, listed by serial number in the Effectivity Sections of Allied-Signal Propulsion Engines Service Bulletin (SB) No. TFE731–73–3107, Revision 3, dated September 22, 1993, and Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3118, Revision 1, dated February 16, 1993. The engines are installed on but not limited to Dassault Falcon 10, 50, and 100 series; Learjet 31 (M31) series; British Aerospace BAe HS125 series; Sabreliner NA–265–65 (65, 65A); and Cessna 650 Citation III, VI, and VII series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaking fuel from spraying in or around electrical components, which can cause an engine fire, accomplish the following:

(a) Within 150 hours time in service (TIS) after June 29, 1993, (the effective date of AD 93–10–10, Amendment 39–8589), for Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–2–1C, –2–3B, –3–1C, –3–1H, –3R–1D, –3R–1H model engines, install a clamp assembly to support the fuel line in accordance with the Accomplishment Instructions of Allied-Signal Propulsion Engines SB No. TFE731–73–3107, Revision 3, dated September 22, 1993. All engines that have the fuel line clamp installed in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3107, dated June 21, 1991; Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3107, Revision 1, dated September 23, 1992; or Allied-Signal Propulsion Engines SB No. TFE731–73–3107, Revision 2, dated July 21, 1993, comply with the requirements of this AD, and no further action is required.

(b) Within 150 hours TIS after June 29, 1993 (the effective date of AD 93–10–10, Amendment 39–8589), for Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–3B–100S, –3BR–100S, –3C–100S, –3CR–100S, –4R–2S model engines, install a clamp assembly to support the fuel line in accordance with the Accomplishment Instructions of Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3118, dated September 3, 1992, or Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731–73–3118, Revision 1, dated February 16, 1993.

(c) 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, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 30, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–30101 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–164–AD]

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes. This proposal would require replacement of certain pneumatic duct couplings with redesigned couplings. This proposal is prompted by reports of failures of certain duct couplings installed on the wing leading edge pneumatic duct. The actions specified by the proposed AD are intended to prevent such failures, which could lead to structural damage to the wing leading edge, flight control problems, or fire.

DATES: Comments must be received by February 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from PTI Technologies, Inc., 950 Rancho Conejo Boulevard, Newbury Park, California 91320. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, 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 (206) 227–2670; fax (206) 227–1181.

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 93–NM–164–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–103, Attention: Rules Docket No. 93–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

There have been numerous reports of in-flight failures of certain duct couplings installed on the wing leading edge pneumatic duct of certain Boeing Model 747 series airplanes. Subsequent to some of these events, the flight crews observed engine fire warnings in the cockpit and noticed that the airplane began to vibrate; however, there have been no reported fires and, in all cases, the flight crews were able to land the airplanes without further incident. During a recent incident, a coupling broke away from the wing leading edge pneumatic duct and severed the engine sensor cable for the number 4 engine, dented the fuel and hydraulic tubing, and damaged secondary structure. Investigation revealed that the coupling failed due to fatigue cracking of the lug. Pneumatic duct couplings that are located in close proximity to wire bundles, fuel tubes, and hydraulic tubes are critical safety of flight items. Failure of pneumatic duct couplings located in these areas could lead to structural damage to the wing leading edge, flight control problems, or fire.

Purolator, Inc., a manufacturer of duct couplings, has issued Service Bulletin FSC–912, dated December 1972, that describes procedures for installing certain redesigned pneumatic duct couplings on the wing leading edge pneumatic duct. These redesigned pneumatic duct couplings have no history of fatigue cracking problems or failures, such as those reported on the incident airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of certain duct couplings installed on the wing leading edge pneumatic duct. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 219 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 132 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $8,486 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,207,272, or $9,146 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The number of required work hours for the proposed duct coupling replacement, as indicated above, is presented as if the accomplishment of that proposed action was to be conducted as a "stand alone" action.

However, the 15-month compliance time specified in paragraph (a) of this proposed AD should allow ample time for the duct coupling replacement to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 93–NM–164–AD.

Applicability: Model 747 series airplanes, line position 1 through 219 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of duct couplings installed on the wing leading edge pneumatic duct installed in the vicinity of the strut, which could lead to structural damage to the wing leading edge, flight control problems, or fire, accomplish the following:

(a) Within 15 months after the effective date of this AD, replace duct couplings having part number (P/N) 7540600 and 7540602, with duct couplings having P/N 7541749 and 7541751, in accordance with Purolator Service Bulletin FSC–912, dated December 1972, at the following locations:

(1) The coupling that connects the tee duct at the inboard struts to the pneumatic ducting of the engine in the struts;

(2) The coupling that connects the tee duct at the inboard struts to the pneumatic ducting of the wing leading edge outboard of the inboard struts; and

(3) The coupling that connects the pneumatic ducting of the wing leading edge to the pneumatic ducting of the engine in the outboard struts.

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

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

(c) Special flight permits may be issued in accordance with FAR 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 December 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–30102 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–179–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F 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 McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposal would require modification of the fuel crossfeed low level dump system shutoff. This proposal is prompted by an FAA determination that, in the event of a failure of the number 2 bus tie relay and the subsequent loss of the number 2 electrical power source, an all-engine flameout event could occur due to fuel starvation during or shortly after a fuel dumping operation. The actions specified by the proposed AD are intended to prevent loss of the fuel dump system shutoff due to a failure of the number 2 DC bus electrical relay and the subsequent loss of the number 2 electrical power source.

DATES: Comments must be received by February 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

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 93–NM–179–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–103, Attention: Rules Docket No. 93–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 1, 1992, the FAA issued AD 92–22–06, Amendment 39–8392 [57 FR 47570, October 19, 1992), applicable to all McDonnell Douglas Model MD–11 and DC–10 series airplanes, and Model KC–10 (military) airplanes, to require revising the Airplane Flight Manual (AFM) to include information specifying that electrical malfunctions may render the automatic fuel dump termination feature inoperative. That action was prompted by an incident on a Model MD–11 series airplane in which the automatic fuel dump system shutoff became inoperative, and fuel was dumped below the minimum allowable level. The requirements of that AD are intended to prevent fuel from being dumped below the minimum allowable limit, which could result in an all-engine-out condition.

Since the issuance of that AD, an in-depth review of the above incident has revealed that the fuel dump shutoff components for fuel tanks 1, 2, and 3 on Model MD–11 and DC–10 series airplanes are powered from a single source: the number 2 engine generator DC 2 bus. Further investigation into this incident has indicated that oil loss in the number 2 engine on that Model MD–11 series airplane was due to a missing borescope inspection plate. The resultant electrical power loss was due to the failure of the number 2 DC bus tie relay.

The FAA has determined that in the event of a failure of the number 2 bus tie relay and the subsequent loss of the number 2 electrical power source (the number 2 engine driven generator), an all-engine flameout event could occur due to fuel starvation during or shortly after fuel dumping operations. Further, the FAA has evaluated the fuel dump system shutoff on Model DC–10 and MD–11 series airplanes and has determined that a design deficiency may exist with regard to the engine isolation design requirements of Federal Aviation Regulations (FAR) 25.903.

This condition, if not corrected, could render the fuel dump system shutoff inoperable due to a failure of the number 2 DC bus electrical relay and the subsequent loss of the number 2 electrical power source.

The FAA has reviewed and approved McDonnell Douglas MD–11 Service Bulletin 28–48, dated September 30, 1993, that describes procedures to modify the fuel crossfeed low level dump system shutoff. This modification entails replacing two fuel relays and installing three new crossfeed low level dump shutoff relays, which provides isolation of the engine fuel system and provides redundancy of the electrical power source. Further, this modification also revises the wiring for the fuel crossfeed low level dump shutoff to facilitate installation of the added relays. This modification has been installed, prior to delivery, on all MD–11 series airplanes having manufacturer's fuselage numbers 545 and subsequent.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the fuel crossfeed low level dump system shutoff on Model MD–11 series airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously. Accomplishment of this modification will terminate the requirement imposed by paragraph (a) of AD 92–22–06 to revise the FAA-approved Airplane Flight Manual (AFM), which cautioned that electrical malfunctions may render the automatic fuel dump termination feature inoperative.

Although this AD action is applicable only to certain Model MD–11 series airplanes, the manufacturer has advised that it is currently developing a similar modification for Model DC–10 series airplanes that will deal with the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

There are approximately 98 McDonnell Douglas Model MD–11 and MD–11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $5,688 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $258,774, or $6,018 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, the 15-month compliance time specified in paragraph (a) of this proposed AD should allow ample time for the modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 93–NM–179–AD.

Applicability: Model MD–11 and MD–11F airplanes having manufacturer's fuselage numbers 447 through 544 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the fuel dump system shutoff due to a failure of the number 2 DC bus electrical relay and the subsequent loss of the number 2 electrical power source, accomplish the following:

(a) Within 15 months after the effective date of this AD, modify the fuel crossfeed low level dump system shutoff in accordance with McDonnell Douglas MD–11 Service Bulletin 28–48, dated September 30, 1993. Accomplishment of this modification constitutes terminating action for the revisions to the Airplane Flight Manual (AFM) required by paragraph (a) of AD 92–22–06, Amendment 39–8392.

(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, Los Angeles 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, Los Angeles ACO.

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

(c) Special flight permits may be issued in accordance with FAR 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 December 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–30103 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 93–AGL–21]

Proposed Establishment of Class E Airspace; Port Huron, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Port Huron, MI. A standard instrument approach procedure (SIAP) has been recently developed at St. Clair County International Airport, and controlled airspace to the surface, and a control zone is needed to contain instrument flight rules (IFR) operations at the airport. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace designated from the surface for an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

DATES: Comments must be received on or before January 22, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AGL–530, Federal Aviation Administration, Docket No. 93–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. The official docket may be examined in the office of the Assistant Chief Counsel, AGL–7 at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, System Management Branch, AGL–530, at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone (708) 294–7573.

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. 93–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AGL–530, Air Traffic Division, at 2300 East Devon Avenue, Des Plaines, Illinois, 60018, before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AGL–530, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Port Huron, MI. An Automated Weather Observation System (AWOS) has been installed at the St. Clair County International Airport that will continuously provide weather data, and a non-Federal instrument landing system (ILS) SIAP has been established. Controlled airspace to the surface, a control zone, is needed to contain IFR operations at the airport. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace designated from the surface, including any arrival extensions, for an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E

airspace for IFR operators executing the ILS SIAP at St. Clair County International Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

AGL, MI E2 Port Huron, MI [New]

St. Clair County International Airport, MI
(lat. 42°54'40" N., long. 82°31'44" W.)

Within a 4-mile radius of the St. Clair County International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on December 3, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–30070 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–13–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Retention of or Access to Confidential Business Information From Investigations and Related Proceedings on Unfair Practices in Import Trade

AGENCY: U.S. International Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Commission is considering revision of its rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 to address two subjects: a prescribed policy of allowing counsel who are signatories to an administrative protective order (APO) to retain confidential business information (CBI) from a particular investigation after that investigation has been finally terminated; and the operation of a Commission repository for CBI, which would be accessible to counsel of record who signed the APO, in lieu of or in addition to permitting post-termination retention of CBI by such counsel.

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether there should be Commission rules governing the aforesaid subjects and, if so, what those rules should provide. (For guidance on specific issues that the Commission would like to have commenters address, see the Supplementary Information section of this document.)

DATES: Comments will be considered if received on or before February 7, 1994.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

Part 210 of title 19 of the Code of Federal Regulations currently sets forth procedures for adjudicative investigations under section 337 of the Tariff Act. Part 211 currently establishes procedures for advisory opinions as well as the enforcement, modification, or revocation of remedial or consent orders issued under section 337.

The current rules in parts 210 and 211 were adopted on an interim basis in 1988 to implement amendments to section 337 that were effected by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, 102 Stat. 1107 (1988).[1] The Commission is now engaged in rulemaking to replace the interim rules in Parts 210 and 211 with final rules for Part 210.[2] If the Commission decides to adopt rules governing post-termination retention of CBI and/or a Commission repository for CBI, those rules will be promulgated in a separate rulemaking.

The question of possible Commission rules governing post-termination retention of CBI and a possible Commission repository for CBI arises in part from the Commission's recent decision not to review the APOs issued in investigation No. 337–TA–334, Certain Condensers, Parts Thereof, and Products Containing Same, Including Air Conditioners for Automobiles (Condensers), and investigation No. 337–TA–331, Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same (Memory Controllers).

The APOs in those investigations deviated from standard Commission practice by (1) failing to provide that "final termination" of the investigation

[1] See 53 FR 33043 (Aug. 29, 1988) and 54 FR 49118 (Dec. 6, 1988).

[2] A notice of proposed final rulemaking was published at 57 FR 52830 (Nov. 5, 1992). The Commission has reviewed the public comments on the proposed rules, and is in the process of preparing final rules. The final rules will be published in the **Federal Register** at least 30 days before their effective date.

occurs upon exhaustion of the appeals process, and (2) permitting outside counsel for the parties to retain CBI beyond the exhaustion of any appeals.

With leave from the presiding administrative law judge (ALJ), the Office of Unfair Import Investigations (OUII) applied for interlocutory Commission review of both APOs. OUII argued that there was good cause for not adhering to the customary practice, and that the APOs should be affirmed.

The Commission conducted a special hearing on the applications for interlocutory review. One issue raised at the hearing was whether the Commission should establish a repository for CBI from section 337 investigations, with provision for access by counsel, in lieu of permitting post-termination retention of CBI by counsel. One participant at the hearing noted that the Commission retains briefs, the record and determinations from Section 337 investigations in perpetuity, but parties currently do not have access to that information. Participants suggested that providing access to that information might be preferable in certain circumstances to post-termination retention of documents containing CBI.

By a 4–2 vote (Commissioners Rohr and Nuzum dissenting), the Commission determined to deny the applications for interlocutory review and thus took no action on the APOs.[3]

Although the applications for interlocutory review were denied, the Commission has decided that the issues raised in connection with those APOs raise policy concerns that might be better addressed through rulemaking under the APA.

The Commission subsequently decided to solicit comments from the public to aid the Commission in determining whether there should be Commission rules governing (1) post-termination retention of CBI and/or the operation of a Commission repository for CBI, and (2) if so, what those rules should provide.

Issues To Be Addressed

Specific issues that the Commission would like to have all commenters address are set forth below.

1. Proposed final rule 210.3, published on November 5, 1992,[4] contained a definition for "investigation," which stated in pertinent part as follows:

> Final termination of an investigation occurs when the Commission issues a nonappealable determination, order, or notice that ends the investigation, when any administrative or judicial review relating to the final Commission action has ended, or when the time for seeking such review has expired.

If the foregoing statement is included in final rule 210.3, should it be revised if the Commission subsequently determines to promulgate rules governing post-termination retention of CBI by counsel?

2A. Should there be Commission rules establishing a fixed Commission policy on post-termination retention of CBI acquired under an APO during a section 337 investigation or a related proceeding? If so, what should those rules provide?

2B. Should a distinction be made between CBI submitted by a third party and CBI submitted by a party to the investigation? Should a separate rule be prescribed for circumstances in which a third party objects to post-termination retention of CBI that it has supplied?

3. In lieu of—or in addition to—permitting counsel to retain CBI after final termination of an investigation, should the Commission create a repository for section 337 materials containing CBI, with provision for access by counsel who have signed the APO? If so, the questions set forth below are among those that have to be resolved, and the answers to some of them may be appropriate subjects for Commission rules. The Commission would therefore like to have commenters address the following issues:

A. What CBI should be stored in the repository (*e.g.*, CBI supplied by parties; CBI supplied by nonparties; the discovery record; the evidentiary record; Commission orders, initial determinations, recommended determinations, opinions, etc.)?

B. Should counsel be permitted to retain certain documents containing CBI, notwithstanding the existence of the Commission repository (*e.g.*, documents relevant to enforcement of a remedial order or documents created by counsel). If such retention is to be permitted, how long should the retention period be (*e.g.*, the duration of the remedial order(s))?

C. How long should the CBI be retained in the Commission repository (e.g., until exhaustion of the appeals process; completion of any parallel court litigation; duration of any remedial order(s) issued by the Commission; indefinitely)? Should the Commission rules establish a presumption that CBI need be retained only for a fixed number of years (e.g., a 3-year period), at which time the information would have to be returned to the submitter or destroyed, unless the Commission ordered otherwise?

D. Who should have access to the CBI kept in the repository? (e.g., only attorneys who originally signed the APO, any outside counsel representing one of the parties, outside counsel representing a nonparty seeking an advisory opinion; in-house counsel; or non-attorneys such as technical experts)?

E. On what basis should access to the CBI kept in the repository be granted (e.g., demonstrated need or upon request)?

F. For what purposes should access to the CBI kept in the repository be granted? Should access be limited to purposes directly related to post-termination proceedings before the Commission and, possibly, the U.S. Customs Service?

G. In what form should the CBI be kept in the repository (e.g., paper documents, microfiche, microfilm, or electronic media such as CD-ROM)?

H. Should persons allowed access to the CBI be allowed to make copies of documents containing CBI or should they only be allowed to examine (and perhaps take notes concerning) the CBI? If copying is to be permitted, should wholesale copying of the record be permitted—or should copying be limited to specific documents? Who should actually be permitted or required to make the copies (e.g., the attorney given access to the material; Docket Staff in the Secretary's Office)? Who should pay for the copies? Should limits be imposed on the number of copies that can be made? If notetaking is to be permitted, to what extent should it be allowed?

I. Who should rule on questions relating to access to the CBI in the repository (e.g., the Commission; an ALJ; the Secretary)?

J. If persons are allowed to copy documents in the repository containing CBI, should the treatment of that CBI be governed by the original APO or a new APO?

4. Proposed final rule 210.72, which was published on November 5, 1992,[5] governs confidential treatment of information provided in connection with a remedial or consent order. The last sentence of that rule states that in a proceeding to enforce a remedial, consent, or other Commission order or a proceeding for the modification or rescission of a remedial or consent order, the Commission or the presiding ALJ may issue or continue appropriate APOs. The Commission notes that if

[3] See the Commission Orders issued in *Condensers and Memory Controllers* on Sept. 2, 1993, and 58 FR 47284 and 47286 (Sept. 8, 1993).

[4] See supra n.2. and 57 FR 52866.

[5] See supra n.2. and 57 FR 52892.

that sentence is included in final rule 210.72, the sentence may have to be revised, depending on (1) whether the Commission subsequently adopts rules on post-termination retention of CBI and/or a Commission repository for CBI with provision for access by counsel and (2) what those rules provide. Persons who have an opinion on the possible revision of the sentence in question—or more importantly, on APO practice and procedure for proceedings to enforce a remedial, consent, or other Commission order or proceedings for the modification or rescission of a remedial or consent order—are encouraged to provide it in their comments.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the CBI retention and repository rules will be promulgated in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), and will be codified in 19 CFR part 210.

By Order of the Commission.

Issued: December 2, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29964 Filed 12–8–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Parts 300, 310, 390

[Docket No. R–93–1673; FR–2908–P–01]

RIN 2503–AA07

GNMA—Issuer Eligibility and Integrity Reforms

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: GNMA proposes to reform its rules to help ensure the strength and integrity of the issuer community and reduce the risk associated with GNMA's $420 billion in outstanding guarantees. This proposed rule would revise GNMA's standards for issuer approval by amending the net worth and financial reporting requirements, and implementing new integrity requirements that would more accurately reflect an issuer's ability to participate in the GNMA mortgage-backed securities program. This proposed rule would also allow the acceptance of FHLMC or FNMA approval in GNMA's issuer application process, and remove the requirement that an issuer both issue and service GNMA pools. Finally, this proposed rule would make minor revisions to administrative matters.

DATES: Comment due date: February 7, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Guy S. Wilson, Vice President, Office of Mortgage-Backed Securities, Government National Mortgage Association, room 6224, 451 Seventh Street SW., Washington, DC 20410–9000, telephone (202) 708–2772. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3649. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this proposed rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

Through the mortgage-backed securities (MBS) program, GNMA guarantees the timely payment of principal and interest on privately issued pass-through securities which are backed by mortgages insured or guaranteed by the Federal Housing Administration (FHA), Department of Veterans Affairs (VA) and Farmers Home Administration (FmHA). The private issuers are responsible for passing through to security holders the monthly collection of principal and interest less a servicing fee which is retained as compensation for administering the mortgage pools. A portion of the servicing fee is paid to GNMA as its fee for guaranteeing the securities. As a condition of issuing securities, the private issuers agree to advance mortgage delinquencies and other shortfalls from the scheduled payments with their own funds. These advances are largely reimbursed by eventual claim payments from FHA, VA and FmHA as delinquent loans are foreclosed. If an issuer exhausts its ability to fund mortgage shortfalls and cannot make the full pass-throughs due to GNMA security holders, GNMA must default the issuer and assume the issuer responsibilities itself.

In order for GNMA adequately to protect its interests, GNMA must ensure that its issuers operate in a safe and sound manner. This proposed rule would strengthen the existing GNMA requirements to require that issuers exhibit the financial strength and operate with the level of integrity that is commensurate with the responsibilities of being a GNMA issuer.

This proposed rule would make changes in the following key areas: (A) Net worth, (B) financial reporting, (C) integrity, and (D) FNMA approval. This proposed rule would also remove the requirement that an issuer both issue and service GNMA pools, and would make minor revisions to administrative matters.

A. Net Worth

GNMA issuers must meet GNMA's minimum net worth requirements for continued good standing in the MBS program. The net worth requirement is the sum of a base net worth requirement and an incremental net worth requirement. The base requirement is dependent upon the type of securities an issuer is approved to issue. The

incremental requirement is based on the amount of securities that an issuer has outstanding.

GNMA is proposing to increase the base requirement for single family issuers, index the base requirement for all issuer types to inflation, standardize the incremental requirement for all issuer types, and eliminate the special incremental net worth treatment for internal reserve pools. While this proposed rule would strengthen GNMA's net worth requirements, the adverse impact on the issuer community would be minimal. Ninety-nine percent of the GNMA issuers currently in good standing meet the proposed net worth levels.

The base net worth requirement for single family issuers would increase by $150,000, from $100,000 to $250,000. This increase is designed to restore the value that has been lost through inflation since the $100,000 base requirement was established by GNMA in January, 1979. The $250,000 proposed level would also match the minimum net worth requirements of FHA (for non-supervised mortgagees in the Direct Endorsement program—non-supervised mortgagees originate 93% of all the loans in the FHA program) and the Federal National Mortgage Association (FNMA). GNMA issuers are currently required to be an FHA mortgagee and FNMA seller/servicer in good standing to maintain their approved GNMA status.

The base net worth requirement for all issuer types would be indexed to inflation and adjusted on an annual basis. The change in price levels would be measured by using the Consumer Price Index (CPI). The reference period from which changes in price levels are measured would be December 1992. The revised net worth requirement would become effective on April 1 of each year for every issuer. The first adjustment, in April 1994, would reflect the rate of inflation experienced in the 12-month period ending in December 1993.

The incremental net worth requirement would be standardized under the proposed rule for all issuer types at 0.2% ($2,000 per million) of all of an issuer's outstanding securities. For single family issuers, the current incremental requirement is 0.0% of the first $5 million of securities, 1.0% of the next $15 million, and 0.2% of any additional securities. The new requirement would be 0.2% of all securities. This has the impact of increasing the incremental requirement for single family issuers by as much as $10,000, or reducing the incremental requirement by as much as $110,000, depending on an issuer's size. While the incremental net worth requirement would decrease for most single family issuers, the total required net worth (base plus incremental) for these issuers would still increase by at least $40,000. For manufactured home and multifamily issuers, the current incremental requirement is 0.0% of the first $35 million of securities and 0.2% of any additional amount. By expanding the incremental requirement to the first $35 million, the incremental requirement would increase for these issuers by as much as $70,000.

Finally, GNMA is proposing to eliminate the special net worth treatment for internal reserve (IR) pools. Currently, the amount of IR securities that an issuer has outstanding is divided in half before applying the incremental net worth percentage. This proposal would have the impact of doubling the incremental net worth requirement for manufactured home issuers. The lower risk that GNMA expected from the IR structure has not materialized, given the higher delinquency and partial insurance characteristics of manufactured home loans. Therefore, GNMA is proposing to discontinue the special treatment.

B. Financial Reporting

Under the heading of financial reporting, GNMA is proposing to require that each issuer submit to GNMA a classified balance sheet with the issuer's annual audited financial statement. Currently, classified balance sheets are collected on a voluntary basis. A classified balance sheet for all issuers is essential so that GNMA may perform a more detailed financial analysis of each issuer, and measure more accurately the level of risk associated with each issuer. This requirement would become effective for the issuer's fiscal year that begins after the effective date of the rule.

C. Integrity

Under the heading of integrity, GNMA is proposing four new requirements. This proposed rule would require: (1) More extensive disclosure for key issuer personnel, (2) disclosure of changes in issuer status with other federal agencies, (3) approval of changes in issuer ownership, and (4) approval of cross-default agreements for affiliated issuers.

GNMA would require more extensive disclosures for all Board members and authorized signatories of issuers. GNMA would require resumes and disclosure of prior criminal convictions, fines and other disciplinary actions for all of these individuals. Currently, GNMA requires resumes for only some of these individuals, and does not require disclosure of prior disciplinary actions. The expanded disclosures are intended to prevent individuals with questionable backgrounds from participating in the MBS Program. The disclosures would be required when an application for new issuer approval is submitted, and when any new Resolution by the Board of Directors and Certificate of Authorized Signatures is submitted.

The second integrity item deals with the status that issuers maintain with other federally-related mortgage agencies and regulatory agencies. Issuers would be required to disclose terminations, defaults, fines, and material non-compliance with program requirements of FHA, VA, FmHA, FNMA, and Federal Home Loan Mortgage Corporation (FHLMC) within 5 business days of their occurrence. In addition, issuers would be required to disclose similar actions with regard to their respective regulators, including the Office of Thrift Supervision, Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, Federal Reserve, and National Credit Union Administration within 5 business days of their occurrence. These disclosures would aid GNMA in determining compliance with the ongoing FHA and FNMA/FHLMC approval requirements, and would allow GNMA to increase its monitoring efforts where these and other disclosures warrant further action.

The third integrity requirement concerns changes in issuer control. For mergers where the surviving entity is not the GNMA-approved issuer, the issuer would be required to apply formally for approval as a new issuer. For other issuer control changes, including but not limited to stock purchases and acquisitions, the issuer would be required to demonstrate that it continues to meet all eligibility requirements. A change in issuer control would occur whenever a new party obtains 'significant influence' over an issuer, as defined by Generally Accepted Accounting Principles (GAAP).

The final integrity proposal addresses related issuers. GNMA would require cross default agreements for all issuers with one or more related GNMA issuers. Under the cross default agreement, if any of the related issuers was in default, all related issuers would be in default. The cross default agreements are necessary to prevent a parent company from concentrating poorly performing pools in one issuer and allowing that issuer to default, while continuing to do business through other related non-defaulting issuers. This final integrity requirement is a current GNMA policy; however, GNMA considers this policy

so important that GNMA is proposing to make this a regulatory requirement.

D. FNMA Approval

GNMA is also proposing to amend the regulations to accept FHLMC approval or FNMA approval for program entry. Currently, FNMA approval is acceptable for program entry, but FHLMC approval is not acceptable. This proposed rule change would open the mortgage-backed securities program to the growing number of FHLMC lenders, while providing GNMA with an equivalent level of risk aversion. Loss of either FNMA approval or FHLMC approval would be grounds for default.

E. Other Changes

As a final change, this proposed rule would revise GNMA's fiscal year and address, and remove the requirement that GNMA issuers both issue and service pools.

III. Other Matters

A. Regulatory Impact—Executive Order 12866

This proposed rule was approved as submitted by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.B.

C. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule only has an economic impact on one percent of the approximate 800 issuers currently participating in the program.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the proposed rule is directed to issuers of GNMA securities, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the proposed rule is not subject to review under the order.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This proposed rule was listed as sequence number 1607 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56442) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

G. Collection of Information

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Those sections of the proposed rule determined by the Department to contain collection of information requirements are §§ 390.10 and 390.12 of 24 CFR part 390.

GNMA—ISSUER ELIGIBILITY AND INTEGRITY REFORMS, FR–2908

Description	Number of respondents	Hours per response	Total hours	Total annual cost
Cross default agreement	20	1	20	$500
Personnel disclosure	90	1	90	2,250
Classified balance sheet	750	8	6,000	150,000
Changes in issuer control	40	1	40	1,000
Changes in issuer status	40	1	40	1,000
Total hours and costs	.....	.....	6,190	154,750

*Responses per respondent=1.
*Wage rate=$25/hour.

List of Subjects

24 CFR Part 300

Lawyers, Organization and functions (Government agencies).

24 CFR Part 310

Organization and functions (Government agencies).

24 CFR Part 390

Mortgages, Securities.

Accordingly, 24 CFR parts 300, 310 and 390 would be amended as follows:

PART 300—GENERAL

1. The authority citation for 24 CFR part 300 would be revised to read as follows:

Authority: 12 U.S.C. 1723a; 42 U.S.C. 3535(d).

2. Section 300.9 would be amended by revising the first sentence of the introductory paragraph to read as follows:

§ 300.9 Offices.

The Association directs its operations from its office located at 451 Seventh

Street SW., room 6100, Washington, DC 20410–9000. * * *

* * * * *

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

3. The authority citation for 24 CFR part 310 would be revised to read as follows:

Authority: 12 U.S.C. 1723.

4. The Appendix to § 310.1 would be amended by revising Article 1—General Provisions, Sec. 1.05, to read as follows:

§ 310.1 Bylaws of the Association.

* * * * *

Appendix

ARTICLE 1—

GENERAL PROVISIONS

* * * * *

Sec. 1.05. *Fiscal Year.* The fiscal year of the Association shall end on the thirtieth day of September of each year.

* * * * *

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

5. The authority citation for 24 CFR part 390 would be revised to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); 42 U.S.C. 3535(d).

6. Section 390.3 would be amended by revising the introductory text of paragraph (a) and paragraphs (a) (2) and (3), (c) and (d) to read as follows:

§ 390.3 Eligible issuers of securities.

(a) A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue or service mortgage-backed securities guaranteed by GNMA must—

* * * * *

(2) In the case of single family issuers, be in good standing as a mortgage seller or servicer approved by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC). Loss of either FNMA approval or FHLMC approval may cause the issuer to become ineligible to issue and service mortgage-backed securities guaranteed by the Association and constitute a default under the applicable contractual agreement;

(3) Have adequate experience, management capability, and facilities to issue or service mortgage-backed securities, as determined by the Association;

* * * * *

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to the Association of not less than the applicable minimum amount. The applicable minimum amount is the sum of the applicable adjusted base net worth requirement and the applicable incremental net worth requirement.

(1) The applicable adjusted base net worth requirement shall equal the unadjusted base requirement, indexed yearly for inflation. The applicable adjusted base net worth requirement is calculated as follows:

(i) The unadjusted base requirement shall equal:

(A) $250,000 for issuers of modified pass-through securities based on and backed by mortgages on one-to-four family residences;

(B) $500,000 for issuers of modified pass-through securities based on and backed by mortgages on manufactured homes;

(C) $500,000 for issuers of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and permanent mortgages); or

(D) $500,000 for issuers of more than one type of security.

(ii) Index means the Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average, All Items, Unadjusted for Seasonal Variation, 1982–84=100 Base Period.

(iii) The reference period shall be December 1992.

(iv) The adjusted base net worth requirement shall equal the index for the most recent December period, divided by the index for the reference period, multiplied by the unadjusted base requirement, and rounded up to the next thousandth. If this calculation yields an amount that is less than the previous adjusted base net worth requirement, the adjusted base net worth requirement shall remain unchanged.

(v) The adjusted base net worth requirement shall be recalculated on an annual basis, on the first day of April each year.

(2) The applicable incremental net worth requirement shall equal 0.2% of all securities outstanding.

(d) In computing the required amount of net worth for purposes of this section, the term "securities outstanding" means the sum of:

(1) The unpaid principal balances of securities currently in the name of the issuer; plus

(2) The amount of any outstanding commitments for guaranty issued by the Association, excluding the amount of project security commitments outstanding in cases where a construction security or a commitment for guaranty of a construction security is outstanding for the same project; plus

(3) The amount of any commitments to guarantee currently being requested from the Association, excluding the amount of project security commitments requested in cases where construction security commitments are being requested for the same project.

* * * * *

7. Section 390.10 would be added to read as follows:

§ 390.10 Financial reporting.

All approved issuers of pass-through securities shall submit to the Association an audited annual financial statement within 90 days of the issuer's fiscal year end. All financial statements with a fiscal year end date on or after [one year after the effective date of this rule] shall include a classified balance sheet, prepared in accordance with the standards for financial audits of the U.S. General Accounting Office's (GAO) Government Auditing Standards, issued by the Comptroller General of the United States. The balance sheet shall show the division of total assets into current, noncurrent and fixed assets and the division of total liabilities into current and long-term liabilities.

8. Section 390.12 would be added to read as follows:

§ 390.12 Integrity.

(a) An issuer shall disclose the background of all individuals serving on its Board of Directors and all individuals acting as authorized signatories. The disclosures shall include any prior convictions, fines or other adverse actions against these individuals by a Federal or state agency, or a government-related entity where the action is related to the responsibilities that are commensurate with those of banking, lending, securities or servicing. The term government-related entity includes, but is not limited to, the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.

(b) An issuer shall provide disclosures of material changes in its status with other federally-related mortgage agencies and regulatory agencies, including the Federal Housing Administration, Department of Veterans Affairs, Farmers Home Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, Federal Reserve, and National Credit Union Administration within 5 business days of their

occurrence. The disclosures shall include voluntary and non-voluntary terminations, defaults, fines, and material non-compliance with agency rules and policies.

(c) An approved issuer shall notify the Association of any change in issuer control within 30 days of the change. A change in issuer control occurs whenever a new party obtains significant influence over the issuer, as defined by GAAP. In a merger where the surviving party is not the approved GNMA issuer and in a consolidation, an issuer must apply formally for approval as a new GNMA issuer. In other business combinations which result in a change in issuer control, the issuer shall demonstrate to the Association that it continues to meet issuer eligibility requirements for participation in the GNMA program.

(d) Related GNMA issuers, as defined by GAAP, shall execute a cross-default agreement, in a form prescribed by GNMA, that provides for the default of all related issuers in the event of a default by any one of the related issuers.

Dated: November 29, 1993.

Dwight P. Robinson,

President, GNMA.

[FR Doc. 93–30059 Filed 12–8–93; 8:45 am]

BILLING CODE 4210–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 218]

Filing of Tariff Adoption Publications

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to establish a specific deadline for the filing of adoption publications, in order to remove any possible ambiguity with regard to the existing rule, which requires that such publications be filed "promptly".

DATES: Comments are due on January 10, 1994.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 218 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The existing provisions of paragraphs (a) and (b) of § 1312.20 of the Commission's regulations [49 CFR 1312.20 (a) and (b)] describe the circumstances under which tariff "adoption" publications must be filed with the Commission. The provisions of § 1312.20(h) [49 CFR 1312.20(h)] prescribe both the effective date of such publications and the time frame in which they must be filed with the Commission. The effective date of adoption publications is the date the transaction (change of name, etc.) actually occurs, *i.e.*, the date the transaction is legally consummated. The regulations specify that adoption publications should be filed prior to consummation, if possible. If for some reason filing cannot be accomplished prior to consummation, they should be filed as soon as possible thereafter, *i.e.*, "promptly". The proposed regulation would replace "promptly" with the more specific requirement that adoption publications be filed no later than 60 days after consummation of the transaction.

Timely filing of adoption publications is important. Absent a new carrier's filing of its own tariffs or adoption of the former carrier's tariffs, any operations conducted by the new carrier violate 49 U.S.C. 10761(a), which prohibits service by a carrier unless "the rate for transportation or service is contained in a tariff that is in effect * * *." Thus, the failure to timely file either new tariffs or adoption publications can result in a violation of the statute. Additionally, users and potential users of transportation services have no way of determining from the tariff system the rates for the new carrier's services unless adoption publications or new tariffs have been filed.

Some carriers fail to comply with the adoption notice filing requirements. In one instance, a carrier attempted to file an adoption publication some 59 months after the adoption was consummated.[1]

To emphasize the need for the timely filing of adoption publications, we propose to establish a maximum period of 60 days after consummation as the filing deadline. Adoption publications would not be accepted more than 60 days after consummation of the event giving rise to their filing, unless special tariff authority permitting a later filing is obtained. See 49 CFR 1312.2. Absent a clearly demonstrated need for a later filing (for example, to legalize the continuing operations of a carrier), the Commission does not anticipate granting such requests.

The proposed 60-day deadline is intended only as the maximum allowable time; it should not be viewed as an opportunity to delay filings beyond the consummation date. As stated in the regulations, adoption publications should be filed prior to the consummation date whenever possible.

We are also proposing to revise the language of the regulation to make it more readable.

Environmental and Energy Considerations

We primarily conclude that the proposed rule revision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our proposed action will not have a significant economic impact on a substantial number of small entities. This action will merely clarify the timing of a one-time filing requirement already required by the Commission's regulations. Thus, no new substantive requirements would be imposed.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines.

Decided: November 18, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, the Commission proposes to amend chapter X of title 49 of the Code of Federal Regulations, part 1312, as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. In § 1312.20, paragraph (h)(1) is revised to read as follows:

[1] The Commission rejected this publication in No. 40942, *Appeal of Rejection of Adoption Publications—BGR Transportation Co., Inc.* (not printed), served May 24, 1993, appeal pending sub. nom. *Jeff MacLeod, Trustee for BGR Transportation, Inc.* v. *Interstate Commerce Commission*, No. 93–1363 (D.C. Cir. filed May 28, 1993), in which the carrier already had ceased operations. In addition to the carrier's failure to file promptly as required, there was no prospective purpose to be served by the filing.

§ 1312.20 Transfer of operations—change in name and control.

* * * * *

(h) * * *

(1) The effective date of adoption publications is the date of consummation of the transaction for which such publications are required. Adoption publications shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter.

* * * * *

[FR Doc. 93–30107 Filed 12–8–93 8 45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 235
Thursday, December 9, 1993

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

East Fork Blacks Fork; Wasatch-Cache National Forest, Summit County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft and Final Supplement to the East Fork Blacks Fork Environmental Impact Statement previously prepared for East Fork Blacks Fork. The supplement will focus on specific issues involving roadless characteristics, effects on cultural and historic properties and a new road location.

The agency will accept written comments and suggestions concerning the scope of analysis. The agency urges that any comments be concise and specific to the focus of the supplement as described below. Comments directed to the substance rather than the scope of the proposed action would be more appropriately submitted during the comment period following the release of the Draft Supplement to the Environmental Impact Statement.

DATES: Comments on the scope of the analysis must be received by January 18, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Steve Ryberg, Evanston District Ranger, Wasatch-Cache National Forest, P.O. box 1880, Evanston, Wyoming 92931.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Steve Ryberg, District Ranger, Evanston Wyoming (307) 789–3194.

SUPPLEMENTARY INFORMATION: The Wasatch-Cache National Forest Supervisor released the Final Environmental Impact Statement for the East Fork Blacks Fork on August 1992. A decision was not made at that time. A public review and comment period on the Final Environmental Impact Statement was allowed. After reviewing public comments, a Record of Decision was signed on February 9, 1993 by Forest Supervisor Susan Giannettino. During March of 1993, 4 appeals were filed on the Record of Decision and East Fork Blacks Fork Final Environmental Impact Statement.

After reviewing the appeals, the Intermountain Regional Forester reversed the Forest Supervisor on four appeal points and affirmed the Forest Supervisor on all other appeal issues. The Regional Forester directed the Forest Supervisor to supplement the Environmental Impact Statement and issue a new Record of Decision prior to implementation. He directed the Forest Supervisor to supplement the following information:

1. The effects of any proposed action on historic properties or cultural resources in the area affected by the project.
2. The effects of the new road location.
3. The effects on all roadless characteristics. (2 appeal points)

The Draft Supplement is expected to be filed with the Environmental Protection Agency and be available for public review in February, 1994. At that time the Environmental Protection Agency will publish a notice of availability of the Draft Supplement in the **Federal Register.**

The comment period on the Draft Supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested participate at that time. To be most helpful, comments on the Draft Supplement should be as specific as possible and address the adequacy of the supplement.

Comments on the Draft Supplement will be analyzed and considered by the Forest Service in preparing the Final Supplement, which is scheduled to be completed in April 1994. The Forest Service is required to respond to the comments received (40 CFR 1503.4). The decision and reasons supporting it will be documented in a new Record of Decision.

Susan Giannettino, Forest Supervisor of the Wasatch-Cache National Forest, Salt Lake City, Utah is the responsible official for this action.

Dated: December 1, 1993.

Susan Giannettino,

Forest Supervisor.

[FR Doc. 93–30071 Filed 12–8–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Capital Construction Fund Deposit/Withdrawal Report.

Agency Form Number: NOAA 34–82.

OMB Approval Number: 0648–0041.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,650 hours.

Number of Respondents: 4,000 (some respondents submit more than one form).

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Capital Construction Fund program enables fishermen to construct, reconstruct, or acquire fishing vessels with before–tax, rather than after–tax dollars. Fishermen holding Capital Construction Fund Agreements are required to submit annual information on their deposits and withdrawals from their accounts. The information is used to check compliance with NOAA and IRS requirements.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the above

information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 3, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–30134 Filed 12–8–93; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–588–604; A–588–054]

Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On September 30, 1993, the Department of Commerce published the preliminary results of its 1990–91 and 1991–92 administrative reviews of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan, and the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan. The reviews of the finding (A–588–054) cover three manufacturers/exporters of the subject merchandise to the United States during the periods August 1, 1990 through September 30, 1991, and October 1, 1991 through September 30, 1992. The reviews of the order (A–588–604) cover four manufacturers/exporters for the periods October 1, 1990 through September 30, 1991, and October 1, 1991 through September 30, 1992.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen Shields (NSK), Valerie Turoscy (NTN), Chip Hayes (Koyo), or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1993, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1990–91 and 1991–92 administrative reviews of the antidumping finding (41 FR 34974, August 18, 1976) on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan, and the antidumping duty order (52 FR 37352, October 6, 1987) on tapered roller bearings and parts thereof, finished and unfinished, from Japan (58 FR 51058). The Department has now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Reviews

Imports covered by the A–588–054 reviews include tapered roller bearings (TRBs), four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 reviews include tapered roller bearings and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Toyo Bearing Co., Ltd. (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for A–588–054 are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover TRB sales by Koyo Seiko Company, Ltd. (Koyo), NSK Ltd. (formerly Nippon Seiko, K.K.) (NSK), NTN, and Nachi-Fujikoshi Corporation (Nachi). Although Nachi claimed no shipments in the A–588–054 proceeding during the 1990–91 period of review (POR), we received information from the Customs Service indicating shipments of covered merchandise produced by Nachi. However, Nachi stated that it had no knowledge of any sales to the United States of covered merchandise during the POR, and that it could only speculate that the sales were made by unrelated purchasers of Nachi's products. Nachi asserted that it had no knowledge of sales which were destined for the United States, and there is nothing on the record to indicate otherwise. Nachi also claimed no shipments during the 1991–92 period in the A–588–054 proceeding. Nachi did not respond to the Department's questionnaires in the A–588–604 proceeding. Consequently, for the A–588–054 proceedings we have used Nachi's rate from the last period in which it had shipments, and for the A–588–604 proceedings we have used, as the best information available (BIA), the highest of the rates found for any firm in the less-than-fair-value (LTFV) investigation or prior administrative reviews.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the Timken Company (Timken), the petitioner in these proceedings, Koyo, NSK, and NTN, respondents, we held a hearing on November 16, 1993. We received case and rebuttal briefs from all interested parties except Nachi. We received written comments from Nachi

Comments are addressed in the following order:

1. Model Match, Difference-in-Merchandise Adjustments, and Set Splitting
2. Packing and Movement Expenses
3. Adjustments to FMV
4. Adjustments to USP
5. COP
6. Cost Test Methodology
7. Further Manufacturing
8. Miscellaneous Issues Regarding Level of Trade, U S. Sample Sales, Consumption Tax, Assessment and Duty Deposit Rates, Scope, Deduction of Profit from ESP, and Sales Outside the Ordinary Course of Trade
9. Clerical Errors and Programming Errors

Comments Regarding Model Match, Difference-in-Merchandise Adjustments, and Set Splitting

Comment 1: NSK, Koyo, and NTN argue that the Department has been

required by the Court of International Trade (the CIT) in decisions regarding earlier administrative reviews of A–588–604 to include in its model-match methodology a ten-percent cap on deviations in each physical characteristic (*Koyo Seiko Co., Ltd and Koyo Corporation of U.S.A.* v. *United States*, No. 91–09–00704, Slip. Op. 93–185 (*Koyo*)). Respondents submit that the cap ensures that home market sales selected for comparison satisfy the statutory requirements to use similar merchandise, and that failure to apply the cap leads to distorted results.

Timken contends that the methodology employed by the Department implements the statutory intent that the comparison merchandise be like the merchandise sold in the United States and commercially comparable. Timken argues that the statute does not impose a requirement that home market models be technically substitutable, and the Department should therefore decline to modify its methodology until a final judicial decision is made on the issue.

Department's Position We are satisfied that use of the sum of the deviations methodology, without the 10 percent cap but including the 20 percent difference-in-merchandise (difmer) test, accurately determines the most similar model sold in the home market. We have used the sum of the deviations methodology for model-match comparisons in all of the final results of review concerning tapered roller bearings from Japan, four inches or less in outside diameter, and certain components thereof (A–588–054) (the 1976 finding) (see 55 FR 22369, June 1, 1990 (1974–1980 review), 55 FR 38720 September 20, 1990 (1986–87 review), 56 FR 38721, June 3, 1991 (1987–88 review), 56 FR 65228, December 16, 1991 (1988–89 review), and 57 FR 4975 February 11, 1992 (1989–90 review)). In addition, this method has been upheld by the CIT in *Timken* v. *United States*, Slip. Op. 84–63 (7 CIT 319) (June 5, 1984) (*Timken*), *Timken* v. *United States*, 630 F. Supp 1327 (CIT 1986) (*Timken I*), and *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987) (*Timken II*), and used for the final results of review of the 1987 order on tapered roller bearings, finished and unfinished, and parts thereof (see 56 FR 41508, August 21, 1991 (1987–88 review), 57 FR 4952, February 11, 1992 (1988–89 review) and 57 FR 4962, February 11, 1992 (1989–90 review)).

Because we now use the sum of the deviations model-match methodology rather than the single greatest deviation methodology we used in conjunction with the 10 percent deviation cap in the LTFV investigation for A–588–604, application of a 10 percent deviation cap to each physical matching criterion would mean that the best overall match could be eliminated simply because a single physical criterion deviated by more than 10 percent. Since under the sum of the deviations methodology all 5 matching criteria were intended to be given equal weight, the application of a 10 percent cap to each physical criterion represents an unacceptable distortion of the model-match methodology.

Furthermore, if the Department were to apply both the 10 percent cap and the 20 percent difmer test, the methodology would become too restrictive, since in some cases the only matches passing the 20 percent difmer test may vary by more than 10 percent in one or more physical criteria. The imposition of both tests will eliminate matches of essentially comparable merchandise. Thus, this methodology would result not in more precise matches but in fewer matches to such or similar merchandise, and more frequent comparison to constructed value (CV). Finally, because the remand in Koyo is not yet final, the Department is not yet able to appeal this issue.

Therefore, for these reasons and the reasons explained in the notices listed above, we have not changed our methodology for these reviews.

Comment 2 NSK claims that in identifying similar merchandise, the Department should identify merchandise with similar physical characteristics before using the 20 percent difmer test to determine whether merchandise is of equal commercial value. NSK argues that this sequence is necessary because section 771(16) of the Tariff Act sets forth a hierarchy of standards for product comparison, which the Department should apply in sequential order. Furthermore, NSK asserts that this is a major change in the Department's methodology for these proceedings and NSK objects to the Department's change without allowing all parties an opportunity to comment.

Timken argues that NSK misinterprets the statute, and that the hierarchical order applies to paragraphs (A), (B), and (C) of section 771(16) of the Tariff Act, not to subparagraphs (i) and (ii) of paragraph (B), as NSK argues in its brief. Timken notes that the subparagraphs are connected by "and", indicating that all criteria must be met for merchandise to be considered similar Furthermore, all respondents should have the same model-match methodology, and no other respondent has suggested this approach.

Department's Position We agree with Timken. The hierarchical order established is among paragraphs A, B and C, while all three subparagraphs of paragraph B must be satisfied. Therefore, the order in which we test for commercial comparability is irrelevant, since we never match sales if they are not commercially comparable. Furthermore, this is not a change in our methodology as NSK asserts, since it is the same as that used in the 1989–90 administrative reviews of both the A–588–054 and A–588–604 cases.

Comment 3 NTN argues that, the Department should not compare bearings of different design types, and especially that the Department should not compare TRBs of different precision ratings. NTN contends that the physical nature of high precision (HP) TRBs is much different than that of normal precision TRBs, HP TRBs are sold at much higher prices than normal precision TRBs, and HP and normal precision bearings are never used interchangeably. Therefore, NTN asserts that the Department's comparison of HP and normal precision TRBs is contrary to law. NTN refers to the original antifriction bearings (AFBs) investigation and all subsequent reviews of AFBs where the Department did not compare bearings of different precision ratings.

Timken contends that the Department's 20-percent difmer cap, model-match performance criteria (dynamic load rating and Y factor), and practice of comparing only those models with the same number of rows all serve to prevent such comparisons. Timken contends that, because the number of rows has a direct correlation to NTN's bearing design groupings, the Department's policy of only comparing bearings with the same number of rows addresses NTN's concerns regarding bearing design. Timken further notes that NTN has provided no evidence on the record to demonstrate why these factors should be added, nor has respondent provided any examples of unfair comparisons.

Department's Position. We agree with Timken. NTN's exhibit A–18 of their original questionnaire responses divides TRBs into at least 25 NTN specific bearing types. While other manufacturers also divide TRBs into design types, these design type categories are not consistent throughout the TRB industry. If we could not match across such categories, we would substantially limit the number of matches, thus working contrary to the statutory preference for price-to-price comparisons. If bearings are radically different, the sum of the deviations model-match methodology addresses the differences in physical criteria. In

addition, any significant differences in component materials would be reflected in both the dynamic load ratio and Y factor and addressed by the 20-percent cap on the differences in the variable cost of manufacturing. Furthermore, NTN has not provided evidence demonstrating that HP and normal precision bearings are being compared by the Department with distortive results (see Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan, (57 FR 4964, February 11, 1992)).

Comment 4: Koyo argues that the Department should not split sets because section 771b(a)(1) of the Tariff Act does not permit the fabrication of sales, in this case of cups and cones, in the home market. In addition, the Department's use of annual weighted-average foreign market values (FMVs) ensures sufficient regular sales of cups and cones in the home market to allow adequate matches to cups and cones sold in the United States. Koyo further argues that the Department, by splitting sets, unfairly assumes that the sum of the commercial values of a cup and cone, if sold separately, would equal the commercial value of the completed TRB set.

NTN also argues that the Department should not split sets because section 771b(a)(1) of the Tariff Act does not permit the creation of fictitious, "pretended" sales for the calculation of FMV. NTN contends that, because the set is not similar to the cup or cone sold in the United States, the sale of sets may not be used to create sales of similar cups and cones in the home market. NTN further argues that the Department incorrectly split sets that are "unsplittable." NTN claims that because specific types of TRB models contain cups and cones which are never sold individually in any market, the resulting split cups and cones cannot be fairly considered as candidates for matching as products similar to a cup and cone sold separately in the United States.

Timken argues that the Department's practice of splitting sets has been consistently approved by the CIT. Timken further argues that, because section 771(16) of the Tariff Act directs the Department to determine the most similar home market merchandise to that sold in the U.S. market, and because the model-match criteria and 20-percent difmer test ensure that bearings of similar characteristics and commercial value are compared, the Department should split NTN's "unsplittable" sets.

Department's Position: We agree with Timken. In its most recent decision on this matter the CIT, citing its previous decisions, again reaffirmed the Department's practice of set splitting (*NTN Bearing Corp* v. *United States*, October 22, 1993, Slip-Op 93–204 at 7–8). In *Timken II*, the CIT pointed out that these split sales are not "fictitious" sales, but that they are real sales made to real customers. The CIT upheld the Department's decision to split sales of sets because, otherwise, respondents could have forced the Department to use CV in its analysis by simply selling sets in one market and cups and cones in the other: "the Court declines to read section 1677b(a)(1) to permit such control by foreign manufacturers of the manner in which foreign market value is determined" (*Timken*, at 495, 504–505). In addition, the CIT has also stated in *NTN Bearing Corp. of America* v. *United States*, 14 CIT 623, 747 F. Supp. 726 (1990) (*NTN*), that, if NTN's interpretation of the statute were followed, "such interpretation would encourage importers to circumvent the antidumping laws by simply using divergent invoicing methods" (*NTN*, at 726, 741). The Department remains faithful to this principle in the splitting of those sets which NTN regards as "unsplittable." Cups and cones split from NTN's "unsplittable" sets are potentially the most similar merchandise to the products NTN sold in the United States. Because they may be the most similar products, it is appropriate to include this merchandise in the pool of home market sales. When these split cups and cones are determined to be the most similar merchandise to the products sold in the United States, then we should use them in our dumping comparisons, as we did in the 1974–80 and 1986–90 reviews of the 1976 finding and in the 1987–90 reviews of the 1987 order (see cites in our response to Comment 1 of this section).

Comment 5: NSK claims that it included cup and cone model names on its home market sales tape, but that it inadvertently left them off the tape format sheet. The Department's programming language in the preliminary results designed to retrieve the model names from a previous submission is, therefore, unnecessary.

Department's Position: We recognize the error caused by NSK's incomplete format sheet. However, since the language in the preliminary results computer program achieves the same end results as reloading the tape using the proper format, we have retained that language for these final results.

Comment 6: Koyo argues that the Department should not compare TRBs produced by Koyo to TRBs sold by Koyo but produced by another manufacturer. Koyo submits that the statute requires the Department to compare merchandise that was "produced in the same country and by the same person" (section 771(16) (A), (B), and (C)).

Timken counters that this manufacturer is a related entity of Koyo and that Koyo exerts control over the specifications of products manufactured by this related entity. Timken also points out that the Department has previously treated related parties as one entity when calculating a dumping margin (see Antifriction Bearings Final Results of Antidumping Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39759 (July 26, 1993) (AFBs), and Certain Granite Products from Spain, 53 FR 24335 (1988)).

Department's Position: We agree with Timken. The record reflects the fact that Koyo owns a significant percentage of this related company and that Koyo and its related entity have common board members. Koyo influences which models the company will produce and when it produces them, and thus is able to coordinate product availability of subject merchandise in the Japanese market. Therefore, it is appropriate to consider Koyo and its related party as a single entity for purposes of these reviews, and hence the statutory requirement that like merchandise be produced by the "same person" is satisfied.

Comments Regarding Packing and Movement Expenses

Comment 1: Timken notes that Koyo allocated its air freight expenses across all U.S. sales, though Koyo stated that these expenses were incurred only on certain sales. Timken submits that the Department should subtract air freight expenses from ocean freight and U.S. inland freight, and allocate air freight only to a select number of the highest priced U.S. sales. Koyo counters that it combines the expenses for air and ocean freight because products are shipped either way, depending on how quickly the order is needed. Koyo states that it is purely random as to which merchandise is shipped by air, and notes that the Department has accepted its allocation methodology in the past.

Department's Position: We agree with Koyo, and have made no adjustments to Koyo's data in this regard.

Comment 2: Timken argues that the Department should not allow NTN's claimed adjustments for pre-sale inland freight on sales in both the home and

U.S. markets. Timken contends that the expense ratios for these expenses should be consistent between markets, whereas NTN's ratios vary between the two markets. Timken argues that, absent any explanation from NTN as to why this variation occurs, the Department should not allow this adjustment to either FMV or United States price (USP). NTN argues that pre-sale inland freight expense calculations do not have to be consistent between markets. NTN cites the Department's decision in AFBs where the Department not only acknowledged that freight expense does not have to be the same in each market, but that the adjustment applies even when the expense is not incurred in one of the markets.

Department's Position: We agree with NTN. Because sales in each market may be handled differently and, thus, NTN may incur different freight expenses, variations in these expenses between markets is reasonable and not an adequate basis upon which to reject NTN's claimed adjustment for home market and U.S. pre-sale inland freight expenses (see AFBs).

Adjustments to Foreign Market Value

Comment 1: NSK claims that the Department erred in deducting early payment discounts from home market price before comparing that price to the cost of production (COP). NSK asserts that, since it included discounts in its selling, general, and administrative expenses (SG&A) portion of the COP, such a deduction from home market price amounts to double counting. NSK suggests that in the final results the Department should not subtract discounts from home market price for purposes of comparison to COP.

Department's Position: We agree that the calculations in the preliminary results led to double-counting. Since in these reviews it is impossible to deduct discounts from COP on a transaction-specific basis, we have avoided double-counting by not subtracting discounts from home market price before comparing that price to COP.

Comment 2: NSK claims that the Department should either ignore *de minimis* errors or accept corrected data provided by NSK at verification. NSK submits that the majority of the errors were unfavorable to NSK. Timken, for its part, argued for the denial of specific adjustments based on errors the Department discovered at verification. The adjustments in question are as follows:

(1) Discounts, rebates and certain commissions. At verification the Department discovered that actual amounts for total sales to two distributors differed from the amounts used in worksheets for the response. Since the Department verified the corrected amounts and the discrepancies were "small", NSK argues that, although company officials were unable to explain the source of the error, the Department should either accept the corrected data or ignore the *de minimis* errors. Timken argues that the Department should conclude that sales amounts to all distributors are inaccurate, and deny all adjustments calculated on this basis.

(2) Commissions for delivery on behalf of NSK. NSK argues that since the Department verified the corrected commission amounts, and since most of the errors were unfavorable to NSK, the Department should either accept NSK's corrected information or make no adjustment to the data.

(3) Post-sale price adjustments. NSK failed to report certain adjustment amounts for home market post-sale price adjustments (PSPAs) shown in the sales ledgers. NSK claims that it did not report certain PSPAs which would have resulted in net negative prices. Since NSK eliminated these PSPAs from its submission in direct response to concerns expressed by the Department at previous verifications, NSK argues that the Department should accept the adjustments.

(4) Commissions for repurchase for urgent delivery. NSK objects to the Department's denial of this adjustment for commissions because NSK incurred the expense in question and because the Department verified the amount of commissions paid. Moreover, NSK asserts that the Department has accepted the method of allocation in previous reviews. Timken argues that the Department should disallow these adjustments because of improper allocation and also because these commissions were paid to related parties.

(5) Lump-sum price adjustments. Timken contends that the Department should not allow these adjustments unless NSK ties the expenses to in-scope merchandise. NSK submits that its allocation of the total lump-sum adjustments based on the proportion of in-scope merchandise to total merchandise purchased by that customer during the POR is an accurate reflection of the amount of the lump-sum adjustments attributable to in-scope merchandise.

Regarding all of the above adjustments, Timken argues that when sample information presented at verification is inaccurate, the Department must conclude that unverified information is also inaccurate. Timken states that verification is intended to establish the accuracy of the response, not to correct it to conform to the Department's requirements. Timken argues that the Department should not accept corrected information, since this would provide incentives for respondents to present inaccurate information that would either not be verified or would be corrected at verification. Furthermore, Timken submits that any adjustments denied in the 1991–92 reviews should also be denied in the 1990–91 reviews, since the two responses are virtually the same.

Department's Position: As for (1), NSK officials were unable to explain the source of the error, which affected a substantial percentage of its distributors. Therefore, we have disallowed all adjustments which were based on total sales to the distributors associated with the errors. As for (2), we disagree with NSK. The amounts of commissions paid to distributors in the home market were both understated and overstated, compromising the integrity of the response. Although NSK submitted corrected information, because NSK officials could not explain why the response was inaccurate, we have disallowed these claimed adjustments. As for (3), while we agree that firms do not have to report net negative prices, we disagree with the methodology employed by NSK to identify PSPAs that were greater than 100 percent of sales. NSK eliminated from its response PSPAs that resulted in a 100 percent increase in price as well as those that would have resulted in a net negative price. Therefore, we have disallowed these adjustments. As for (4), while we recognize that the expenses were in fact incurred, we do not accept NSK's allocation methodology. NSK allocated commission amounts over sales of the related distributors, who bore no expense in the consummation of the new sales, rather than over the sales to the ultimate customer. To associate the expenses with sales to the distributors is distortive, since NSK did not incur the expenses in connection with these sales. We therefore have disallowed these adjustments in these final results. As for (5), we verified NSK's methodology and supporting documents and are satisfied that the allocation is representative of the costs NSK incurred.

Finally, we do not wish to hold NSK responsible for the Department's delay in conducting the 1990–91 reviews. Furthermore, it is our general practice not to apply the results of verification of a period to preceding review periods. Therefore, we have not adjusted NSK's response for the 1990–91 reviews for

discrepancies found in verifying the 1991–92 reviews.

Comment 3: Timken claims that, according to the CIT, the Department cannot adjust for home market PSPAs based on a methodology that includes price adjustments for out-of-scope merchandise (*Torrington Co.* v. *United States*, 818 F. Supp. 1563, 1578 (CIT 1993) and *Federal-Mogul Corp.* v. *United States*, Slip Op. 93–194 at 21–22 (October 7, 1993)). Timken contends that since Koyo failed to demonstrate which of its home market billing adjustments, rebates, commissions, and warranty expenses were incurred for in-scope merchandise and which for out-of-scope merchandise, and because Koyo reported that it allocated its rebates, commissions, and warranty expenses across all bearings sold, the Department should deny Koyo's home market rebates, commissions, and billing adjustments and regard Koyo's warranty expenses as indirect rather than direct expenses. In addition, Timken points out that if the Department does accept Koyo's commissions in the analysis of the 1990–91 period, the Department should use the commission rates the Department recalculated in the verification report of the 1990–91 reviews.

Koyo argues that because the rebates and commissions it granted do not differ on the basis of merchandise sold, the commission and rebate amounts Koyo reported to the Department are reflective of sales of in-scope merchandise. Koyo further argues that the Department has always accepted its billing adjustment and warranty adjustment methodology and to reject it now would be both unreasonable and unfair. Koyo agrees with Timken's suggestion that the Department should use the recalculated rates from the verification report, even though two of the recalculations lead to the same results. Koyo objects to the Department's preliminary decision not to make any adjustment for Koyo's home market warranty expenses. Koyo submits that this is contrary to Department regulations and practice, and that the Department should deduct them as direct adjustments to price. Finally, Koyo points out that the Department verified all these claimed adjustments and found no discrepancies.

Department's Position: We accept claims for rebate, discount, and price adjustments if they were granted as a fixed and consistent percentage of sales on all transactions for which they were reported (see AFBs). We verified Koyo's rebates and commissions and, unlike its U.S. discounts and sales allowances, Koyo based them on a fixed percentage of sales of all bearings. We also verified Koyo's billing adjustments and warranty expenses and found them to be reasonably allocated and reflective of sales of in-scope merchandise. As a result, we have not changed our adjustments for Koyo's billing adjustments, commissions, or rebates, except that we have used the recalculated commission rates from our 1990–91 verification report in our analysis of 1990–91 sales. Because each segment of a proceeding is distinct with regard to proprietary information and any recalculations made, we have not used the revised calculations in our 1991–92 analysis. In addition, for both the 1990–91 and 1991–92 PORs we have included a deduction for Koyo's warranty expenses as indirect expenses in our calculation of FMV. They are not direct expenses since they were not allocated to in-scope merchandise or to specific transactions.

Comment 4: Timken disagrees with the Department's acceptance of Koyo's 1990–91 home market credit expenses because Koyo did not calculate such expenses using its experience on all of its sales during the POR.

Department's Position: We disagree with Timken. We verified Koyo's credit expenses and we are satisfied that the claimed account for the vast majority of its home market sales of covered merchandise during the POR.

Comment 5: Timken argues that the Department should reject Koyo's claimed adjustment for home market indirect selling expenses because Koyo presented no evidence to support that each listed expense tied to selling activities as opposed to general or administrative expenses not related to selling. Timken further contends that, at a minimum, the Department should reject Koyo's inclusion in its home market indirect selling expenses of an allowance for doubtful debts, as the Department did in Antifriction Bearings and Parts Thereof from France, *et al.* (57 FR 28360, 28412, June 24, 1992).

Department's Position: We disagree with Timken. Not only has Koyo provided, on the record, a detailed explanation as to how each of its listed home market indirect selling expenses is tied to selling activities, but we verified Koyo's indirect selling expenses and doubtful debt expenses and found no evidence to support the rejection of Koyo's adjustment for home market indirect selling expenses or the inclusion of doubtful debt expenses in its claimed adjustment for indirect selling expenses.

Comment 6: Timken argues that, because NTN's customer-specific discount adjustment is not sufficiently specific to warrant an adjustment to home market price, the Department should reject NTN's home market discounts, or, at a minimum, should reclassify these discounts as indirect selling expenses.

NTN argues that the Department accepted customer-specific post-sale discounts in the last TRB review. NTN contends that because the Department accepts reporting of credit expenses, which are direct selling expenses, on a customer-specific basis, then so too should customer-specificity be sufficient for the purpose of post-sale discounts.

Department's Position: In past TRB reviews, and most recently in the current 1991–92 review, we verified NTN's discount reporting methodology and, for reasons discussed in the proprietary version of the 1991–92 home market verification report, we found it to be both reasonable and non-distortive. As a result, we have not changed our calculations for these final results.

Comment 7: Timken argues that the Department should not accept respondents' allocation of U.S. sales expenses on a transfer-price basis. Timken is concerned that a respondent may manipulate its transfer price by reducing prices for certain part numbers while increasing them for others, which could distort subsequent allocations of expenses. Timken lists examples from the preliminary results which suggest NTN's and NSK's transfer prices are suspect. Timken contends that the Department should require U.S. adjustment allocations based on a per-unit or cost-of-goods-sold (COGS) basis, and that the Department should reallocate all of NTN's adjustments to USP, except for credit, and all of NSK's adjustments that are based on transfer price on a per-unit or COGS basis. Timken argues further that if the Department were to accept NTN's U.S. adjustment allocations based on transfer price, the Department should still recalculate these adjustments due to an error in NTN's calculations which understated these adjustment amounts by approximately 30 percent.

NTN argues that it first calculated the total amount of expenses it incurred on U.S. sales. In order to associate U.S. expenses with its U.S. sales, NTN calculated an expense ratio using the total expense amount as the numerator and the total CIF value as the denominator. NTN applied the resulting ratio to individual CIF values in order to identify expenses for each U.S. sale. Furthermore, NTN argues that if CIF prices decrease, the expense ratios

increase proportionally because the numerator does not change, and, as a result, the absolute amount of total expenses remains the same. NTN also argues that Timken has failed to understand how its expense ratios were calculated. NTN contends that the Department should accept its U.S. expense allocation methodology as it has in all past TRB reviews.

NSK argues that potential significant penalties prescribed by the U.S. federal tax and Customs laws prevent NSK from manipulating transfer prices in any way and that the permissible range of transfer prices is so narrowed by these other regulatory systems that there is no meaningful impact on antidumping results. In addition, NSK argues that Timken's examples of transfer prices as possibly below the cost of production do not constitute evidence of manipulated transfer prices. Rather, the examples show the result of factors such as the period of time between production and dates of sale and the variations in the exchange rate. Koyo argues that it makes sense for it to use transfer prices to allocate freight-in movement charges because in exporter's sales price (ESP) transactions the transfer price is the price of the merchandise as it is shipped from Koyo Seiko to American Koyo Corporation.

Department's Position: We disagree with Timken. We verified NTN's, NSK's, and Koyo's transfer prices and U.S. expense allocation methodology and, despite Timken's allegation that NTN understated its adjustments, we found no evidence that any respondent misstated its transfer prices or that any respondent's expense allocation methodologies are inaccurate.

Comment 8: Timken argues that the Department should reject NTN's allocation of various home market and U.S. indirect selling expenses based on levels of trade as it did in AFBs. Timken contends that, because NTN's allocation methodology is flawed and produces anomalous results, and because NTN apportioned expenses based on number of invoices and levels of trade, a methodology rejected by the Department in other cases, the Department should re-allocate NTN's various home market and U.S. indirect selling expenses on the basis of sales value without regard to alleged differences in levels of trade. Timken refers to previous Department decisions to support its argument.

Department's Position: We disagree with Timken. We verified NTN's allocation methodology in the past and most recently for the 1991–92 review, and we are satisfied that NTN's allocations of various home market and U.S. indirect selling expenses are non-distortive and accurate. Furthermore, in our verification of NTN's 1991–92 data we specifically asked NTN to conduct a test comparing the results of its allocation based on number of invoices to the results of allocation based on sales value and we found only a negligible difference (see proprietary version of the 1991–92 home market verification report, p. 30). As a result, we have accepted NTN's allocation methodology for these final results.

Adjustments to U.S. Price

Comment 1: Timken submits that since Koyo's U.S. discounts and sales allowances were allocated on a customer-specific basis rather than a transaction-specific basis, the Department should apply BIA to these expenses, as it did in AFBs. Timken argues further that the Department should reject Koyo's upward adjustments to USP for net credit balances in the customer's account for the same reason. Koyo submits that BIA in this instance is unwarranted, as it was in AFBs, since the Department did not supply Koyo with any notice that the methodology it had used in previous TRB reviews was no longer satisfactory.

Department's Position: We agree with Timken. In these reviews of TRBs, the Department stated clearly in its questionnaire that discounts must be reported on a transaction-specific basis. As a general matter, the Department only accepts claims for discounts, rebates, and price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Thus, discounts, rebates, or price adjustments based on allocations are not allowable. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Since Koyo's U.S. discounts and sales allowances were not reported on a transaction-specific basis, we assigned, as BIA, the highest percentage discount or sales allowance reported for any U.S. sale to all sales that received a discount or sales allowance.

Comment 2: Timken argues that the Department should reclassify Koyo's U.S. advertising expenses, treated as indirect selling expenses in the preliminary results, as direct selling expenses. Timken asserts that Koyo bears the burden of proving that these expenses are indirect, and that it failed to do so. Koyo counters that it met its burden of proving that its advertising expenses are indirect because its advertisements are general, and not product-specific.

Department's Position: We verified Koyo's advertising expenses and are satisfied that they are general in nature; therefore, we have treated them as indirect selling expenses in these final results.

Comment 3: Timken asserts that the Department should add back certain expenses that Koyo subtracted from its U.S. indirect expenses. Timken claims that Koyo did not justify these subtractions. Koyo counters that it subtracted antidumping legal expenses from U.S. indirect expenses because the CIT has ruled that they are not to be deducted from USP, and notes that the Department verified its calculation of U.S. indirect selling expenses.

Department's position: We verified Koyo's U.S. indirect selling expenses, and are satisfied that Koyo properly subtracted the amounts in question from total indirect selling expenses. This is consistent with Department practice with regard to these kinds of expenses.

Comment 4: Timken argues that NTN's export selling expenses methodology, which is based on the ratio of salaries of the U.S. staff to salaries of overseas section staff, is incorrect and should be more properly allocated based on the ratio of U.S. sales to total export sales. NTN contends that its method of allocation is reasonable because its export selling expenses are comprised of fixed expenses such as salaries and administrative expenses that have no correlation to the size or identity of individual sales.

Department's Position: We agree with NTN. We verified NTN's export selling expenses in the past and most recently for the 1991–92 review, and we found NTN's export selling expense methodology to be both accurate and reasonable (see the proprietary version of the 1991–92 home market verification report). We have not changed our calculation for these final results.

Comment 5: Timken contends that NTN's calculation of time in inventory prior to export for U.S. sales is unsupported by evidence on the record. Timken argues that the Department should apply, as BIA, the home market sales inventory period to NTN's U.S. sales.

Department's Position: For the 1990–91 review we have no evidence to support the conjecture that NTN's estimate of the time in inventory for U.S. sales is inaccurate, and, as a result, we have used NTN's estimate for the 1990–91 review. However, while verifying NTN's estimate in our verification of its 1991–92 information, we found that, in selected traces used

for verification purposes, the number of days varied from NTN's reported estimate. As a result, we have recalculated NTN's U.S. inventory carrying costs for the 1991–92 review using information we obtained at verification.

Comment 6: Timken argues that NTN's public description of its U.S. technical services indicates that some are related to particular sales and should be categorized as direct expenses. Timken contends that, since NTN failed to segregate these expenses into direct and indirect expense categories, the Department should re-classify NTN's technical service expenses as direct expenses and should adjust indirect selling expenses accordingly. NTN argues that the expenses related to technical services consist of fixed salaries; as such, they have no relation to particular sales, even though at any given moment an employee may be providing service to a particular customer or dealing with a particular product.

Department's Position: We agree with NTN. We have no reason to believe that NTN has incorrectly categorized its technical services and Timken has not provided sufficient evidence to warrant changing our calculations for these final results. Furthermore, in our verification of the response for 1990–91, we found that NTN's technical services expenses could not be tied to any particular sale or sales and were thus correctly categorized as indirect expenses.

Comment 7: Timken argues that, absent explanation and support in the record, the Department should not allow the interest, antidumping, and warehousing expense adjustments which NTN claimed as U.S. indirect selling expenses. NTN counters that not only is the Department well aware of the nature of these expenses, but the Department has verified these expenses twice, and has accepted them in all previous TRB reviews. NTN notes that it explained these expense adjustments in detail in Exhibit B–8 of its questionnaire responses.

Department's Position: We agree with NTN. We verified these expense adjustments in the past and most recently for the 1991–92 review, and, absent sufficient evidence from Timken that NTN's claimed adjustments are unreasonable, we have no reason to reject them for these final results.

Comment 8: NSK objects to the Department's classification of its U.S. rebates, discounts, and "other expenses" as price adjustments rather than U.S. direct expenses. NSK also argues that U.S. direct expenses should be added to FMV instead of subtracted from USP, in accordance with a recent court decision (see *NSK Ltd.* v. *United States*, No. 92–03–00158, Slip. Op. 93–178 (September 10, 1993)). NSK maintains that this change will affect both deposit and assessment rates.

Timken, however, asserts that NSK's discounts and rebates should properly be considered price adjustments. Timken notes that NSK referred to rebates in its response as "post-sale price adjustments". Timken argues further that the issue will be moot with respect to the assessment rate the Department calculates for NSK, if, as Timken urges, the Department calculates this rate using NSK's entered value during each POR rather than using the total value of U.S. sales, as NSK suggests.

Department's Position: We agree with Timken. Although NSK characterized rebates and discounts as expenses, they are in fact adjustments to revenue. Early payment discounts reflect the decrease in projected revenue due to early payments, and rebates reflect price fluctuations. As such, we have treated these items neither as direct nor as indirect expenses, but have subtracted them from USP as price adjustments.

Since the issue of deducting U.S. direct selling expenses from USP or adding them to FMV is currently on appeal before the Court of Appeals for the Federal Circuit (CAFC), we have maintained our longstanding practice on this issue, and subtracted them from USP for these final results.

Furthermore, the issue is moot with respect to assessment rates, which we have calculated as a percentage of entered value in accordance with our current methodology.

Comment 9: Timken claims that NSK erred in excluding salaries of Japanese workers in the United States from its U.S. general and administrative expenses, and that the Department should include them for the final results. NSK counters that it has accounted for these expenses in NSK Ltd.'s general and administrative expenses, and not in the expenses of NSK Corp., the U.S. subsidiary, since NSK Ltd. pays these salaries.

Department's Position: We verified that NSK included labor expenses for Japanese workers in the United States in NSK Ltd.'s export expenses. We found no discrepancy in the manner in which NSK accounted for these salaries.

Comment 10: Timken objects to NSK's and Koyo's allocations of technical service expenses to sales of all products, claiming that the technical services are not likely to relate to aftermarket (AM) customers. Timken asserts that expenses should, therefore, be allocated only to sales to original equipment manufacturers (OEMs).

NSK contends that the Department verified that NSK had allocated the expenses over all sales except precision products, and that there is no evidence to support the claim that these services do not benefit AM customers. Koyo asserts that these services are in fact provided to both OEM and AM customers, and notes that the Department verified its allocation of these expenses.

Department's Position: We verified NSK's and Koyo's technical service expenses and are satisfied that their allocations are appropriate because these services are available to both OEM and AM customers.

Cost of Production

Comment 1: NSK objects to the Department's adjustment of the COP and CV data for the 1991–92 reviews in the preliminary results. NSK claims that the fact that it maintains a separate standard cost system in addition to the system used in the response is totally irrelevant to the Department's review. NSK notes that the existence of NSK's standard cost system was disclosed in the Ministry of Finance (MOF) reports presented at verification. NSK explained in its September 17, 1993 submission that the standard cost system is not used to calculate either inventory cost or COP, but only to evaluate internal efficiencies and productivity.

NSK argues that the Department verified that NSK correctly reported its actual COPs for subject merchandise using its actual cost accounting system which ties to the company's MOF report. NSK asserts that, for the preliminary results, the Department incorrectly based COP and CV on NSK's budgeted cost plus variance system, rather than on NSK's actual costs. NSK argues that the Department's inability to fully understand the cost accounting system does not mean that NSK's reported actual costs fail to capture all production costs. NSK maintains that, to the contrary, the evidence collected by the Department clearly establishes that NSK's reported costs are accurate.

NSK argues that the Department found one discrepancy in NSK's per-unit allocation of materials, the existence of an apparent mystery account. NSK asserts that it explained in its September 17, 1993 submission that this "mystery account" is no mystery at all. Rather, NSK believes that this account was repeatedly defined during verification, and was linked to the burden ratio NSK used to capture actual material costs, and the Department tied

the calculation of this burden ratio to NSK's MOF report.

NSK notes that if the Department decides to use NSK's standard cost system to modify NSK's reported costs, the Department should not use the methodology it chose for the preliminary results for two reasons. First, NSK claims that the variance the Department applied is an aggregate variance, which covers all products NSK produced. Second, NSK asserts that the Department should have used the variance NSK carried forward from prior years, rather than the variance from the fiscal year which ended March 31, 1992.

Timken contends that NSK's cost response was so deficient as to warrant the use of BIA in calculating a margin. Timken points out that the cost questionnaire states, "describe the cost accounting system used by your company for the bearings under review. If you have more than one accounting system, do this for each factory, as necessary." Timken argues that NSK's revelation on the last day of verification that it had two accounting systems was inconsistent with all previous explanations the company had provided. Timken notes that, contrary to NSK's questionnaire response that it calculated its reported costs using the same method it used to prepare its financial statements, the Department found that NSK used the second, previously undisclosed system for accounting and financial reporting purposes. Thus, Timken's view is that, contrary to NSK's assertions, the cost information for individual models has not been verified; rather, Timken asserts that the record shows that the costs NSK reported to the Department were not taken from the cost system that ties to the system used for NSK's financial reporting.

Timken argues that NSK presented information concerning the second cost system for the first time in its case brief and consequently the Department has not been able to verify it. Timken asserts that errors in NSK's cost submission warrant rejection of the whole response, or at least the use, as BIA, of the largest absolute percentage difference the Department can identify.

Timken claims that NSK withheld material information from the record by not translating a certain account which represents a variance amount (NSK claimed that its accounting system did not track variance amounts). Timken further argues that once the Department discovered the variance item, NSK officials were at a loss to relate the variances to the burden rate reported in the response. Therefore, since NSK was unable to support an important aspect of its 1991–92 response, Timken concludes that application of BIA to NSK's response is appropriate.

Department's Position: We disagree with NSK and also with Timken concerning the use of BIA. First, at verification the Department discovered that NSK maintains standard costs and corresponding variances for the subject merchandise. Even though in our cost questionnaire we specifically requested NSK to describe its cost accounting system(s), NSK never disclosed or described its standard cost system. Second, the company failed to adequately demonstrate that the "burden" methodology it uses captures the entire variance (i.e., the untranslated variance account) and that it has captured all production costs in its reported costs of manufacturing. For the models we tested, NSK's reported costs in the submission differ significantly from its standard costs plus variances which NSK maintains in its normal course of business. Therefore, for purposes of these final results, we have retained the adjustments we used in the preliminary results, and, as BIA, have adjusted NSK's submitted costs to reflect standard costs plus variances for the models we tested. For the models we did not test, we increased, as BIA, NSK's submitted costs by the highest percentage difference between reported costs and standard cost plus variance.

Comment 2: Timken argues that for the 1990–91 reviews the Department should apply BIA to NSK's sales. Timken asserts that comparison of the public version of NSK's cost submission in the 1991–92 reviews with NSK's COP response in the 1990–91 reviews demonstrates that the two responses are virtually the same (i.e., in both submissions, the cost accounting systems NSK described are the same). Therefore, Timken argues that the Department should presume that the 1990–91 cost submission suffers from the same deficiencies and errors found in verifying NSK's 1991–92 cost submission.

Department's Position: We disagree. Our delay in completing the 1990–91 reviews should not be used against the respondent by applying partial or total BIA to its response based on verification of a review of a subsequent period.

Comment 3: Timken argues that NSK did not comply with the Department's request to provide comparisons of price for materials and supplies purchased from related and unrelated suppliers. Therefore, Timken maintains that the Department cannot rely on the cost data as a basis for FMV, and the Department should rely on BIA.

NSK claims that it did not provide comparison prices it paid to related and unrelated suppliers because this information does not exist. Instead, NSK asserts that it provided the Department with sufficient proof that the transfer prices NSK paid to its related suppliers permitted the related suppliers to fully recover their costs during the review periods.

Department's Position: We agree with NSK. Since no comparable transactions occurred with unrelated suppliers, NSK was unable to provide comparison prices it paid to related and unrelated suppliers. At verification, the Department tested a sample of related-party transactions and noted that prices were above cost. Therefore, we did not use BIA.

Comment 4: Timken argues that NSK's cost data are understated due to exclusion of certain non-operating expense items. Specifically, Timken refers to NSK's exclusion of depreciation of bond expenses, write-downs, and depreciation on idle assets. Timken asserts that the Department should include each of these expenses as elements of COP.

NSK contends that the Department should continue to exclude write-offs, write-downs, depreciation of bond expenses, and depreciation of idle assets from NSK's submitted actual COP. NSK asserts that the write-offs and write-downs and the depreciation of bond expenses have no bearing on the cost of producing the subject merchandise. If the Department does decide to include the cost of write-offs of inventory, NSK urges that all income or credits these transactions generate should be included as an offset to arrive at the actual costs NSK incurred. Additionally, NSK notes that almost all the idle machinery normally used in the manufacture of TRBs has been fully depreciated. Thus, NSK did not incur any depreciation expense on idle machinery during the periods of review.

Department's Position: We agree with Timken that the above non-operating expense items are relevant costs in computing the COP and CV. We agree with NSK that all income and credits generated by write-offs of inventory should be included as an offset to arrive at the actual costs NSK incurred. However, analysis of NSK's financial statements shows that this adjustment would have virtually no impact on submitted costs. Therefore, we made no adjustment.

Comment 5: Timken states that Koyo's response did not specifically mention depreciation of idle assets. Therefore, Timken argues that the Department should add the highest idle depreciation

amount reported by the other respondents in these reviews to Koyo's submitted costs.

Koyo claims that the Department may not penalize Koyo by using BIA for information which the Department did not request.

Department's Position: We agree with the petitioner. Fully absorbed costs, including idle equipment depreciation expense, for producing the subject merchandise should be included in the COP and CV. However, because we did not require Koyo to report this expense and review of proprietary information for another manufacturer indicates the effect would be insignificant, we did not adjust Koyo's figures for these final results.

Comment 6: Timken alleges that Koyo's reported related-party transactions did not occur at arm's-length prices. Thus, as BIA, Timken asserts that the Department should increase all material costs by the average difference between the actual COP related parties incurred and reported transfer prices.

Koyo argues that the Department should use Koyo's transfer prices paid to related suppliers. If the Department determines that these transfer prices are unacceptable, Koyo asserts that there is sufficient verified information on the record enabling the Department to make appropriate adjustments to the submitted related subcontractor data.

Department's Position: We agree with Timken. In calculating CV, we find related-party transactions to be at market value if the transfer price is above the related company's COP.

For CV, Koyo submitted transfer prices for all related party transactions. We tested a sample of these related-party transactions, noting that not all transactions occurred above cost. Therefore, we adjusted Koyo's submitted costs to account for the below-cost transactions with related companies.

Comment 7: Timken argues that short-term interest income should not be allowed to offset interest expense because it is not related to the manufacture of bearings.

Koyo claims working capital used for manufacturing bearings is temporarily available for short-term investing. Therefore, Koyo states that the Department correctly reduced Koyo's interest expense by interest income earned on its short-term deposits.

Department's Position: We agree with Koyo. It is the Department's practice to offset interest expense by interest income earned from short-term investments if these investments are related to working capital.

Comment 8: Timken argues that, because NTN has not demonstrated that related-party material transfers are at arm's-length prices, the Department should reject NTN's data regarding related-party inputs and apply "second-tier" BIA to all of NTN's U.S. sales. This, Timken argues, would be consistent with the Department's decision in AFBs.

Department's Position: We disagree with Timken. We are satisfied with the information NTN supplied in its questionnaire responses regarding its related-party inputs. In the course of our verification of NTN's 1991–92 cost data, we examined the transfer prices from two of NTN's related suppliers and found, in both cases, transfer prices to be above COP. We again found no evidence that related party transfers were not at arm's length or that NTN's cost information was unreliable. Therefore, we have accepted NTN's costs with respect to related-party inputs.

Comment 9: Timken argues that NTN's adjustment of its interest expenses for certain income items is inappropriate. Timken urges the Department to deny NTN's offset claim and adjust NTN's COP and CV figures to reflect the pre-adjustment interest expenses.

Department's Position: There is no evidence on the record for the 1990–91 review that NTN offset its interest expenses by impermissible income items. However, in our verification of the 1991–92 review we discovered that NTN had offset its interest expense with two impermissible income items. As a result, we have recalculated NTN's 1991–92 interest expense to include these items. Accordingly, we have adjusted NTN's 1991–92 COP and CV figures. For details regarding the nature of these items and why the Department considers them impermissible, see the proprietary version of the analysis memorandum for these final results.

Comment 10: Timken argues that, where the Department reallocates expenses, denies NTN's claims, or makes other modifications to NTN's data, the Department should accordingly make adjustments to NTN's CV database.

Department's Position: We agree with Timken that, to the extent it is appropriate, we should adjust NTN's figures for CV when we make other adjustments to information related to CV. As a result, we have adjusted NTN's 1991–92 CV figures to reflect our recalculation of NTN's 1991–92 interest expense.

Comment 11: Timken contends that the Department should exclude below-cost sales in calculating profit for CV. In addition, Timken asserts that sales respondents make below COP do not constitute sales in the ordinary course of trade. Timken points out that the Department disregards these sales in the computation of FMV for which CV is a substitute.

NSK, NTN, and Koyo state that the Department acted correctly, since there is no statutory provision requiring below-cost sales to be disregarded when calculating profit for CV. NSK argues further that since CV is an alternative to FMV, sales prices are wholly irrelevant, and that Timken's interpretation of below-cost sales falling outside the ordinary course of trade is contrary to legislative history and the Department's practice. NTN notes that the very structure of a CV calculation is intended to approximate a sale made above cost. All three respondents point to the Department's decision on this issue in AFBs.

Department's Position: We disagree with Timken's contention that the calculation of profit should be based only on sales that are priced above the COP. In the definition of ordinary course of trade, the Tariff Act does not exclude or even mention below-cost sales. Therefore, we have continued our normal practice of using the greater of actual profit or the statutory eight percent minimum. This decision is consistent with AFBs.

Cost Test Methodology

Comment 1: NTN argues that the Department should not have performed set-splitting of the home market set sales prior to conducting the COP test. NTN contends that, by splitting sets prior to the cost test, the Department derives fictional COP figures upon which it determines whether a split cup and cone is at, above, or below COP. NTN argues that there is no authority under the antidumping statutes or regulations which allow for any kind of derivation of COP; rather, NTN points to 19 CFR 353.51(c) as requiring the Department to calculate COP based on costs and expenses incurred in producing such or similar merchandise. Finally, NTN claims that splitting prior to the cost test allows for the possibility of a split cup and cone passing the cost test while the parent set does not.

Timken argues that the Department should split sets prior to the COP test because if a split cup or cone is used as the basis for FMV, the transaction price of the split component must be tested separately to be above the COP independently of the COP test on the set price. Timken notes that, by splitting after the cost test, as respondents argue,

the Department imputes the result of the cost test for the parent test to the split cups and cones, which are merged with regular cup and cone sales that are tested separately against the COP. Timken contends that by reordering the sequence of tests, the Department ensures more accurate, less complex, cost test results. Timken further adds that, by means of simple arithmetic, split cups and cones will never pass the cost test while the parent set does not.

Department's Position: We maintain that it is consistent with our set-splitting methodology to first conduct the cost test using cup and cone costs we derive through set-splitting. The COP figures we derive from set-splitting when we split prior to conducting the cost test are based on the variable cost of the cup to the cost of the set and the variable cost of the cone to the cost of the set. These ratios are based on costs NTN actually incurred in producing the individual cups and cones. Therefore, the resulting COP figures are not fictional. Furthermore, because split cups and cones may be found to be the most similar merchandise to the product sold in the United States, the Department must ensure, according to 19 CFR 353.51, that the transaction price is above the COP. By splitting prior to the cost test, we are able to separately test each home market sale, whether it be a split or regular sale, to determine if the sale was at, above, or below the COP, rather than imputing the results of the cost test for the parent set to the split cups and cones. Finally, because the same cost ratios are applied to both the transaction price and the COP of the set, if a parent set is sold above cost, the split cups and cones will have above-cost prices. Likewise, if the price of the parent set is below cost, the prices of the split cups and cones will be below cost.

Comment 2: NTN argues that the Department provides no explanation as to why a period of three months or more represents an "extended period of time" in the analysis of whether NTN made home market sales below the COP. NTN contends that by the definition of the word extended, an "extended period of time" should account for at least fifty percent of each period of review.

Department's Position: We disagree with NTN that the "extended period of time" should account for at least fifty percent of each period of review. Section 771 of the Tariff Act is designed to ensure that the Department does not disregard below-cost sales if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. TRBs are commodity items that do not demonstrate perishability, seasonality, or frequent generational changes in models. No information on the record in this case indicates that below-cost sales are a normal practice or characteristic of the industry. We used the period of three months to define an extended period since three months is commonly used to measure corporate, financial, and economic performance. The use of three months to measure frequency of below-cost sales shows that sales below the cost of production are not random, accidental, or sporadic. This time-measurement also ensures that we use home market prices that are above COP in our price-to-price comparisons in all but random or sporadic situations.

Therefore, we have determined below-cost sales occurring in three or more months of each review period to have been made over an extended period of time.

Further Manufacturing

Comment 1: Timken raises a concern about the Department's calculations on sales of TRBs which underwent manufacturing in the United States and yielded negative profit. Timken asserts that the Department's allocation of the negative profit amount to the portion of the product made in the United States, and its deduction from USP serves to increase USP and mask the full extent of dumping of imported products. Timken argues that such results of the further manufacturing analysis are contrary to law and common sense.

NTN argues that Timken is asking the Department not to attribute any portion of losses to the value-added calculation for the purposes of calculating USP. NTN claims that this is the same argument brought forth by Timken and soundly rejected by the CIT in *Timken*, 14 CIT 753, at 755–756 (1990).

Department's Position: We disagree with Timken. It has been the Department's practice to allocate for profit as well as losses in our further manufacturing calculation, and we have done so for these reviews as well (see Color Picture Tubes From Japan, 55 FR 37915 (1990) and TRBs, 56 FR 41516 (August 21, 1991)).

Miscellaneous Comments

Comment 1: Timken disagrees with the Department's preliminary exclusion of U.S. sales classified by NSK as samples or prototypes. Timken argues that the statute requires inclusion of all U.S. transactions involving transfer of ownership, and that the exclusion of sales as being outside the ordinary course of trade applies to FMV only. NSK argues that the cost of samples and prototypes is included in its figures for indirect selling expenses incurred on U.S. sales, and to treat such samples as sales would amount to double counting.

Department's Position: We verified documentation provided by NSK concerning sales designated as samples or prototypes, including invoices reflecting zero prices and items clearly labeled as samples. We also verified that NSK included the cost of samples in its SG&A figures. Therefore, we have excluded samples and prototypes from the U.S. database.

Comment 2: Timken objects to the Department's approach in determining for USP the amount of tax forgiven by reason of export of the merchandise. Timken asserts that this approach, whereby the Department added to USP the actual amount of tax calculated for the comparison home market model, has been rejected by the CIT (*The Torrington Company* v. *United States*, 17 CIT ____, Slip. Op. 93–194 (October 7, 1993), and *Zenith Electronics Corp.* v. *United States*, 10 CIT 268, 633 F. Supp. 1382, 1389 (1986) (*Zenith*)). Timken claims that the Department erred in its interpretation of *Zenith*. Timken states that the Department relied on footnote 4 in the CAFC's decision in *Zenith Electronics Corporation* v. *United States*, Slip. Ops. 92–1043, –1044, –1045, –1046 (March 19, 1993), at 17, which does not constitute the holding of the decision. Timken submits that the tax adjustment to USP should be based on the consumption tax rate applied to USP. In addition, Timken suggests that FMV and USP should be adjusted for taxes respondents incurred on transportation charges.

NSK, Koyo, and NTN argue that the Department properly added the absolute amount of home market tax to USP in the preliminary results. Koyo states that the tax adjustment to USP is limited to the tax amount included in the price of such or similar merchandise sold in the home market. Koyo argues further that the Department correctly interpreted the Court's decision in the CAFC Zenith decision, and that the Department is required by law to pursue tax neutrality. Koyo claims that footnote 4 is a logical extension of that decision, and that the Department properly used it as a basis for preventing the multiplier effect from creating or enlarging margins. Koyo also submits that Timken's suggestion regarding further adjustment to USP for taxes applied to freight charges is actually an argument for adding the amount of home market tax rather than a percentage, since a percentage would complicate the adjustment considerably.

NSK asserts that *Zenith* held that if the methodology which the Department uses results in an inequitable tax

calculation, the Department is prohibited from performing a circumstance-of-sale adjustment, but if the Department can make an adjustment which does not create or inflate margins, it may do so. Therefore, NSK argues, footnote 4 is entirely consistent with the opinion when read as a whole.

Department's Position: We agree with respondents. On March 19, 1993, the CAFC, in affirming the decision in *Zenith*, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to USP to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow the Department to make circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have added to USP the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the absolute amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences in taxes included in FMV and those added to USP.

Comment 3: Timken claims that certain in-scope products were imported but not reported during the periods of review, specifically Koyo's rough forgings and certain products imported by NTN. Since Koyo has failed to respond to the Department's further manufacturing questionnaire, Timken claims that the Department should assess a margin on these forgings based on the BIA for Koyo's entries. Timken argues that because there is incomplete information regarding certain products imported by NTN, the Department should assume that NTN has impeded these proceedings and apply a first-tier BIA rate.

Koyo argues that it is unfair of Timken to raise this issue so late in the proceedings, which are overdue for completion. Furthermore, Koyo submits that if the Department determines that forgings are within the scope of the 1987 order, any data on entries of forgings should not be analyzed until the 1992/93 review. In addition, Koyo points out that imports of any forgings purchased from unrelated suppliers must be analyzed as purchase price sales.

NTN counters that there is nothing on the record to substantiate Timken's claim, and notes that it has stated quite clearly that it has considered all imports of materials used in the production of TRBs as in-scope merchandise. NTN also points out that the Department has verified its further manufacturing response.

Department's Position: Because the Department is conducting a scope inquiry at Koyo's request as a separate proceeding, we are deferring our decision with respect to Koyo's imports. NTN has submitted several certified statements regarding the completeness of its further manufacturing response, and the Department is satisfied that NTN has reported all imports of scope merchandise.

Comment 4: Timken argues that the Department should deduct a reasonable profit amount from ESP sales, while NSK, NTN, and Koyo disagree. All three respondents point out that there is no statutory basis for deducting profit from ESP. Koyo notes that doing so would represent a fundamental change in a Department practice that has been upheld by the courts, and NTN cites a recent decision on this issue (*Timken* v. *United States*, 14 CIT 753, 758, (1990)).

Department's Position: We agree with respondents. Sections 772(d) and (e) of the Tariff Act do not include resale profits among the detailed list of adjustments that the Department is to make to USP in ESP situations. Thus, there is no provision of U.S. law under which we can make the adjustment that Timken requests. This decision is in accordance with AFBs.

Comment 5: Both Koyo and NTN argue that the Department should not have crossed levels of trade when comparing U.S. and home market sales. NTN argues that because differences in level of trade represent different commercial quantity levels and separate courses of trade, they should not be compared under 771(a)(1)(A)of the Tariff Act. NTN further argues that a level of trade adjustment based on differences in indirect selling expenses does not reflect the substantial price differences between levels of trade and does not achieve the stated purpose of 19 CFR 353.58 to adjust for differences affecting price comparability. NTN contends that only a level of trade adjustment based on price differences between levels of trade would accurately reflect the differences in value and prevent the creation of margins solely from trade level differences. Koyo argues that according to the Department's own analysis the Department can successfully identify home market sales of such or similar merchandise sold at the same level of trade, and therefore should not match identical models across levels of trade before looking for similar models at the same level of trade. Koyo further argues that the Department should have granted Koyo a level of trade adjustment when the Department compared sales at different levels of trade. Koyo contends that the level of trade adjustment it calculated and submitted to the Department was net of all charges and therefore eliminates double-counting of any part of the price differential.

Timken argues that the Department's practice of crossing levels of trade when it is unable to conduct a comparison of merchandise at the same level of trade is proper and has been repeatedly upheld by the CIT. (*Koyo Seiko Co. Ltd.* v. *United States*, 17 CIT, Slip Op 93–185 at 8–11 (September 21, 1993), *Koyo Seiko Co. Ltd.* v. *United States*, 16 CIT, 796 F. Supp. 1526 1532 (1992), *NTN Bearing Corp. of America* v. *United States*, 17 CIT____, Slip Op. 93–204 at 8–9 (October 22, 1993), and *NTN Bearing Corp. of America* v. *United States*, 14 CIT 623, 634, 747, F. Supp. 726, 736 (1990).) Timken argues that the Department was correct to deny Koyo's claim for a level of trade adjustment because, although the regulations authorize the Department to make level of trade adjustments, a party must establish its entitlement to such an adjustment. Timken contends that Koyo's adjustment is based on price differentials and not cost-based data, and that Koyo has failed to provide any evidence that it was entitled to such an adjustment. Timken also argues that, although it agrees with the Department's limiting NTN's level of trade adjustment to differences in indirect selling expenses, the record does not fully support the amount of the adjustment granted by the Department.

Department's Position: In a recent decision in these cases (*NTN Bearing Corp. of America* v. *United States*, 17 CIT ____, Slip Op. 93–204 (October 22, 1993)), the CIT reaffirmed the Department's comparison across levels of trade, citing its decision in *NTN Bearing Corp.* v. *United States*, 14 CIT at 634, 747 F. Supp. at 736, which stated: "* * * there is no statutory mandate requiring Commerce to remain within the same levels of trade while effecting its such or similar merchandise determination." Therefore, we have again crossed levels of trade in our comparisons of U.S. and home market sales.

Following our practice in previous administrative reviews of these cases, we searched for identical merchandise at the same level of trade. If unsuccessful, we crossed to another level of trade to search for identical merchandise. If we did not find an identical match, we searched for the most similar home market model sold at the same level of trade as the U.S. sale, and, if we could not find the most similar model, we searched for that model at the other level of trade.

Because NTN provided us with cost-based data demonstrating that it incurs different costs at different levels of trade, we have granted NTN the adjustment. However, NTN's argument that a level of trade adjustment should be based on differences in price levels does not address the issue of whether the differences in price are due solely to the difference in level of trade, or whether there are other factors that affect price. Because we already make adjustments for NTN's direct selling expenses, we have based the level of trade adjustment on indirect selling expenses in order to avoid double-counting the direct selling expenses.

We have not granted Koyo a level of trade adjustment because although Koyo demonstrated that net prices vary between levels of trade, it did not provide evidence that this variation in price was the result of different costs incurred at different levels of trade. (See TRBs 57 FR 4966, February 11, 1992 and 56 FR 42512, August 21, 1991.)

Comment 6: Timken disagrees with the Department's use of partial BIA for those home market sales for which respondents failed to supply variable cost of manufacturing information (VCOM). Timken disagrees with the Department's derivation of a VCOM for the home market model by decreasing the VCOM of the U.S. model by 20 percent. Timken argues that this provides respondents with the incentive to manipulate the model match by omitting VCOM data for certain home market models which respondents wish the Department to match with U.S. sales but which exceed the 20-percent difference-in-merchandise cap. Timken argues that the Department should employ its normal inference that, if the missing data had been supplied, the result of providing the data would have been adverse. Timken urges the Department to apply, as BIA, the highest weighted-average rate from a previous review to U.S. sales which, when the Department applies the five-criteria model-match methodology, match home market sales lacking VCOM data.

NTN argues that any missing home market VCOM data is the result of the Department's improper splitting of sets that are "unsplittable", and not the result of NTN's purposeful omission of the data. NTN further contends that Timken's suggestion of a punitive BIA rate is unjustified, as well as the Department's decision to apply, as BIA, a 20-percent difmer adjustment to such matches, because there would not have been any missing VCOM data if the Department had not split these "unsplittable" sets.

Department's Position: We disagree with both Timken and NTN. Absent quantitative evidence on the record that respondents are manipulating our model match by purposefully omitting VCOM data for specific home market models, we have no reason to believe that such manipulation is taking place. As a result, we do not agree with Timken that an adverse BIA rate should be applied to U.S. sales which match to home market sales for which we have no VCOM data. Rather, for these final results we have derived a VCOM for the home market model by reducing the U.S. VCOM by 20 percent. We have used this approach in previous TRB reviews (see TRBs 56 FR 26057 (June 6, 1991), 56 FR 65238 (December 16, 1991), and 57 FR 4986 (February 11, 1992)).

Furthermore, for these final results we have corrected our preliminary calculations to ensure the proper splitting of those sets NTN claims to be "unsplittable," and have derived VCOM figures for split cups and cones based on the ratios of the cost of the cup and cone to the cost of the set. If VCOM information is missing from any home market model, it is not the result of the Department's improper splitting of these sets, but the result of NTN's failure to supply the necessary information for the parent set. As a result, we disagree with NTN that our 20-percent partial BIA calculation is unjustified.

Comment 7: Timken contends that due to recent court decisions regarding value added taxes and the lack of a deduction for U.S. direct selling expenses, which will result in USP exceeding entered value, the Department should calculate assessment and duty deposit rates based on entered value in order to collect the full amount of the difference between FMV and USP as required by section 751 of the statute. Timken argues that the Department should continue to calculate the assessment rate over entered value as done in AFBs and the Department should also calculate deposit rates using entered value as the denominator.

Koyo argues that the Department should not base assessment rates on entered value as it does in the AFB reviews because the AFB reviews use sampling methodology. Koyo contends that it has reported all the data necessary to calculate transaction specific duty amounts. In addition, Koyo contends that the Department, according to section 751(a)(2) of the Tariff Act must base assessment on the difference between FMV and USP. NTN and Koyo argue that the Department should not calculate deposit rates on the basis of entered value as Timken suggests. NTN and Koyo contend that Timken's assumption that cash deposit rates based on total USP will understate the difference between FMV and USP is unsubstantiated, and that according to section 736 of the Tariff Act, deposits made on future entries are estimates and not intended to be precise calculations of margins. NTN argues that, upon review, if a deposit rate is found to be too low, the difference between the deposit rate and actual rate plus interest is assessed upon liquidation, and, as a result, domestic parties are fully protected. Koyo adds that there is no reason to expect that Timken's methodology would result in a more precise deposit rate. NSK argues that Timken's assumption that USP will exceed entered value is based on hypothetical calculations. Using actual calculations on the record, NSK demonstrates that USP does not necessarily exceed entered value and that the relationship between the two is dependent upon individual transactions. As such, NSK asserts that the Department should reject Timken's argument.

Department's Position: The Department will continue to appraise on the basis of entered value and instruct Customs on a period of review basis for each review as we explained in AFBs. However, we have not calculated deposit rates on the basis of entered value. Deposit rates, unlike assessment rates, are estimates for prospective entries by the exporter regardless of the importer, and are not intended to reflect precise duty collection. Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which FMV and USP differ, since it is during the administrative review process that we calculate USP and FMV. Finally, as we have stated in AFBs, if the amount of the deposits is less than the amount ultimately assessed, the Department will instruct Customs to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act.

Comment 8: NTN argues that the Department should not include home market samples and small quantity sales in its calculation of FMV. NTN maintains that these sales are outside the ordinary course of trade. NTN contends that, because the Department has always excluded sales NTN claimed as outside the ordinary course of trade in past TRB reviews and because the CIT has affirmed this practice, the Department should do so in these reviews as well.

Koyo argues that the Department should exclude sales it characterizes as sample sales, obsolete sales, and the sale of a particular product that was sold only once in Japan. Koyo contends that it negotiates its prices for sample sales separately and marks these sales as samples when orders are taken. Koyo also explains that its obsolete sales are of TRB models sold in small quantities only to accommodate customers and therefore sold at unusually high prices. Finally, Koyo points out that it has informed the Department of an unusual sale of a model that was only sold in Japan once and that clearly meets all the standards for exclusion as a sale outside the ordinary course of trade.

Timken, referring to *Murata Mfg. Co. Ltd.* v. *United States*, 17 CIT ____, 820 F. Supp. 603, 606 (1993) (*Murata*) and *Nachi-Fujikoshi Corp.* v. *United States*, 16 CIT ____, 798 F. Supp. 716, 718 (1992) argues that the respondent bears the burden of proof of proving that home market sales are not in the ordinary course of trade. Timken contends that since the record lacks any substantive evidence that NTN and Koyo's not-in-the-ordinary-course-of-trade sales were indeed outside the ordinary course of trade, the Department has properly included such sales in its calculation of FMV.

Department's Position: We agree with Timken that NTN and Koyo have not provided sufficient evidence to support their claims that certain home market sales are not in the ordinary course of trade. As in AFBs, for the purposes of these reviews, we have applied the standard set forth in *Murata*, in which the CIT quoted with approval the statement in Indian Pipes and Tubes, 56 FR 64755, that the Department does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question in determining whether they are outside the ordinary course of trade. In *Murata*, the CIT noted that, in other cases, the Department had determined that sales were outside the ordinary course of trade not only due to the presence of small quantities and higher prices, but also because the Department found, for example, that prices for sample sales were determined separately from standard price lists, that customers purchased products for trial or evaluation purposes, or that sales were cancelled prior to invoicing (*Murata*, Slip Op. 93–53 at 9.)

Based upon our review of the record for these reviews and our recent verifications of NTN and Koyo, we are not satisfied that NTN and Koyo have provided evidence to substantiate that NTN's sample and small quantity sales and Koyo's sample and obsolete sales are indeed outside the ordinary course of trade. The fact that respondents identify a sale as a sample or prototype or maintain an internal record of the sale as a sample does not alone support the sales classification as outside the ordinary course of trade for the purposes of antidumping calculations.

Likewise, infrequent sales of small quantities of certain models or sales of models at a high price to only a few customers is also insufficient to establish a sale as outside the ordinary course of trade. As a result we have not changed our original decision regarding NTN's and Koyo's sample, small quantity, and obsolete sales and have included them in our calculations of FMV. However, we do agree with Koyo that its sale of a model that was only sold once in Japan is a unique transaction and is therefore outside the ordinary course of trade, and as such we have excluded it from our calculation of FMV.

Clerical Errors

Comment 1: NTN contends that the Department made the following clerical errors in its preliminary results: (1) The Department failed to identify identical matches for any sales in the preliminary results, (2) the Department's adjustment for differences in level of trade adjustments for OEM to AM comparisons was incorrect, and (3) the Department made some comparisons of home market merchandise to U.S. sales, for which the home market model failed the 20 percent difmer test. Timken and NTN claim that the Department failed to convert the level of trade adjustment and the variable for home market indirect expenses to U.S. dollars before adding them to a dollar-denominated FMV. Finally, Koyo claims that the Department included a line in its Koyo programs that served to exclude all home market sales of multi-row TRBs from the model match.

Department's Position: We agree with all of these comments and have corrected these errors for these final results. In addition, we have discovered that not only was our level of trade adjustment incorrect for matches between OEM and AM sales, but for all matches across levels of trade. As a result, we have corrected our calculations to ensure that we have made the proper level of trade adjustment to FMV.

Comment 2: Both Timken and NTN argue that, due to the clerical errors in the preliminary results, the Department should release pre-final programs and printouts to ensure the calculation of accurate final results and reduce the potential for unnecessary litigation.

Department's Position: We disagree. Issuance of pre-final programs and printouts would only serve to delay our results of review. In addition, parties are provided with the opportunity to request disclosure after issuance of the final results to identify and comment on any clerical errors.

Final Results of Review

As a result of our comparison of USP to FMV, we have determined that margins exist for the periods as follows:

Manufacturer/exporter	Percent margin
August 1, 1990 through September 30, 1991 (A–588–054):	
Koyo Seiko	20.92
Nachi-Fujikoshi Corp	[1] 18.07
NSK Ltd	19.84
October 1, 1990 through September 30, 1991 (A–588–604):	
Koyo Seiko	14.65
Nachi-Fujikoshi Corp	45.95
NSK Ltd	22.84
NTN	14.34
October 1, 1991 through September 30, 1992 (A–588–054):	
Koyo Seiko	34.09
Nachi-Fujikoshi Corp	[1] 18.07
NSK Ltd	12.74
October 1, 1991 through September 30, 1992 (A–588–604):	
Koyo Seiko	19.79
Nachi-Fujikoshi Corp	45.95
NSK Ltd	7.84
NTN	13.86

[1] No shipments during the period; rate from the last period in which Nachi had shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the United States price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise 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 Tariff Act:

(1) The cash deposit rates for the reviewed companies will be those rates outlined above for the October 1, 1991 through September 30, 1992 period;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review,

or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be the all other rate established in the LTFV investigation (A–588–604), and the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established (A–588–054), as discussed below.

On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once a company is assigned an "all others" rate, the company can only change that rate through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. Thus, the "all others" rate for the A–588–604 proceeding is 36.52 percent.

In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because the A–588–054 proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review published by the Department (47 FR 25757, June 15, 1982). However, a "new shipper" rate was not established in that notice. Therefore, the "all others" rate applied is the rate of 18.07 percent from Tapered Roller Bearings and Certain Components Thereof from Japan, Final Results of Administrative Review of Antidumping Finding, 49 FR 8976 (March 9, 1984), the first review conducted by the Department in which a "new shipper" rate was established.

All U.S. imports of subject merchandise by each respondent will be subject to the deposit rates found in each proceeding.

The cash deposit rates have been determined on the basis of the selling price to the first unrelated customer in the United States. The Department will use the entered value of the merchandise to determine the appraisement rate.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods.

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 parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the 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.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 3, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–30135 Filed 12–8–93; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Chemical Weapons

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Weapons will meet in closed session on December 21–22, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review all available intelligence and reports of detection of chemical agents and toxins during Desert Shield, Desert Storm, and the post-war period. Also, review scientific and medical evidence relating exposure to nerve agents at low levels and long-term health effects.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 3, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–30002 Filed 12–8–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Office of the Secretary; Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Master Plan Update at Fort McCoy, WI

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: Fort McCoy provides year-round training facilities, administration, and logistical support to both active and reserve component units from all branches of the Armed Services. The proposed Master Plan formalizes Fort McCoy's priorities for developing maneuver areas, training ranges and facilities over a 20 year period. This plan will prepare Fort McCoy to enter the 21st century with the assets required to conduct highly realistic, challenging, and safe training in accordance with Army Training and Evaluation Program (ARTEP) standards.

The Installation Real Property Master Plan is being updated and requires a supporting EIS for the following reasons: (1) The Master Plan update identifies major changes in development for the installation; (2) Several projects identified in the Master Plan update would require individual EIS's because they will cause significant impacts to the environment; (3) An EIS prepared in 1982 for the installation mission is in need of revision to reflect current and projected activities.

Alternatives to be considered in the EIS are:

—No action
—Master Plan and component plans fully implemented
—Master plan and components are expanded

Full mobilization will be evaluated as an occurrence under each of the above alternatives.

Comments received as a result of this notice will be used to assist in evaluating the impacts of the Master Plan on the environmental, social, historical, archaeological and socioeconomic aspects of Fort McCoy and the surrounding area.

DATES: A scoping meeting will be held in the vicinity of Fort McCoy within 30 days of the publication of this NOI.

ADDRESSES: Written comments or questions regarding this notice may be sent to the following address: Burns & McDonnell Engineering, ATTN: Mr. Bob Sholl (Project Manager), 4800 E. 63rd Street, Kansas City, MO 64141.

FOR FURTHER INFORMATION CONTACT: Verbal comments or questions regarding this notice may be directed to Mr. Bob Sholl at (816) 333–4375.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 93–30072 Filed 12–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

JohnCo Rental, Inc.; Intent To Grant Partially Exclusive Patent License

ACTION: Intent to grant partially exclusive patent license; JohnCo Rental, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant JohnCo, Rental Inc., a revocable, nonassignable, partially exclusive license in the United States and certain foreign countries to practice the Government-owned inventions described in U.S. Patent No. 5,196,302, "Enzymatic Assays Using Superabsorbent Materials" issued March 23, 1993 and U.S. Patent No. 5,200,321, "Microassay on a Card" issued April 6, 1993 in the field of seized drugs of abuse.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: December 1, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–29988 Filed 12–8–93; 8:45 am]

BILLING CODE 3810–AE–M

PMI Industries, Inc.; Intent To Grant Partially Exclusive Patent License

ACTION: Intent to grant partially exclusive patent license; PMI Industries, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to PMI Industries, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 5,082,318, "Girth Hitching Mechanism" issued January 21, 1992.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: December 1, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–29989 Filed 12–8–93; 8:45 am]

BILLING CODE 3810–AE–M

U.S. Alcohol Testing of America, Inc.; Intent To Grant Partially Exclusive Patent License

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; U.S. Alcohol Testing of America, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to U.S. Alcohol Testing of America, Inc., a revocable, nonassignable, partially exclusive license in the United States and certain foreign countries to practice the Government-owned invention described in U.S. Patent No. 5,183,740, "Flow Immunosensor Method and Apparatus" issued February 2, 1993 in the field of testing for methadone, benzodiazapines, barbituates, propoxyphene, tricyclic antidepressants, and anabolic steroids.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: December 1, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–29990 Filed 12–8–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

National Coal Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015 and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 27, 1995. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy, on a continuing basis, regarding general policy matters relating to coal issues.

Council members are chosen to assure a well balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has members who represent interests outside the coal industry, including environmental interests, labor, research, academia, and minorities. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the

Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC, on November 23, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–30122 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 27, 1995. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and large and small companies. The Council also has members who represent interests outside the petroleum industry, including representatives from environmental, labor, research, academia, minorities, and state utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC, on November 23, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–30123 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. EA–86]

Application for Electricity Export Authorization by Washington Water Power Co.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Washington Water Power Company has requested authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 10, 1994.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: On October 29, 1993, Washington Water Power Company (WWP) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, WWP has applied for authorization to sell firm capacity and energy to West Kootenay Power, Limited (WKP), in the Provence of British Columbia, Canada. The electrical energy proposed for export would be delivered to WKP over transmission facilities owned and operated by the Bonneville Power Administration (BPA) for which Presidential permits have been granted.

West Kootenay Power requested that the period of the export be from December 1, 1993, through February 28, 1994. WWP proposes to make available, and WKP will purchase, firm capacity during the proposed period as follows: December 1993, 30 megawatts (MW); January 1994, 40 MW; and February 1994, 30 MW. In addition, upon request from WKP, WWP may, at its sole discretion, increase the amount of firm capacity made available during any month within the term of the agreement. However, in no event will the amount be raised above 100 MW.

The electric energy WWP proposes to sell will be delivered to WKP utilizing the BPA electric transmission system. WWP's system connects to BPA's system via two 230-kilovolt (kV) and two 115-kV transmission lines at BPA's Bell substation. The Bell substation is in turn connected to BPA's Boundary substation via three 230-kV transmission lines. The BPA holds Presidential permits for the two 230-kV transmission lines over which the export will take place. The BPA Presidential permits are contained in Dockets PP–36 and PP–46.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with § 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Charles M. Goligoski, Power Resource Analyst, Washington Water Power, East 1411 Mission, P.O. Box 3727, Spokane, Washington, 99220–3727

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede

the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, December 3, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30128 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF93–149–000, et al.]

Department of Energy, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 3, 1993.

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

1. United States Department of Energy

[Docket No. QF93–149–000]

On November 15, 1993 and November 24, 1993, United States Department of Energy (Applicant) tendered for filing a supplement and an amendment respectively to its filing in this docket. No determination has been made that the submittals constitute a complete filing.

The submittals provide additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: December 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Houston Lighting & Power Company

[Docket No. ER94–12–000]

Take notice that on November 10, 1993, Houston Lighting & Power Company tendered for filing supplemental information requested by staff in the above-referenced docket.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER93–920–001]

Take notice that on New England Power Company (NEP), on November 26, 1993, tendered its compliance filing pursuant to the Commission's October 29, 1993, order in this proceeding. The compliance filing consists of a Revised Page No. 2, Schedule II of NEP's Tariff No. 8.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER94–180–000]

Take notice that on November 22, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, new supplements to the "Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company" (PG&E–NCPA IA). The IA and its appendices were accepted for filing by the Commission on May 12, 1992 and designated as Rate Schedule FERC No. 142.

Pursuant to the procedures outlined in Sections 6.2.4 and 7.5 of the PG&E–NCPA IA, NCPA forecast its Firm Transmission Service and Firm Coordination Transmission Service needs for 1994 and 1995 by providing PG&E revised exhibits that reflect NCPA load requirements for 1994 and 1995. Therefore, PG&E proposes to amend Exhibits III.1, III.2, III.3, III.4, III.6 and VII.1 of Appendix A to the PG&E–NCPA IA to include NCPA's request for (1) 0.2 MW of Firm Transmission Service for the McKays Hydro Project; (2) 49.9 MW of Firm Transmission Service for the Steam Injected Gas Turbine (STIG) Project; (3) 50 MW of Firm Coordination Transmission Service for 1994 and 1995; and (4) access to the Department of Water Resources for the State of California (DWR) for delivery of DWR power to NCPA's Member Customers.

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER93–985–000]

Take notice that on November 17, 1993, twenty-nine participants in the New England Power Pool (the Filing Participants) filed additional information concerning the Thirtieth Amendment to the New England Power Pool (NEPOOL) Agreement (the Amendment), which had been filed with the Commission on September 29, 1993. The additional information submitted by the Fling Participants constitutes an amendment to the original filing and has been submitted in response to the Commission's October 26, 1993 letter in the captioned docket that requested additional information concerning the Amendment.

The Filing Participants have provided details concerning each revision to the NEPOOL Agreement made by the Amendment. Specifically, the Filing Participants state that they have provided a detailed comparison of the present and revised sections of the NEPOOL Agreement, and a detailed explanation of, and justification for, each revision and the impact of each revision on NEPOOL participants. The Filing Participants also state that they have provided additional information which demonstrates that the revisions to the NEPOOL Agreement contained in the Amendment are reasonable and are consistent with the objectives specified in the NEPOOL Agreement and all applicable pool procedures.

The filing Participants have renewed their request that the Commission waive the customary notice period and permit the Amendment to become effective as of September 30, 1993.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30010 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–956–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 2, 1993.

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

1. PacifiCorp

[Docket No. ER93–956–000]

Take notice that on November 9, 1993, PacifiCorp tendered for filing an amendment to its filing for the Power Purchase Agreement plus two amendments and an Interconnection Agreement between the Confederated Tribes of the Warm Springs Reservation of Oregon in conjunction with their enterprise and operating division, Warm Springs Power Enterprises (WSPE) and PacifiCorp.

Copies of this filing have been supplied to WSPE, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER94–43–000]

Take notice that on November 22, 1993, Boston Edison Company (Boston) tendered for filing an amendment in the above-referenced docket.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Co.

[Docket No. ER93–976–000]

Take notice that on November 19, 1993, Alabama Power Company (Alabama) tendered for filing supplemental information to its original filing filed in this docket on September 27, 1993.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–787–000]

Take notice that on November 4, 1993, Consolidated Edison Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Co.

[Docket No. ER94–179–000]

Take notice that on November 22, 1993, Commonwealth Edison Company (Edison) tendered for filing proposed changes in its FERC Electric Tariff, Rate 81. The proposed change revised the Electric Service Contract between Edison and the City of Rock Falls, Illinois (Rock Falls) to provide for relocation of metering facilities.

A copy of the filing has been served upon Rock Falls and the Illinois Commerce Commission.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Co.

[Docket No. ER94–174–000]

Take notice that on November 19, 1993, Minnesota Power & Light Company (Minnesota) tendered for filing executed contract amendments to ten separate wholesale municipal electric service agreements between Minnesota and the Cities of Aitkin, Brainerd, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Pierz, Randall and Two Harbors.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Co.

[Docket No. ER94–177–000]

Take notice that on November 19, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing Supplement No. 3 to the Municipal Transmission Service Agreement between NSP and the City of Granite Falls, Minnesota (City). NSP presently provides certain On Line transmission services to the City pursuant to the Municipal Transmission Service Agreement dated February 1, 1984, as amended, prior to putting Supplement No. 3 into effect. NSP Rate Schedule FERC No. 436. Supplement No. 3 will replace the transmission service portion of the Municipal Transmission Service Agreement, and sets forth the terms and conditions and rates for service to the City through December 31, 2012.

Comment date: December 16, 1993, in accordance with Standard Paragragh E at the end of this notice.

8. Oklahoma Gas and Electric Co.

[Docket No. ER94–171–000]

Take notice that on November 18, 1993, Oklahoma Gas and Electric Company tendered for filing several letters documenting agreement with the Oklahoma Municipal Power Authority (OMPA) regarding the installation of electric facilities necessary to provide electric service to new points of delivery for OMPA.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. City of Needles, CA

[Docket No. EL94–8–000]

Take notice that on November 4, 1993, the City of Needles, California (City) tendered for filing a letter requesting Commission assistance with the resolution of the differing of opinions between the City, and the Bureau of Indian Affairs about maintenance required on a 69,000 volt line which provided service to the City.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER93–478–000]

Take notice that Puget Sound Power & Light Company (Puget) on November 4, 1993, tendered for filing supplemental information to its original filing in the above-referenced docket.

Comment date: December 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30105 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP93–548–000]

Wallkill Transport Company, L.P.; Intent To Prepare an Environmental Assessment for the Proposed Wallkill Pipeline Project and Request for Comments on Environmental Issues

December 3, 1993.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Wallkill Pipeline Project.[1] This EA will be used by the

[1] Wallkill Transport Company L.P.'s application was filed with the Commission under section 7 of

Continued

Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

Wallkill Transport Company, L.P. (Wallkill) wants Commission authorization to construct and operate the following facilities needed to transport natural gas from an existing Tennessee Gas Pipeline Company pipeline in the Town of Wantage, Sussex County, New Jersey to the planned Wallkill Generating Facility in the Town of Wallkill, Orange County, New York:

- 23 miles of new 10-inch-diameter pipeline in Sussex County, New Jersey and Orange County, New York; and
- A new 6-inch meter run and a new 6-inch orifice meter at the Wallkill Generating Facility.

The general location of these facilities is shown in appendix 1.[2]

Wallkill Generating Company, L.P. wants to build and operate the Wallkill Generating Facility, an unspecified number of compressor units, and a 250-foot-long pipeline to transport natural gas from the terminal point of the Wallkill Pipeline Project to the Wallkill Generating Facility. Although these facilities are not under the jurisdiction of the FERC, they will be discussed in the EA.

Land Requirements for Construction

The proposed pipeline would generally be built adjacent to or within existing utility rights-of-way or transportation corridors. Typically, Wallkill would use a construction and permanent right-of-way width of 50 feet.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By the Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Wallkill. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. Issues are:

- The pipeline would cross the Appalachian Trail in Sussex County, New Jersey.
- The pipeline would cross Shannen Park in the Town of Wawayanda, Orange County, New York.
- The pipeline would be near Brae Side Camp in the Town of Wallkill, Orange County, New York.
- Construction of the pipeline would take place within 50 feet of 17 residences.
- The pipeline would possibly cross potential habitat for the small whorled pogonia, a federally listed endangered plant species.
- The pipeline would cross 16 perennial streams and 19 wetlands and would be near 1 New York State regulated wetland.
- The pipeline may cross or be near historic structures and archeological sites.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426;
- Reference Docket No. CP93–548–000;
- Send a copy of your letter to: Ms. Laura Turner, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St. NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before January 7, 1994.

If you wish to receive a copy of the EA, you should request one from Ms. Turner at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

Additional information about the proposed project is available from Ms. Laura Turner, EA Project Manager, at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30011 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–P

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the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP94–106–000, et al.]

Arkla Energy Resources Co., et al.; Natural Gas Certificate Filings

December 2, 1993.

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

1. Arkla Energy Resources Co.

[Docket No. CP94–106–000]

Take notice that on November 24, 1993, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–106–000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of two existing transportation agreements and authorizing cancellation of the underlying rate schedules, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER indicates that it acquired transportation agreements with Williams Natural Gas Company (Williams) dated December 14, 1945 (Rate Schedule XT–27) and November 30, 1946 (Rate Schedule XT–28), as amended, by merger with Consolidated Gas Utilities Corporation. AER states that these transportation agreements are no longer necessary or beneficial to AER and Williams and have been terminated pursuant to mutual written agreement of AER and Williams. AER indicates that no facilities are proposed to be abandoned herein.

Comment date: December 23, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Transwestern Pipeline Co.

[Docket No. CP94–90–000]

Take notice that on November 18, 1993, Transwestern Pipeline Company (Transwestern),[1] P.O. Box 1188, Houston, Texas 77251–1188, filed an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations for an order authorizing the abandonment of an exchange of gas[2] between Transwestern and American Processing L.P. (American)[3] and an Exchange Agreement dated August 15, 1967. Upon approval, Transwestern requests cancellation of Transwestern's Rate Schedule X–6 contained in Transwestern's FERC Gas Tariff, Original Volume No. 2. Transwestern states that gas is no longer being exchanged under the Exchange Agreement and Transwestern and American have settled all imbalances issues. On June 1, 1993, Transwestern submitted a notice to American terminating the Exchange Agreement, effective January 1, 1994. Transwestern's application is on file with the Commission and open to public inspection.

Transwestern states that under the terms of the Exchange Agreement, American delivers gas produced from a well in Lipscomb County, Texas, to Transwestern's 24-inch Panhandle lateral in Roberts County, Texas, and Transwestern redelivers substantially equivalent volumes of gas to American in Gray or Carson Counties, Texas. The transportation and exchange of natural gas was limited to 10,000 Mcf per day and 150,000 Mcf per month. The original term of the Exchange Agreement was to continue until January 1, 1972, and from year to year thereafter until either party provided written notice to the other of its desire to terminate at least (6) months prior to the anniversary date thereof.

Comment date: December 23, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP94–103–000]

Take notice that on November 23, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–103–000 a request pursuant to §§ 157.205, and 157.212(b) of the Commission's Regulations under the Natural Gas Act for authorization to install a tap and appurtenant facilities for the delivery of interruptible transportation gas to GPM Gas Corporation (GPM) in Hemphill County, Texas, under its blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the volume of delivery is estimated to be approximately 6,000 Mmcf annually and 2,000 Mcf on a peak day. Williams indicates that the estimated cost of construction is $11,090 which will be reimbursed by GPM.

Comment date: January 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Williston Basin Interstate Pipeline Co.

[Docket No. CP94–110–000]

Take notice that on November 30, 1993, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP94–110–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a meter and regulating station, under its blanket certificate issued in Docket No. CP82–487–000, pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston proposes to abandon a meter and regulator located at the take-off of the Marmarth-Bowman transmission lateral, located in Fallon County, Montana. It is indicated that, historically, gas was received into Williston's system from the Coyote Creek Field after it was processed through the Cenex Gas Processing Plant. Williston also indicates that the meter and regulator proposed to abandoned herein was installed to measure the excess gas produced from the Coyote Creek Field and processed through the Cenex Gas Plant at Rhame, North Dakota as it entered Williston's No. 3 field gathering line.

Williston states that the Coyote Creek Field is no longer producing and the Cenex Gas Plant has been shut down. It is indicated that gas is now moving only from Williston's Cabin Creek to Belle Fourche transmission mainline to the Marmarth-Bowman transmission lateral and is measured at the town border stations of the customers served, thereby eliminating the need for the meter and regulator.

Williston states that no consent of customers is required because the proposed abandonment would have no effect on any customers.

Comment date: January 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Distrigas of Massachusetts Corp.

[Docket No. CP94–114–000]

Take notice that on December 1, 1993, Distrigas of Massachusetts Corporation ("DOMAC") filed an abbreviated application for a limited-term certificate of public convenience and necessity and request for expedited action requesting authority to install certain temporary air injection equipment at its liquefied natural gas ("LNG") terminal in Everett, Massachusetts.

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[1] Transwestern is a wholly owned subsidiary of Enron Corp.

[2] Pursuant to Commission's Order issued in Docket Nos. CP68–93 and CI68–497, Transwestern Pipeline Company and Cabot Corporation, 38 FPC Page 1,197 (1967).

[3] Transwestern indicates that American is successor-in-interest to Maple Gas Corporation which is successor-in-interest to Cabot Corporation.

DOMAC states that it requires additional air injection capability in order to air stabilize a cargo of LNG currently in route to its terminal. DOMAC states that its current air injection equipment is inadequate to fully air-stabilize the expected cargo because of a combination of higher than usual Btu content and its arrival during a period of peak throughput at DOMAC's terminal. DOMAC has requested issuance of a limited-term certificate by 8 a.m. on December 6, 1993.

Comment date: December 16, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30106 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP89–661–026]

Algonquin Gas Transmission Co.; Filing

December 3, 1993.

Take notice that on November 22, 1993, Algonquin Gas Transmission Company (Alqonquin) tendered for filing a rate sheet reflecting rates for fall service offered by Algonquin to its eight shippers under Rate Schedule AFT–2.

Service under Rate Schedule AFT–2 and authorization to construct facilities to provide full service were granted in the Commission's orders issued October 9, 1991 and May 20, 1992 in Algonquin Gas Transmission Co., Docket Nos. CP89–661–004 et. al.

On September 21, 1993, Algonquin filed an application to, inter alia, amend its initial rates for service under Rate Schedule AFT–2 to reflect the phasing-in of service, revise facility costs and revise cost of service components. The Commission issued its "Order Amendment Certificate" on October 29, 1993 granting Algonquin's request. The interim service that was provided to the AFT–2 customers beginning November 1, 1992, was provided under a separately authorized interim rate schedule and expired, under the term of its authorization on November 1, 1993. The tariff sheet represents the rate sheet for full service under Rate Schedule AFT–2 for the period November 1, 1993 through October 31, 1994.

Pursuant to § 154.51 of the Commission's regulations, Algonquin requests waiver of the notice requirements of § 154.22 to the extent necessary for the service agreements to become effective as of November 1, 1993 the date such service was made available to the AFT–2 shippers.

Algonquin further states that copies of its filing were mailed to all of the AFT–2 shippers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 10, 1993. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30012 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of January 1, 1994.

Algonquin states that the purpose of this filing is to implement Algonquin's Gas Research Institute (GRI) surcharge for 1994, pursuant to the Commission's orders approving the "Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism".

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30013 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–73–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Tenth Revised Sheet No. 570, with a proposed effective date of January 1, 1994.

ANR states that the purpose of the instant filing is to reflect an increase from $249,981 to $292,034 in the monthly charge paid by the High Island Offshore System (HIOS) to ANR pursuant to Rate Schedule X–64 under Original Volume No. 2 of ANR's FERC Gas Tariff. Rate Schedule X–64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78–134, ANR provides certain gas measurement, dehydration and related services for HIOS at its Grand Chenier, Louisiana facility.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1993. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30014 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–71–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

Original Sheet No. 37
First Revised Sheet Nos. 107, 108, 121, 143, 163, 279, and 369

CNG states that the proposed tariff sheets reflect tariff revisions that will permit certain parties to convert their current part 157 services to service under part 284 of the Commission's regulations.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30015 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–22–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

Second Revised Sheet Nos. 32 and 33

CNG states that the purpose of this filing is to update CNG's tariff to reflect collection of the 1994 research, development, and demonstration (RD&D) program costs of the Gas Research Institute (GRI). CNG avers that the GRI unit surcharges reflected in CNG's filing are in accordance with the methodology of the "Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism" (GRI Settlement), as approved by the Commission. The rates proposed by CNG reflect the allocation of GRI's 1994 RD&D program costs to GRI members, as set forth by the Commission's Opinion No. 384.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30016 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–5–011, RS92–6–010]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, Columbia Gas Transmission Corporation (Columbia Transmission) and Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of it FERC Gas Tariff, Second Revised Volume No. 1, and Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets set forth on Appendix A to the filing, to be effective on January 1, 1994.

Columbia Transmission and Columbia Gulf state that this filing is being made in further compliance of the Commission's September 29, 1993 "Second Order On Compliance Filings And Order On Rehearing", and consistent with previously filed pro forma tariff sheets in their October 22, 1993 "Second Revised Compliance

Filings" in the above-referenced dockets to implement effective January 1, 1994 open bidding under Columbia Transmission's ITS Rate Schedule and Columbia Gulf's ITS–1 and ITS–2 Rate Schedules.

Columbia Transmission and Columbia Gulf state that copies of this filing are available for inspection at their principal places of business at 1700 MacCorkle Avenue, SE., Post Office Box 1273, Charleston, West Virginia 25325–1273; and 2603 Augusta, Post Office Box 4621, Houston, Texas 77210–4621, respectively, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30017 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–70–000]

Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of January 1, 1994:

Second Revised Sheet No. 018
First Revised Sheet No. 018A
Second Revised Sheet No. 019
First Revised Sheet No. 019A

Columbia Gulf states that the aforementioned tariff sheets are being filed to revise the Gas Research Institute (GRI) General RD&D Funding Unit Rates, as authorized by the Federal Energy Regulatory Commission (Commission) by Order issued on October 5, 1993 in Docket No. RP93–140–000, *et al.*, establishing a funding mechanism for 1994. Under the funding mechanism, pipelines will collect the GRI volumetric surcharge of .85 cents per Dth on all nondiscounted commodity charges and nondiscounted one-part rates for transportation services. Pipeline members will also charge a surcharge of 21.80 cents per Dth per month on the demand/reservation components of firm service rates for "high load factor customers," (customers with load factors exceeding 50%) and 13.40 cents per Dth per month on the demand/reservation components of firm service rates for "low load factor customers," (customers with load factors of 50% or less).

Columbia Gulf states that copies of this filing were served upon all Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. 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 Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30018 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–24–000]

Equitrans, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1994:

2nd Substitute First Revised Sheet No. 5
2nd Substitute First Revised Sheet No. 6
2nd Substitute First Revised Sheet No. 8
First Revised Sheet No. 260
First Revised Sheet No. 261

Pursuant to Opinion No. 384 in Docket No. RP93–140–000, issued October 5, 1993, the Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1994 GRI unitdemand surcharge approved by the Commission is $.2180 per dekatherm (Dth) for high load factor customers and $.1340 per Dth for low load factor customers along with a $.0085 per Dth commodity surcharge. Equitrans proposes to include language in Section 28 of its General Terms and Conditions explaining the methodology for determining customer load factors for the purpose of assessing the GRI demand surcharge.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1993. 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 persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30022 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–33–000]

El Paso Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, El Paso Natural Gas Company (El Paso), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1–A and Third Revised Volume No. 2 to implement Gas Research's Institute's (GRI) 1994 funding mechanism to become effective January 1, 1994.

On October 5, 1993 the Commission issued Opinion No. 384 at Docket No. RP93–140–000, approving GRI's June 10, 1993 funding mechanism for use in collecting GRI's 1994 budget. El Paso states that the tendered tariff sheets serve to implement GRI's funding

mechanism for the period commencing January 1, 1994 through December 31, 1994. Accordingly, the tendered Statement of Rates tariff sheets set forth the charges approved by the Commission for GRI as follows: (1) Rate Schedule T–3 firm transportation reservation surcharges, for high load factor Shippers of $.2180 per dth per month and for low load factor Shippers of $.1340 per dth per month, plus a usage surcharge of $.0085 per dth for all Rate Schedule T–3 Shippers; (2) Rate Schedule FTS–S, for small quantity firm Shippers, will be assessed a usage surcharge of $.0200 per dth; (3) Rate Schedule T–1 for interruptible Shippers, will be assessed a usage surcharge of $.0085 per dth; and (4) the necessary changes to the GRI funding mechanism, Section 18 in El Paso's FERC Gas Tariff, Volume No. 1–A to reflect the modifications as required in Opinion No. 384.

El Paso states that such reservation and usage surcharges will be considered, for the purposes hereof, as the first rate increment to be discounted in the event El Paso discounts its reservation and/or usage rates. In other words, if El Paso discounts its reservation and/or usage rates more than the rates stated above, the GRI surcharges are not applicable; however, if El Paso discounts its reservation and/or usage surcharges by less than the rates stated above, the difference between the GRI surcharge and the discounted rate will be collected and remitted to GRI. El Paso states that this treatment is consistent with the provisions of Opinion No. 384.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective January 1, 1994.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commissions's Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30019 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–61–000]

El Paso Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and Section 31 of the General Terms and Conditions of its First Revised Volume No. 1–A Tariff, certain tariff sheets which, when accepted for filing and permitted to become effective, will adjust the Washington Ranch Reservation Surcharges for interest and true-up and update certain references in the tariff. In addition, the filing comprises El Paso's report of stranded costs for its Washington Ranch Storage Facility, as required by Section 4.3 of the Offer of Settlement in Restructuring, Rate and Related Proceedings at Docket Nos. RP91–188–000, RP92–214–000 and RS92–60–000, et al., (Settlement).

As a part of the Settlement, El Paso, among other things, proposed to treat its Washington Ranch Storage Facility as an adjunct to its transmission system for both rate and certificate purposes.

El Paso states that it proposed to reduce its investment in Washington Ranch by selling a portion of the inventory and writing down the remaining inventory and plant, the resulting impact of which was an estimated $61.3 million of stranded investment costs. El Paso proposed to recover from its affected firm Shippers under Rate Schedules T–3 and FTS–S the actual stranded cost resulting from the reduction in its Washington Ranch investment, plus applicable interest, by means of a reservation charge designed to amortize the cost incurred over a period commencing with the effectiveness of the Settlement and ending not later than December 31, 1996. As part of the Settlement, El Paso proposed a new tariff provision, Section 31, Washington Ranch Facility Stranded Investment Cost Recovery, to implement the proposal.

El Paso states that by order issued October 29, 1993 at Docket No. RS92–60–016 and 017, et al., the Commission accepted, among other things, the Washington Ranch tariff sheets to be effective October 1, 1993.

El Paso states that Section 31.4(b) of its tariff provides the mechanism by which El Paso will adjust each Shipper's Monthly Amortized Amount for interest calculated on the unrecovered balance of its stranded investment cost. The tariff further provides that El Paso will adjust its rates for any differences resulting from the use of estimated interest versus actual interest and such differences shall be added to or deducted from the estimated interest for the upcoming six (6) month period. El Paso states that no adjustment for differences between the calculation of the actual and estimated interest rates was necessary for the period February 1, 1993 through December 31, 1993 since the rates were the same.

El Paso states that Section 31.5 of its tariff provides that El Paso will file a true-up related to the sale of inventory to be effective January 1, 1995. Since El Paso has completed the sale of the required inventory amount and realized a gain on such sales, El Paso requests that the Commission grant waiver of Section 31.5 to allow an early true-up of the $1.5 million gain realized from the sale of the Washington Ranch inventory, to become effective January 1, 1994.

El Paso states that the filing and the schedules included therewith constitute El Paso's report of costs as required by Section 4.3 of the Settlement. El Paso requests that the Commission require any comments on this report be due on or before January 14, 1994 and reply comments be due on or before January 28, 1994.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective January 1, 1994, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies of the filing were served upon all interstate pipeline transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30020 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–62–000]

El Paso Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, tariff sheets to its First Revised Volume No. 1–A Tariff and Third Revised Volume No. 2 Tariff.

El Paso states that on January 29, 1993, at Docket Nos. RP91–188–000, RP92–214–000 and RS92–60–000, et al., it filed an Offer of Settlement in Restructuring, Rate and Related Proceedings (Settlement). El Paso states that Article III, paragraph 3.1(a), Production and Gathering Facilities, provides that all costs of the field transmission facilities being collected through mainline usage rates or reservation charges will be "phased-out" of mainline rates over a transition period ending December 31, 1995 and that such costs will be included in field transportation rates. El Paso states that the Settlement further states that with respect to any future rates that become effective on or after January 1, 1996, El Paso will not propose to recover any of the costs of its production area service facilities through its mainline usage rates (either firm or interruptible), mainline reservation charges or other mainline rates.

El Paso states that on April 30, 1993, the Commission issued an "Order Accepting Settlement and Compliance Filing Subject to Modifications," at Docket No. RS92–60–000, et al. On August 31, 1993, the Commission issued an "Order Denying Rehearing, Granting and Denying Clarification, Terminating Technical Conference in Part, Accepting Revised Compliance Filings, and Granting Limited Waiver," at Docket No. RS92–60–011, et al. El Paso states that on September 14, 1993 at Docket No. RS92–60–016, et al., it filed tariff sheets to, among other things, implement the Settlement effective October 1, 1993, El Paso states that on October 29, 1993 at Docket Nos. RS92–60–016 and 017, et al., the Commission accepted El Paso's revised compliance filing, subject to conditions, granted clarification, and granted in part and denied in part rehearing.

El Paso states that Article III, paragraph 3.2, of the Settlement provides that El Paso will reduce the amount of field transportation costs included in mainline rates effective with the implementation of its Settlement. Furthermore, El Paso will file a revision in its mainline and field transportation rates to be effective as of January 1, 1994, 1995 and 1996. El Paso states that, in accordance with the provisions of the Settlement, it tendered Statement of Rates tariff sheets which reflect the phase-out of a portion of the field transportation costs from its mainline transportation rates (i.e., a rate decrease) and an increase in the applicable field transportation rates effective January 1, 1994. El Paso states that the field transportation rate has increased from $0.1390 to $0.1560 per dth while the mainline rates have decreased by the amounts reflected on the schedule attached with the filing.

El Paso states that the rates reflected on the tariff sheets are those rates which have been approved as part of the Settlement.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective on January 1, 1994, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30021 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date January 1, 1994:

First Revised Sheet No. 8A
First Revised Sheet No. 8B

FGT states that the above-referenced tariff sheets are being filed pursuant to Commission Order in Docket No. RP93–133–000 issued on March 22, 1993 to reflect the 1994 funding mechanism for GRI's approved 1994 expenditures and pursuant to Commission Order in Docket No. RP93–140–000 issued on October 5, 1993 which approved GRI's 1994 research, development and demonstration (RD&D) expenditures. The funding mechanism includes the approved GRI demand charges of 21.8 cents per MMBtu per month (.72¢ per MMBtu stated on the daily demand basis underlying FGT's demand reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 13.4 cents per MMBtu per month (.44¢ per MMBtu stated on the daily demand basis underlying FGT's demand reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.85 cents per MMBtu to be applicable to all one-part interruptible rates and to the commodity portion of two-part rates to the extent such volumes are not discounted. In addition, the 1994 funding mechanism includes a volumetric charge of 2.0 cents per MMBtu to be applicable to all one-part small customer rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30023 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–51–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to become effective January 1, 1994.

Second Revised Volume No. 1
First Revised Sheet No. 7
First Revised Sheet No. 48

Great Lakes states that the proposed tariff sheets are being filed to reflect (1) the Gas Research Institute (GRI) funding unit factors approved pursuant to the Commission's "Order on Proposed Funding Mechanism", issued on October 5, 1993, in Docket No. RP93–140–000, and (2) modification of Great Lakes' existing GRI Adjustment Charge tariff provisions to reflect appropriate application of the revised GRI funding unit to Great Lakes' transportation services.

Great Lakes states further that the Commission's Order authorized, inter alia, the establishment of a new GRI funding unit to be applicable to the Demand/Reservation component of pipeline transportation services of 21.8¢ per Mcf per month (Load Factor greater than 50%), of 13.4¢ per Mcf per month (Load Factor 50% or less) and a funding unit of 0.85¢ per Mcf applicable to the Commodity/Utilization component of such services.

Great Lakes requests that the above tariff sheets become effective on January 1, 1994, to coincide with the effective date of the GRI funding unit rates approved in the above-described Commission Order.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30024 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–72–000]

Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing as part of its FERC Gas Tariff, First Volume No. 1, revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of January 1, 1994.

Iroquois states that the proposed changes would increase revenues from jurisdictional service by $8.425 million (6.0%), based on the twelve-month period ended July 31, 1993, as adjusted for changes through April 30, 1994. Additionally, Iroquois states that it is making certain minor tariff revisions of a clarifying or conforming nature.

Iroquois states that this rate filing is the first major rate change to be proposed since the pipeline commenced service in December 1991, and that the filing is necessary to reflect the current costs of constructing and operating the pipeline.

Iroquois states that a copy of its filing was served on each of its customers and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30025 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–46–000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, Kentucky West Virginia Gas Company (Kentucky West), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 162, to become effective January 1, 1994.

Kentucky West states the revised tariff sheet amends its Gas Research Institute (GRI) funding charge to place in effect on January 1, 1994, the new Gas Research Institute funding unit of $.0085 per Dth on all applicable nondiscounted commodity units and nondiscounted one-part rates for transportation service. Additionally, there will be a $0.218 per Dth per month demand or reservation surcharge on all firm transportation entitlements for customers with load factors exceeding 50% and $.134 per Dth per month for Customers with load factors of 50% or less. A surcharge of $.02 per Dth will be assessed to all VTS Customers. This funding unit was approved by the FERC in Opinion No. 384, issued on October 5, 1993, under Docket No. RP93–140–000.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 285.214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30026 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–5–000]

Midwestern Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 7, with a proposed effective date of January 1, 1994.

Midwestern states that this filing reflects revisions in the recovery of take-or-pay and contract reformation costs billed to Midwestern by its upstream supplier, Tennessee Gas Pipeline Company (Tennessee) pursuant to Section XXX of Tennessee's General Terms and Conditions.

Midwestern further states that the revised demand surcharge amount reflects an increase over the previously effective demand surcharge amount, which was filed on May 28, 1993, in Docket No. TM93–4–5, resulting in a new proposed effective demand surcharge amount of $866,073, including interest. The proposed new amount has been amortized over a six month period. The current volumetric charge will not change.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30027 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–25–000]

Mississippi River Transmission Corp; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on November 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 10
First Revised Sheet No. 227
First Revised Sheet No. 228

MRT states that the tariff sheets reflect the Gas Research Institute's (GRI) surcharges in accordance with the Commission's Order issued October 5, 1993, at Docket No. RP93–140–000.

MRT states that a copy of the revised tariff sheets is being mailed to each of its jurisdictional customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30028 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–68–000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Tariff

December 3, 1993.

Take notice that on December 1, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets. MRT stated that the purpose of this filing is to adjust MRT's rates to reflect $5,637,133 of gas supply realignment costs, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of its Tariff. MRT stated that this filing includes the cost of terminating gas supply contracts pursuant to four buyout agreements.

MRT requested an effective date of January 1, 1994 for these tariff sheets.

MRT stated that copies of its filing are available for inspection at its business offices, located in St. Louis, Missouri, and have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30029 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–26–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets to be effective January 1, 1994.

Natural states that the purpose of the filing is to implement the Gas Research Institute (GRI) Adjustment in accordance with Section 39 of the General Terms and Conditions of Natural's FERC Gas Tariff. The GRI rates were approved by Commission Opinion and Order issued October 5, 1993 at Docket No. RP93–140–000 to be effective January 1, 1994. Natural states that it also filed to make minor changes in Section 39.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1994.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30030 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–45–010]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 353 and 355 through 358 to be effective January 1, 1994.

Natural states that the purpose of the filing is to reflect revised sales service elections by three of its small customers that had previously requested sales service of Natural. Natural states that the Commission had granted it waiver to perform such sales service without forming a separate merchant division in its "Order on Compliance Filing and Rehearing" issued September 17, 1993 at Docket No. RS92–45. Natural states that the revised Tariff sheets remove references to sales service by Natural.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the Tariff sheets to become effective January 1, 1994.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30031 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–64–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revised the initial Stranded Account No. 858 surcharge to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Fifth Revised Sheet Nos. 50, 51, and 53 to revise this surcharge effective January 1, 1994.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30032 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–65–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing establishes the revised surcharge to recover costs incurred by Northern related to the realignment of its gas supply contracts. Therefore, Northern has filed Fourth Revised Sheet Nos. 50, 51, and 53 to establish the GSR surcharge effective January 1, 1994.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30033 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92-69-010]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing, as part of its FERC Gas Tariff, the following sheets with a proposed effective date of November 1, 1993:

Third Revised Volume No. 1

First Revised Sheet No. 282
First Revised Sheet No. 283

Northwest states that the purpose of this filing is to amend the Transition Cost Reservation (TCR) Surcharge Provision in Section 27 of the General Terms and Conditions of Third Revised Volume No. 1 of Northwest's FERC Gas Tariff. Northwest requests postponement of the Collection Period and asks that such period commence March 1, 1994, rather than January 1, 1994, as stated in the currently effective tariff provisions. The reason for the delay is to allow time for costs associated with further development of Northwest's Electronic Bulletin Board (EBB) to be properly included in the surcharge calculation. To begin the Collection Period on January 1, 1994, would have required Northwest to file on December 1, 1993, for the surcharge based on cost estimates rather than actual costs to allow for the required thirty days notice. In addition to the date changes, Northwest states that it has clarified that Section 27.3 regarding termination of the TCR Surcharge applies only to Rate Schedule TF-1 (Large Customer) and that termination of said surcharge applicable to FT-1 (Small Customer) is addressed in Section 27.2.

Northwest states that a copy of this filing has been served upon all parties on the official service list as compiled by the secretary in this proceeding and upon Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-30034 Filed 12-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-69-011]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing, as part of its FERC Gas Tariff, the following sheets with a proposed effective date of November 1, 1993:

Third Revised Volume No. 1

Second Revised Sheet No. 23
Second Revised Sheet No. 24

Northwest states that the purpose of this filing is to revise Section 11.2(b) of Rate Schedule TF-1 of Northwest's Third Revised Volume No. 1 Tariff to clarify scheduling priorities with respect to mainline throughput capacity.

Northwest states that a copy of this filing has been served upon all parties on the official service list in this proceeding as compiled by the Secretary and on Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-30035 Filed 12-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-74-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 239
First Revised Sheet No. 261
First Revised Sheet No. 266
First Revised Sheet No. 267
First Revised Sheet No. 304
First Revised Sheet No. 305
First Revised Sheet No. 307
First Revised Sheet No. 308
Original Sheet No. 312
Original Sheet No. 313
Sheet No. 314
First Revised Sheet No. 332
Original Sheet No. 333-A

Northwest states that the purpose of this filing is to propose changes to (i) Section 11.3 of Rate Schedule TF-1, entitled "Procedures for Requesting Permanent Receipt and Delivery Point Changes," of Third Revised Volume No. 1 of Northwest's FERC Gas Tariff ("Tariff") and Section 17 of the General Terms and Conditions; (ii) the Form of Service Agreement and Amendment to Service Agreement applicable to Rate Schedule TF-1 service; (iii) the Form of Service Agreement applicable to Rate Schedule SGS-2F; (iv) Section 22.2(f) of the General Terms and Conditions of Northwest's Tariff; (v) the open season provisions of Section 22, "Capacity Release"; and (vi) add Exhibit T to Rate Schedule TF-1 for capacity release transactions.

Northwest states that a copy of this filing has been served upon all of Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-30036 Filed 12-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94–3–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of January 1, 1994:

Third Revised Sheet No. 4
Third Revised Sheet No. 5
Third Revised Sheet No. 6
Third Revised Sheet No. 7
Third Revised Sheet No. 8
First Revised Sheet No. 289
First Revised Sheet No. 290
Original Sheet No. 290A

Panhandle states that such filing reflects a rate adjustment pursuant to the March 22, 1993 and June 23, 1993 Orders approving the Stipulation and Agreement Concerning Post–1993 GRI Funding Mechanism (Settlement) in Docket Nos. RP92–133–000, et al. and the October 5, 1993 Opinion No. 384 in Docket No. RP 93–140–000 approving the GRI's 1994 Research, Development, and Demonstration Program and Related Five-Year Plan for 1994–1998. Under the approved 1994 mechanism, pipeline members will charge and collect a uniform demand or reservation surcharge of 21.8¢ per Dt. per month to all firm high load factor customers, i.e., those customers with a load factor greater than 50%, and 13.4¢ per Dt. to all firm low load factor customers, i.e., those customers with a load factor less than or equal to 50%, based on the load factor definition in the Settlement. Pipelines will also charge a GRI volumetric surcharge of 0.85¢ per Dt. on all non-discounted commodity firm and interruptible transportation services. Qualifying small customers will pay 2.0¢ per Dt. on all non-discounted commodity charges. These surcharges would be collected only once on each unit of gas.

Panhandle states that copies of this filing have been served on all affected customers subject to the applicable tariff sheets and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30038 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–7–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets, with a proposed effective date of January 1, 1994:

First Revised Sheet No. 194
First Revised Sheet No. 195

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 1994. The 1994 GRI Funding Formula consists of surcharges of (i) .85¢ per MMBtu applicable to the commodity/usage portion of firm service rates and to interruptible rates and (ii) either 21.8¢ per Mcf for high load factor customers or 13.4¢ per Mcf for low load factor customers on the demand/reservation component of firm service rates. The 1994 GRI Funding Formula also provides for a surcharge of 2¢ per MMBtu on service rates for small customers. The Commission authorized these surcharges in its Order No. 384 issues October 3, 1993, in Docket No. RP93–140–000 to be effective January 1, 1994. Gas Research Institute, 65 FERC ¶ 61,027 (1993).

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30037 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–67–000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

December 3, 1993.

Take notice that on December 1, 1993, Southern Natural Gas Company (Southern) filed pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c) (1988), to recover gas supply realignment ("GSR") costs incurred as a consequence of Southern's implementation of restructured pipeline services under Order No. 636, *et seq.* Southern states that the tariff sheets identified below were filed in compliance with the Commission's orders in Southern's restructuring proceeding in Docket No. RS92–10–000 and the procedures set forth in Section 31 of the General Terms and Conditions of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1:

Second Revised Sheet No. 15
Second Revised Sheet No. 17
Second Revised Sheet No. 18
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31

Southern states that the purpose of this filing is to set forth the known and measurable GSR costs which have been paid or incurred by Southern, and the related demand surcharges and revised interruptible rates that will be charged by Southern, in connection with the termination or reformation of gas supply contracts that have become unnecessary and/or unmarketable as a result of the receipt by Southern of revised service elections from its customers following the mandatory restructuring by Southern of its pipeline services under Order No. 636. Southern requests that the tariffs sheets be made effective on January 1, 1994.

Southern states that it seeks to recover a principal amount of $114 million in GSR costs, plus pre-filing interest, which has been paid or incurred in connection with the termination or reformation of seven gas supply contracts that accounted for a significant portion of the projected above-market costs associated with its contracted gas reserves under its former bundled sales service. Southern states that these GSR

costs have arisen as a direct result of the need to realign gas supply contracts following customer's elections during restructuring to terminate their sales entitlements under Order No. 636. Southern further states that none of the GSR costs sought to be recovered in instant filing constitute take-or-pay settlement costs under gas supply contracts existing at March 31, 1989 which would be subject to the provisions of Southern's 1988 take-or-pay settlement in Docket No. RP86–63–000.

Southern states that copies of the filing were served upon Southern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30039 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–69–000]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

December 3, 1993.

Take notice that on December 1, 1993, Tennessee Gas Pipeline Company (Tennessee), is filing the revised tariff sheets to Article XXVII and revising its recovery of take-or-pay and contract reformation costs pursuant to Article XXX of the General Terms and Conditions of Volume One of its FERC Gas Tariff. The following changes are proposed to be effective January 1, 1994:

Fifth Revised Volume No. 1

First Revised Sheet No. 38
First Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 41
First Revised Sheet No. 42

Tennessee states that the purpose of the revisions to Sheet Nos. 38–42 is to adjust Tennessee's transition cost demand surcharge effective January 1, 1994 to reflect the recovery of an additional $3.2 million, including interest, of new demand costs. The additional costs of $7,630,893 have been allocated under an equitable sharing formula of 50% absorption—41.8% demand—8.2% volumetric in conformance with the Stipulation and Agreement approved by Order of the Commission on June 25, 1992, in docket Nos. RP86–119 et al. The resulting revised demand surcharges are shown on the revised sheets; the volumetric charges remain constant.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 93–30040 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–192–002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on October 18, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that the Commission's October 1, 1993 Order in Docket No. CP93–192 (October 1 Order) accepted the tariff sheets filed on September 3, 1993, as supplemented September 16, 1993, to be effective October 3, 1993, subject to Texas Eastern filing certain revisions as required therein. In particular, Texas Eastern states it was required to remove all references to its proposed "convertible" firm rates and recover transition costs from any transportation through the Viosca Knoll Lateral which does not enter the remainder of Texas Eastern's system. Pursuant to and in compliance with ordering paragraph (B) of the Commission's October 1 Order, Texas Eastern is submitting the tariff sheets listed on Appendix A to the filing to reflect these modifications.

Specifically, Texas Eastern submits Sub Original Sheet No. 42B to eliminate the "convertible" rate under Rate Schedule VKFT, to state the transition cost rate components for Rate Schedules VKFT and VKIT, and to institute GRI, ACA, and Usage-2 Charges which reflect the customers' potential to deliver gas off the Viosca Knoll Lateral, which then would not enter the remainder of Texas Eastern's system. Texas Eastern also submits Second Revised Sheet No. 624, 1st Rev First Revised Sheet No. 625, Second Revised Sheet No. 626 and 1st Rev 2nd Sub 1st Revised Sheet No. 627 to reflect the inclusion of Rate Schedules VKFT and VKIT into Section 15.2(C) of the General Terms and Conditions. Further, Texas Eastern submits certain other substitute tariff sheets to reflect the customers potential to deliver gas off the Viosca Knoll Lateral which then would not enter the remainder of Texas Eastern's system.

The proposed effective date of the tariff sheets listed on Appendix A of the filing is October 3, 1993, which is the same date approved by the Commission in the October 1 Order.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30041 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–66–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the

Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in Section 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order issued April 22, 1993 (April 22 Order) and September 17, 1993 (September 17 Order) in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., Phase I/Rates), and RP92–234–001. Texas Eastern states that Order No. 636 and the April 22 and September 17 Orders permit Texas Eastern to file this limited section 4 filing to continue recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred since the date of its previous quarterly filing, plus carrying charges through November 30, 1993, totalling $14,122,064. Additional interest of $321,602 at the current FERC annual rate of 6.00% is added for carrying charges from December 1, 1993 to the projected payment dates.

The proposed effective date of the filing is January 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions, as well as current interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30042 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Texas Gas Transmission Corporation (Texas Gas), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of January 1, 1994:

Third Revised Sheet No. 10
Third Revised Sheet No. 11
Third Revised Sheet No. 12
Second Revised Sheet No. 13
First Revised Sheet No. 189

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas' FERC Gas Tariff, First Revised Volume No. 1, to reflect the 1994 General RD&D Funding Units authorized in the Order on Contested Settlement, issued by the Commission on March 22, 1993, in Docket No. RP92–133–000, at 62 FERC 61,280 and Order Denying Stay, issued September 21, 1993, at 64 FERC 61,320.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30043 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–6–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing. The proposed effective date of such tariff sheets is January 1, 1994.

TGPL states that the purpose of the instant filing is to reflect in TGPL's rates commencing January 1, 1994 the Gas Research Institute (GRI) demand/reservation and commodity/usage surcharges in compliance with the Commission's Opinion No. 384 issued on October 5, 1993 in Docket No. RP93–140–000. Opinion No. 384 approved GRI 1994 funding formula and provides that as a member of GRI, TGPL is authorized to collect under Section 24 of the General Terms and Condition's of TGPL's Third Revised Volume No. 1 Tariff.

TGPL states that copies of the instant filing are being mailed to customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30044 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–70–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 257, with a proposed effective date of January 1, 1994.

TGPL states that the purpose of the instant filing is to revise Section 7(a) of the General Terms and Conditions of TGPL's tariff to provide the option of payment by check from a customer

whose monthly invoice(s) do not exceed an aggregate of $25,000.00.

On November 19, 1992, TGPL filed a Petition for Authorization of Limited Waiver of Tariff Provision (Petition) in Docket No. RP93–27–000, seeking waiver of Section 7(a) of the General Terms and Conditions of its tariff to permit payments by check rather than by wire transfer, if the payment due does not exceed an aggregate of $25,000.00. In its Petition, TGPL stated that certain customers had informed TGPL that payment by wire transfer is administratively or economically burdensome, particularly for invoices of smaller amounts. On December 28, 1992, the Commission granted the requested waiver for a one year period commencing January 1, 1993, finding good cause demonstrated and further finding the waiver to be non-discriminatory.

TGPL seeks authorization to revise its tariff to accept payment by check under the same limited circumstances proposed in its Petition. It is TGPL's understanding that circumstances that resulted in filing its Petition have not significantly changed and that certain customers believe that requiring payment by wire transfer for invoices under $25,000.00 would be burdensome. TGPL does not object to payments by check under the proposed circumstances and is willing to provide this option in its tariff on a permanent basis.

TGPL states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30045 Filed 12–8–93; 8:45 am]

BILLING CODE 6716–01–M

[Docket No. TM94–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of January 1, 1994:

Second Revised Sheet No. 13
First Revised Sheet No. 216
First Revised Sheet No. 217

Trunkline states that the revised tariff sheets filed herewith are submitted pursuant to the Commission's Orders issued on March 22, 1993 approving the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism (Settlement) in Docket Nos. RP92–133–000, et al., the Commission's Opinion No. 384 dated October 5, 1993 in Docket No. RP93–140–000 and in accordance with Section 20 of the General Terms and Conditions of Trunkline Gas Company's (Trunkline) FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that copies of its filing have been served on all affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30046 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–82–000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1993.

Take notice that on December 1, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 6, with a proposed effective date of January 1, 1994.

Viking states that the purpose of this filing is to adjust Viking's Gas Research Institute (GRI) Rate Adjustment, to reflect the 1994 RD&D funding formula approved in the Commission's October 5, 1993 Order in Gas Research Institute, 65 FERC 61,027 (1993).

Viking states that copies of the filing have been mailed to all of its customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30047 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–49–000]

Williston Basin Interstate Pipeline Co., Gas Research Institute Funding Unit Adjustment Filing

December 3, 1993.

Take notice that on December 1, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed January 1, 1994:

Second Revised Sheet No. 15
Second Revised Sheet No. 16
Second Revised Sheet No. 18
First Revised Sheet No. 21
Original Volume No. 2
Forty-eighth Revised Sheet No. 11B

Williston Basin states that its revised tariff sheets reflect the Commission-approved GRI demand surcharge on firm shippers' MDDQs in effect during a given month that are subject to the GRI surcharge. The level of the GRI demand surcharge is dependent upon the designation of an individual shipper as either a high-load factor (i.e., greater than 50%) or low-load factor (i.e., less than or equal to 50%) shipper.

Effective Jaunary 1, 1994, the GRI demand surcharge applicable to high-load factor firm shippers will be 21.800 cents per equivalent dkt and the GRI demand surcharge applicable to low-load factor firm shippers will be 13.400 cents per equivalent dkt. In addition, a GRI commodity surcharge of .8500 cents per dkt has been reflected for the applicable volumes moved under Williston Basin's transportation rate schedules. A commodity surcharge of 2.000 cents per dkt is applicable to shippers receiving service under Williston Basin's Small Customer Firm Transportation Service Rate Schedule ST–1.

Any person desiring to be heard or to protest said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30048 Filed 12–8–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–104–NG]

ANR Gas Supply Co.; Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ANR Gas Supply Company blanket authorization to export up to 100 Bcf of natural gas to Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30124 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–118–NG]

Bridgegas U.S.A. Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Bridgegas U.S.A. Inc. authorization to import up to 50 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after January 31, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30125 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–121–NG]

Husky Gas Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Husky Gas Marketing Inc. authorization to import up to 110 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after November 30, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30126 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–122–NG]

Washington Natural Gas Company; Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Washington Natural Gas Company (Washington Natural) to import up to 50 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery after November 30, 1993, when Washington Natural's current authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30127 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

[Docket Nos. FE C&E 93–28 and 93–29—Certification Notice 127]

Filing Certifications of Compliance; Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Idaho Falls Cogeneration Partners (C&E 93–28) and Lewisville Cogeneration Partners (C&E 93–29) 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 Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 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) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Idaho Falls Cogeneration Partners (C&E 93–28)
Operator: (The applicant has not yet selected an operator)
Location: Idaho Falls, Idaho
Plant configuration: topping cycle cogeneration
Capacity: 8.5 megawatts
Fuel: Natural gas
Purchasing utilities: Pacificorp
Expected in-service date: January 1, 1997

Owner: Lewisville Cogeneration Partners (C&E 93–29)
Operator: (The applicant has not yet selected an operator)
Location: Lewisville, Idaho
Plant configuration: topping cycle cogeneration
Capacity: 8.5 megawatts
Fuel: Natural gas
Purchasing utilities: Pacificorp
Expected in-service date: January 1, 1997

Issued in Washington, DC, December 3, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–30129 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed; Week of October 29 Through November 5, 1993

During the Week of October 29 through November 5, 1993, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 2, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 29 through November 5, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1993	Texaco/Dunes Center Service, Inc., Knox, IN.	RR321–138	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 10, 1993 Dismissal Letter (Case No. RF321–16916) issued to Dunes Center Service, Inc., regarding the firm's Application for Refund submitted in the Texaco Refund Proceeding would be modified.
Oct. 26, 1993 ..	Martin County School, Paris, TN	RR272–130	Request for modification/rescission in the crude oil refund proceeding. If granted: The September 26, 1993 Dismissal Letter (Case No. RF272–79351) issued to Martin County School regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified.
Nov. 2, 1993 ...	Concord Oil Company, San Antonio, TX	LFA–0331	Appeal of an information request denial. If granted: The September 30, 1993 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Concord Oil Company would receive access to additional information.
Nov. 3, 1993 ...	Oxy USA, Inc, Washington, DC	LFA–0332	Appeal of an information request denial. If granted: Oxy USA, Inc., would receive access to sixty-nine responsive documents which were withheld by the Office of Management and Information Systems of the DOE Economic Regulatory Administration.
Nov. 5, 1993 ...	Walker Sims Oil Company, Inc., Seminole, TX.	LEE–0057	Exception to the reporting requirements. If granted: Walker Sims Oil Company, Inc., would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Nov. 5, 1993 ...	Ed F. Hodges, Inc. Fairmont, NC	LEE–0056	Exception to the reporting requirements. If granted: Ed F. Hodges, Inc., would not be required to file Form EIA–782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report."

Refund Applications Received

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/29/93 thru 11/5/93	Crude oil refund, applications received	RF272–94982 thru RF272–95010
10/29/93 thru 11/5/93	Texaco oil refund, applications received	RF321–19948 thru RF321–19959
10/29/93 thru 11/5/93	Atlantic Richfield refund, applications received	RF304–14704 thru RF304–14738
10/29/93	Sysco Food Systems	RC272–217

[FR Doc. 93–30130 Filed 12–8–93; 8:45 am]
BILLING CODE 6450–01–P

Cases Filed During the Week of November 12 Through November 19, 1993

During the Week of November 12 through November 19, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 2, 1993.

George B. Breznay

Director, Office of Hearings and Appeals.

List of Cases Received by The Office of Hearings and Appeals

[Week of November 12 through November 19, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 12, 1993	Seehuus Associates, Prosser, WA	LFA–0337	Appeal of an information. If granted: Seehuus Associates would receive a retroactive waiver of fees charged for processing a previous FOIA request.
Nov. 15, 1993	Miller's Bottled Gas, Bowling Green, KY	LEE–0059	Exception to the reporting requirements. If granted: Miller's Bottled Gas would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Produce Sales Report."
Nov. 15, 1993	MSE Incorporated, Butte, MT	LFA–0338	Appeal of an information request denial. If granted: The October 7, 1993 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and MSE Incorporated would receive access to information concerning an investigation of allegations made by a former employee who was terminated for reporting illegal activities by MSE, Inc.
Nov. 16, 1993	J.R. Cone, Washington, D.C	LEF–0118	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the March 25, 1983 Remedial Order issued to J. R. Cone.
Nov 16, 1993	Maxwell Oil Company, Inc., Washington, D.C.	LEF–0116	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the September 1, 1981 Consent Order entered into with Maxwell Oil Company, Inc.
Nov. 16, 1993	Warwick Oil Corporation, Washington, D.C	LEF–0117	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the April 3, 1980 Remedial Order issued to Warwick Oil Corporation.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
11/12/93 thru 11/19/93	Crude oil refund, applications received	RF272–95020 thru RF272–95032
11/12/93 thru 11/19/93	Atlantic Richfield, applications received	RF304–14784 thru RF304–14810
11/17/93	Jeffrey B. McCuloch	RF307–10217
11/19–93	BTU Energy Corporation	RF350–2

[FR Doc. 93–30131 Filed 12–8–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of October 4 Through October 8, 1993

During the week of October 4 through October 8, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

James L. Schwab, 10/07/93, LFA–0320

James L. Schwab filed an Appeal from a determination issued by the Office of Inspector General (OIG) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). OIG had withheld portions of three documents under Exemptions 6 and 7(C) of the FOIA. In considering the Appeal, the DOE found that the responsive records were compiled for a law enforcement purpose. Thus, the withholding of information would be analyzed under Exemption 7(C). DOE further found, in accordance with precedent, that OIG had properly withheld the names, identifying numbers, initials, and other indicia of OIG investigative personnel and the names, home addresses, phone numbers and other information specifically identifying witnesses, sources and third parties. However, the DOE determined that there was considerable non-exempt segregable material contained in the documents which could possibly be released to Mr. Schwab. Accordingly, the appeal was granted in part, denied in part, and remanded to OIG for a new determination in accordance with the guidance set forth in the Decision and Order.

Natural Resources Defense Council, 10/06/93, LFA–0031

Natural Resources Defense Council filed a Appeal from a denial by the Directorate of Information Management of the Air Force Logistics Command (AFLC) of the Department of the Air Force of a request for information filed under the Freedom of Information Act (FOIA). The AFLC withheld some material responsive to the request as classified material. In connection with the Appeal, the withheld material was reviewed by the DOE's Office of Classification of the Office of Security Affairs, which found most of the material to continue to be properly classified material under Exemption 3 of the FOIA. However, the Office of Classification determined that a small portion of previously withheld material could now be released as the result of more precise deletions. Accordingly, the Appeal was granted in part and denied in part.

Request for Modification and/or Rescission

Energy Refunds, Inc., 10/05/93, LFR–0012

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Energy Refunds, Inc. (ERI). In its Motion, ERI requested that the DOE reconsider a June 4, 1993 Decision and Order which disqualified ERI from representing refund applicants in OHA proceedings. See Energy Refunds, Inc., 23 DOE ¶ 85,076 (1993). In considering ERI's Motion, the DOE determined that ERI's conduct warranted disqualification but that the June 1993 Order should be modified to permit ERI to apply for reinstatement based upon a demonstration that the types of conduct for which it had been disqualified would not reoccur. The DOE specified certain minimal requirements of such a demonstration. Accordingly, the Motion for Reconsideration was granted in part.

Refund Applications

Enron Corp./RF340–67, Stanton Propane; Will's Gas Company, 10/05/93, RF340–104

The DOE issued a Decision and Order concerning refund applications that Stanton Propane (Stanton) and Will's Gas Company (Will's) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that those firms were retailers of propane who qualified for a refund under the 60% mid-range presumption of injury. However, the DOE rejected a completely unrealistic revised gallonage figure for the month of January 1981 that was submitted by Energy Refunds, Inc. on behalf of Stanton, and instead used Stanton's own estimate of its purchase gallonage. Accordingly, the DOE granted Stanton a refund of $13,779 and Will's a refund of $30,665.

Texaco Inc./Long Island Lighting Company, 10/04/93, RF321–18846

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding on behalf of Long Island Lighting Company (LILCO). LILCO sought a refund based on purchases of 26,262,000 gallons of covered petroleum products. LILCO claimed that Texaco's records of its purchases, which totalled 26,262 gallons, were reported in thousands of gallons. The DOE found, however, that LILCO's records as supplied by Texaco were not in thousands of gallons, but in exact gallon amounts. Furthermore, LILCO supplied no other documentation of its purchases to support the 26,262,000 gallon purchase volume claim it advanced. Therefore, LILCO was granted a refund based only on documents purchases of 26,262 gallons of Texaco covered petroleum products. The total refund amount that the DOE granted LILCO was $40, including $11 of accrued interest.

Texaco Inc./Vories Morein, RF321–18575, GAM Enterprises, Ltd., 10/18/93, RF321–18576

The DOE issued a Decision and Order concerning two Applications for Refund filed by Gene Morein in the Texaco Inc. Subpart V special refund proceeding. This applicant was a reseller who purchased Texaco products directly from Texaco. The applicant provided documentation that he owned his father's (Vories Morein) jobbership from the beginning of the refund period and that he was the sole stockholder of GAM Enterprises, Ltd. He also provided documentation establishing that he filed for personal bankruptcy in 1982, that the bankruptcy proceeding was closed, and that he had been discharged from all his debts. Since the personal bankruptcy proceeding was closed, the DOE determined that the refunds should be granted to the applicant. Accordingly, Mr. Morein's Application for Refund were approved. He was granted $10,237 ($7,473 principal plus $2,764 interest) in Case No. RF321–18575 and $619 ($452 principal plus $167 interest) in Case No. RF321–18576.

Texaco Inc./Ward Texaco, 10/07/93, RF321–17997

The DOE issued a Decision and Order concerning an Application for Refund filed by Ward Texaco (Ward) in the Texaco Inc. Subpart V special refund proceeding. This applicant indirectly purchased Texaco products from Southern Maryland Oil Co. (SMO), a Texaco jobber. On June 30, 1993, the DOE issued a Decision and Order in the Texaco proceeding which determined that SMO had been injured in some of its purchases of Texaco products. Texaco Inc./SMO, Inc., 23 DOE ¶ 85,086 (1993). Based on a detailed showing of SMO's costs and prices during the refund period, the DOE concluded that (i) during the period

from March 1973 through April 1976 SMO did not absorb any of Texaco's alleged overcharges, (ii) during the period from May 1976 through April 1980 SMO absorbed 61.9 percent of the overcharges, and (iii) during the period from May 1980 through January 1981 SMO absorbed the full amount of any overcharges. Consequently, in the present Decision, the DOE found that, as a customer of SMO, Ward incurred 100 percent of the impact of Texaco's alleged overcharges during the period from March 1973 through April 1976, and 38.1 percent of the overcharges during the period May 1976 through April 1980 and that during the period May 1980 through January 1981, Ward would not have been injured because the Texaco overcharges were entirely absorbed by SMO. Accordingly, Ward was found eligible for a refund only to the extent that it incurred the Texaco overcharges. Furthermore, since SMO purchased 83 percent of its product supply from Texaco, the volumetric amount for Ward was reduced by 17 percent, the amount of product SMO sold that did not originate from Texaco. Thus the per gallon volumetric amount used to calculate Ward's refund was $0.000913. Ward's total refund amount was $1,523 ($1,112 principal plus $411 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/FRANK CARRALES ARCO *ET AL*	RF304–14417	10/06/93
ATLANTIC RICHFIELD COMPANY/GEORGE'S ARCO *ET AL*	RF304–14003	10/06/93
ATLANTIC RICHFIELD COMPANY/INDIANA BELL TELEPHONE CO. *ET AL*	RF304–13155	10/05/93
BEACON OIL COMPANY/SMITH TANK LINES	RF238–78	10/06/93
DOLTON SCHOOL DISTRICT 149 *ET AL*	RF272–81292	10/06/93
ENRON CORP./FRALEY BUTANE COMPANY, INC	RF340–50	10/05/93
POLAR SUPPLY, INC	RF340–100	
GULF OIL CORPORATION/COBB COUNTY GOVERNMENT	RF300–20009	10/08/93
STATE OF DELAWARE, DEPT. OF NATURAL RESOURCES	RF300–20282	
GULF OIL CORPORATION/MORGAN OIL COMPANY	RR300–235	10/05/93
H.F. CAMPBELL & SON, INC	RF272–75992	10/05/93
JACK LARGENT CO. *ET AL*	RF272–91557	10/05/93
MIKE GUZMAN CONSTRUCTION CO. *ET AL*	RF272–90600	10/08/93
SHANNON COUNTY SCH. DIST. 65–1	RA272–55	10/05/93
SHELL OIL COMPANY/FRANK'S SHELL	RF315–7962	10/06/93
COLOR CANYON AVIATION	RF315–8968	
MEMPHIS GAS, LIGHT & WATER	RF315–9661	
SPEARMAN INDEPENDENT SCHOOL DISTRICT	RR272–117	10/07/93
TEXACO INC./ARTHUR KELLEY'S TEXACO #2	RR321–133	10/05/93
TEXACO INC./B&H TEXACO *ET AL*	RF321–47	10/08/93
TEXACO INC./DUKE'S TEXACO *ET AL*	RF321–997	10/05/93
TEXACO INC./EASTON PETROLEUM, CO. INC. *ET AL*	RF321–4049	10/07/93
TEXACO INC./GUERRA'S TEXACO	RF321–19918	10/07/93
TEXACO INC./J.B. LEVERT LAND CO. *ET AL*	RF321–14706	10/08/93
TEXACO INC./KINARD'S TEXACO	RF321–19898	10/06/93
TEXACO INC./LEE'S TEXACO SERVICE	RF321–1656	10/04/93
LEE'S TEXACO SERVICE	RF321–19689	
LEE'S TEXACO SERVICE	RF321–19850	
TEXACO INC./ORANGE TEXACO CENTER *ET AL*	RF321–19003	10/07/93
TEXACO INC./PAUL'S TEXACO	RR321–134	10/07/93
TEXACO INC./RAY'S AUTO SPECIALIST *ET AL*	RF321–9468	10/06/93
TOWN OF LAKE PROVIDENCE, LOUISIANA *ET AL*	RF272–88434	10/05/93
VILLAGE OF BARNESVILLE	RF272–83177	10/06/93

Dismissals

The following submissions were dismissed:

Name	Case No.
BARTON COUNTY	RF272–85253
BLECKLEY COUNTY	RF272–85226
CANISTOTA SCHOOL DISTRICT 43–1	RF272–82453
CASEY GODDARD OIL CO	RF315–10166
CHARTER INTERNATIONAL OIL COMPANY	RF340–89
CHESTNUT STREET GULF	RF300–13993
CITY OF BAYPORT	RF272–85205
CITY OF HOLTVILLE	RF272–85199
CROSBY COUNTY	RF272–85241
CURT'S SHELL SERVICE	RF315–6901
DALLAS COUNTY RI	RF272–80601
EAST PRAIRIE R II SCHOOLS	RF272–82454
FELSING SERVICE	RF321–13456
GEORGE COUNTY SCHOOLS	RF272–81747
GERMANTOWN HILLS SCHOOL DIST. 69	RF272–80637
HANNIBAL CENTRAL SCHOOL DISTRICT	RF272–82451
HONONEGAH COMMUNITY HIGH SCHOOL DISTRICT 207	RF272–81741
KOHLER SCHOOL DISTRICT	RF272–80621
LEE'S TEXACO	RF321–4492

Name	Case No.
MARLBOROUGH SCHOOL DISTRICT	RF272–80629
NEWFANE CENTRAL SCHOOL DISTRICT	RF272–82471
ORCHARD VIEW SCHOOLS	RF272–81680
PEACH COUNTY	RF272–85210
TIPTON COMMUNITY SCHOOL CORP	RF272–81720
TOWN OF RED SPRINGS	RF272–85222
VALDEZ TEXACO	RF321–18349
VERN'S SUNSET TEXACO	RF321–14437
VERN'S TEXACO	RF321–14438
WEST CLERMONT LOCAL SCHOOL DISTRICT	RF272–82466

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 2, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–30132 Filed 12–8–93; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $10,089.18, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a March 8, 1982 Remedial Order issued to A–1 Exxon and Redhill Mobil & Towing, Case Nos. LEF–0086 and LEF–0088 and a March 29, 1982 Remedial Order issued to Half Moon Bay Exxon, Case No. LEF–0087. The OHA has tentatively determined that the funds obtained from the above firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979 through November 20, 1979 in the A–1 Exxon proceeding; August 1, 1979 through October 23, 1979 in the Half Moon Bay Exxon proceeding; and August 1, 1979 through November 13, 1979 in the Redhill Mobil and Towing proceeding.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before January 10, 1994, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $10,089.18, plus accrued interest, obtained by the DOE pursuant to March 8, 1982 and March 29, 1982 Remedial Orders. In the Remedial Orders, the DOE found that, during the periods beginning August 1, 1979, the firms each had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has tentatively determined to distribute the funds obtained from the firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the firms who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from A–1 Exxon, Redhill Mobil & Towing, or Half Moon Bay Exxon.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 2, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

PROPOSED DECISION AND ORDER—IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

December 2, 1993.

Names of Firms: A–1 Exxon, Half Moon Bay Exxon, Redhill Mobil & Towing

Date of Filing: July 20, 1993

Case Numbers: LEF–0086, LEF–0087, LEF–0088

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Remedial Orders issued by the DOE to the following parties: A–1 Exxon (A–1) of Capitola, California, Half Moon Bay Exxon of Half Moon Bay, California, and Redhill Mobil & Towing of San Anselmo, California (hereinafter collectively referred to as the remedial order firms). In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the

effects of regulatory violations set forth in the Remedial Order. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Each of the remedial order firms was a retailer of motor gasoline during the periods relevant to this proceeding. The ERA issued Proposed Remedial Orders (PROs) to each of the firms.[1] The PROs alleged that, during separate periods beginning on August 1, 1979, the remedial order firms had: charged more than the maximum lawful selling price for one or more grades of gasoline in violation of 10 CFR 212.93; failed to post and maintain the maximum lawful selling price or a proper certification in violation of 10 CFR 212.129; failed to keep and maintain books and records to support the lawfulness of the price for gasoline on the audit date in violation of 10 CFR 210.92 and 212.93; and/or engaged in unlawful or discriminatory business practices in violation of 10 CFR 210.62.

After considering and dismissing the firms' objections to the PROs, the DOE issued final Remedial Orders. A–1 Exxon, et al., 9 DOE ¶ 83,020 (1982); Chip's Chevron Service, et al., 9 DOE ¶ 83,046 (1982).[2] Each of the retailers, represented by the same counsel, appealed the remedial orders to the Federal Energy Regulatory Commission (FERC). On September 19, 1982, FERC affirmed each of the contested remedial orders in every respect. A–1 Exxon, et al., 20 FERC ¶ 61,387 (1982). Each of the firms has since remitted a specified amount in compliance with the Remedial Orders, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the above remedial order funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution processes set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the remedial order funds by which purchasers of gasoline from the remedial order firms during the period covered by the Remedial Orders may submit Applications for Refund in the initial stage. From our experience with subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers ("end-users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[3]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from the remedial order firm during the period covered by the Remedial Order. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of the remedial order firms' sales of gasoline during the period covered by the Remedial Orders. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis.[4] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of a Remedial Order fund is equal to the number of gallons purchased from the remedial order firm during the period covered by that Remedial Order times the per gallon refund amount.[5] We derived the per gallon refund figures by dividing the amount of each Remedial Order fund by the total volume of gasoline which each remedial order firm sold during the period specified in that Remedial Order. An applicant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[6]

In addition to the volumetric presumption, we also propose to adopt a presumption regarding injury for end-users.

2. End-Users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of gasoline purchased from one of the remedial

[1] A–1 Exxon was issued a PRO on January 22, 1981; Half Moon Bay Exxon was issued a PRO on May 7, 1981, and Redhill Mobil & Towing was issued a PRO on February 25, 1981.

[2] A Remedial Order was issued to A–1 Exxon and Redhill Mobil & Towing on March 8, 1982. A Remedial Order was issued to Half Moon Bay Exxon on March 29, 1982.

[3] If a refiner, reseller, or retailer should file an application in any of the refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Shell Oil Co., 18 DOE ¶ 85,492 (1989).

[4] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the remedial firm's overcharges. See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co., 20 DOE ¶ 85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[5] The per gallon refund amount is $.0465 for claimants applying in the A–1 Exxon proceeding ($3,000 remitted/64,456.4 gallons sold), $.0173 in the Half-Moon Bay Exxon proceeding ($2,500 remitted/144,331 gallons sold), and $.0314 in the Redhill Mobil & Towing proceeding ($4,589.18 remitted/146,145.7 gallons sold).

[6] As in previous cases, we propose to establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See Exxon Corp., 17 DOE ¶ 85,590, at 89,150 (1988) (Exxon).

order firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of gasoline purchased from the remedial order firms need only document their purchase volumes from the firm during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from any of the Remedial Order funds, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[7] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) A monthly purchase schedule covering the relevant Remedial Order period.[8] The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the remedial order firm, it should explain this affiliation, including the time period in which it was affiliated;[9]

(5) A statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "A–1 Exxon (Case No. LEF–0086)/Half Moon Bay Exxon (Case No. LEF–0087)/ or Redhill Mobil and Towing (Case No. LEF–0088) Special Refund Proceeding." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than 90 days after the date of the Final Decision and Order and sent to:

A–1 Exxon/Half Moon Bay Exxon/OR Redhill Mobil & Towing Special, Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

C. Refund Applications Filed by Representatives

In addition, we propose to adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See, e.g., Starks Shell Service, 23 DOE 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] The Remedial Orders cover the following periods: August 1, 1979 through November 20, 1979 in the A–1 Exxon proceeding; August 1, 1979 through October 23, 1979 in the Half-Moon Bay Exxon proceeding; and August 1, 1979 through November 13, 1979 in the Redhill Mobil and Towing proceeding.

[9] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of the remedial order firm were not injured by the firm's overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is so because the remedial order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate of the remedial order firm was granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

accordance with the provisions of PODRA.

It Is Therefore Ordered That: The refund amounts remitted to the Department of Energy by A–1 Exxon, Half Moon Bay Exxon, and Redhill Mobil & Towing pursuant to the Remedial Orders issued on March 8, 1982 and March 29, 1982 will be distributed in accordance with the foregoing Decision.

[FR Doc. 93–30133 Filed 12–8–93; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4810–3]

Fuels and Fuel Additives; Extension of Time and Finding Concerning Fuel Additive Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). The waiver application concerned the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000. On January 8, 1992, the Administrator of EPA denied Ethyl's application for a waiver (57 FR 2535, January 22, 1992), based primarily on data submitted by Ford Motor Company which suggested that driving cycle could affect the magnitude of increases in hydrocarbon emissions resulting from MMT use. Ethyl subsequently sought judicial review of the denial decision in the United States Court of Appeals for the District of Columbia Circuit.

While judicial review was pending, Ethyl submitted new emissions test data indicating that driving cycle was not the cause of the increases in hydrocarbon emissions observed in the Ford data. Based on this new information, on April 6, 1993, the Court of Appeals granted a motion by EPA to remand the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's section 211(f)(4) application. The mandate of the court was transmitted to the Agency on June 3, 1993, affording EPA until November 30, 1993 to grant or deny the remanded waiver application.

EPA and Ethyl have now agreed to an extension of 180 days in the deadline for final action by EPA on Ethyl's waiver application for HiTEC 3000. To implement this agreement, Ethyl has withdrawn its July 12, 1991 waiver application, as remanded by the Court of Appeals, and has immediately resubmitted the application. EPA must now take final action either granting or denying Ethyl's resubmitted application by May 29, 1994. For purposes of the resubmitted application, the EPA Administrator has determined that Ethyl has demonstrated as required by section 211(f)(4) that use of HiTEC 3000 at the specified concentration will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified. Further review of Ethyl's application during the additional 180 day period will focus in particular on the issues relating to the potential effects on public health if EPA were to permit use of MMT as a fuel additive.

DATES: Comments on the resubmitted waiver application will be accepted until February 7, 1994. EPA will make a final decision to grant or to deny the resubmitted waiver application no later than May 29, 1994.

ADDRESSES: Copies of the information pertaining to this resubmitted application are available for inspection in public docket A–93–26 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9034.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application, the statute provides that the waiver shall be treated as granted.

This notice concerns withdrawal and immediate resubmission of an application by Ethyl under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level no greater than 0.03125 (1/32) gram per gallon manganese (gpg Mn). Ethyl has agreed to withdraw and resubmit its application in order to extend the deadline for final administrative action by 180 days. During this 180 day period, EPA will focus its review on the issues relating to the potential effects on public health if EPA were to permit use of MMT as a fuel additive.

Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for

concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decisions and justifications thereof may be found in the September 18, 1978 Federal Register, 43 FR 41424, and the December 1, 1981 Federal Register, 46 FR 58630. Ethyl's third application was submitted on May 9, 1990, for concentrations of MMT resulting in a level of 0.03125 (1/32) gpg Mn in unleaded gasoline. Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time the Ethyl withdrew that application, EPA accepted the withdrawal and immediately terminated the proceeding without action on the application.

On July 12, 1991, Ethyl again submitted an application for a waiver to permit MMT to be blended in unleaded gasoline resulting in a level no greater than 0.03125 (1/32) gram per gallon manganese (gpg Mn). On January 8, 1992, the Administrator of EPA denied Ethyl's July 12, 1991 application for a waiver (57 FR 2535, January 22, 1992). The application was denied based in part upon data submitted by Ford Motor Company which indicated that, for the model groups tested by Ford and, for the conditions under which Ford tested its vehicles, the increases in hydrocarbon exhaust emissions as a result of the use of MMT were substantially greater than those observed in the Ethyl test program. In its decision, the Agency stated that a likely factor which might account for the differences observed between the Ethyl and Ford test programs was the severity of the driving cycle. However, the Agency also concluded that other factors might be responsible for the observed differences.

On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision.

In its new test program, Ethyl tested six pairs of 1991 Escorts, using both the relatively high-speed driving pattern similar to that utilized by Ford in its testing of 1991 Escorts (the Ford cycle) and, also, after changing emissions system components (catalyst and oxygen sensor), the driving cycle used by Ethyl in the original test program (EPA's durability certification cycle also known as the AMA). Half of the vehicles utilized MMT-containing fuel and half were run on clear fuel (fuel not containing MMT).

Ethyl also tested six 1988 Escorts which were previously driven on the AMA cycle during the original test program. In the new program, after replacing the catalyst and oxygen sensor, Ethyl continued mileage accumulation, from 75,000 to 100,000 miles, utilizing the Ford cycle. Likewise, Ethyl tested six 1988 Buicks from its original fleet, accumulating mileage (100,000 to 115,000 miles) using the Ford cycle but without replacing any components.

Finally, in this new test program, Ethyl accumulated mileage on seven pairs of 1992 vehicles (four Crown Victorias, six Buick Regals and four Ford Mustangs) over 20,000 to 45,000 miles, with and without MMT, using the Ford cycle.

Based on the new Ethyl data, EPA ultimately concluded that driving cycle does not contribute significantly to MMT-induced increases in hydrocarbon emissions. (EPA's preliminary analysis was placed in docket A–92–41.) However, in addition to addressing the issue of driving cycle, the Ethyl data appeared to confirm the finding by Ford that 1991 Escorts experienced a much higher MMT-induced hydrocarbon increase than that observed in other models tested. EPA held a public workshop on October 28, 1992 to assist the Agency in attempting to formulate a proposed emission test program to address these issues (57 FR 44740, September 29, 1992).

Although further settlement discussions between Ethyl and EPA were held subsequent to the public workshop, the parties were not successful in reaching a settlement. However, despite the failure of the parties to reach agreement, EPA concluded that the Administrator's denial decision should be reconsidered in light of the new emissions data generated by Ethyl subsequent to the decision. Accordingly, EPA requested that the United States Court of Appeals for the District of Columbia Circuit remand the denial decision to enable EPA to reconsider its decision concerning Ethyl's application.

On April 6, 1993, the Court of Appeals issued a decision granting the Agency's motion and remanding the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's application. The mandate implementing this judgement was transmitted to the Agency on June 3, 1993, thereby beginning the 180-day period allotted for the Agency's reconsideration. Thus, the Administrator's final decision on the remanded waiver application was due on or before November 30, 1993. On June 28, 1993, EPA issued a notice announcing the remand of Ethyl's July 12, 1991 application for further administrative action and affording interested persons an opportunity to comment (58 FR 35950, July 2, 1993).

After the Court of Appeals granted the Agency's motion to remand the denial decision concerning Ethyl's July 12, 1991 application, Ethyl submitted to EPA additional data on emissions testing with fuels containing MMT. These data represented additional mileage accumulation on the 1992 vehicles mentioned above (four Crown Victorias to 100,000 miles, six Buick Regals to 65,000 miles and four Ford Mustangs to 45,000 miles) and on five 1993 model-year vehicles (six Toyota Camrys to 85,000 miles, six Oldsmobile Achievas to 65,000 miles, six Dodge Shadows to 60,000 miles, six TLEV Ford Escorts to 85,000 miles, and six Honda Civics to 80,000 miles) with and without MMT.[1] The driving cycles used for these vehicles were an intermediate driving cycle of 45 mph on average for the 1993 model-year vehicles, an average 55 mph driving cycle (i.e., the Ford Cycle) for all mileage accumulation on the 1992 Ford Mustangs and for the initial 45,000 miles of operation on the 1992 Crown Victorias and Buick Regals, and an average driving cycle of 45 mph was utilized for these two models thereafter. More recently, Ethyl initiated testing on four 1993 (49 state) Ford Escorts at a 55 mph average driving cycle and has submitted data on mileage accumulation of up to 30,000 miles.

EPA provided an additional opportunity for the public to submit written comments.[2] Many comments were received from a wide variety of interests, including refiners, automakers, emission control manufacturers, states' committees, environmental and public interest groups and private citizens. Taken together, the comments touched on every aspect of Ethyl's application.

Automakers generally recommended denial of Ethyl's request based on their expectations of unacceptable emissions increases resulting from use of the

[1] Most of the test data concerning these vehicles was submitted to EPA by July 15, 1993. Testing on some of these vehicles continued thereafter and additional data concerning these vehicles were provided incrementally to the Agency.

[2] The comments received during the remand were placed in public docket A–93–26.

additive. Several small refiners and the National Petroleum Refiners Association all recommended approval indicating that MMT would be a valuable octane enhancer. Environmental and health organizations also commented, most noting that little is known about low-level chronic exposure to airborne manganese. These commenters generally recommended that the Administrator exercise discretion in denying the waiver request until the completion of studies sufficient to determine a "safe level" of exposure to ambient manganese.

During the course of the remand of Ethyl's waiver application, the EPA Office of Research and Development (ORD) was reviewing the available data concerning the health effects associated with inhalation of manganese as part of a separate process to establish a reference concentration (RfC) for inhaled manganese.[3] An inhalation reference concentration is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer health effects during a lifetime. The methodology for establishing an RfC accounts for uncertainties and gaps in the health data base through the assignment of uncertainty factors. On November 1, 1993, ORD completed preparation and review of, and EPA released to Ethyl, a document identifying and describing the rationale for a new inhalation RfC of 0.05 μg/m³ for manganese and manganese compounds.

Ethyl subsequently provided to EPA a detailed critique of the approach utilized to derive the new manganese RfC. Among other things, Ethyl argued that EPA used an inappropriate procedure to derive the lowest observed adverse effect level (LOAEL) from a study of occupational manganese exposures by Roels, et al., which was utilized in establishing the RfC. Ethyl also argued that use of MMT would not result in significant changes in background manganese exposures, and that the favorable effects on public health resulting from changes in the composition of gasoline when MMT is utilized would outweigh any potential for adverse health effects. (Copies of a document describing the new RfC and of the Ethyl comments are available in the public docket.)

As the deadline of November 30, 1993 for final action by EPA on Ethyl's waiver application approached, EPA concluded that the extensive data base on the emissions effects of MMT assembled by Ethyl and others during the consideration of the application was sufficient to permit a decision concerning whether Ethyl had satisfied the statutory requirement to show that use of MMT will not cause or contribute to exceedance of emissions standards. However, there had been no opportunity for public comment concerning the use of the new manganese inhalation RfC in assessing any risks which might be posed by granting Ethyl's application. Ethyl argued that it had not been afforded an adequate opportunity to study the derivation of the RfC and to comment on its implications for Ethyl's application. While EPA scientists did not necessarily agree with the specific arguments concerning the new RfC and other issues pertaining to health effects made by Ethyl, EPA concluded that it might be useful to review the new RfC in light of the underlying data from occupational studies of inhaled manganese if such data could be readily obtained. EPA also concluded that it would be desirable in any case to have further dialogue with Ethyl and other interested parties on issues related to the health effects of manganese before EPA makes a final decision concerning Ethyl's waiver application. These factors caused Ethyl and EPA to enter into discussions concerning possible extensions of the deadline for a decision and ultimately led to the agreement between Ethyl and EPA concerning such an extension which today's actions implement.

II. Resubmission of the Waiver Application

EPA and Ethyl have agreed that it is appropriate to extend the deadline for action concerning Ethyl's fuel additive waiver application for MMT by an additional 180 days. To assure that such an extension will not conflict with the language of Clean Air Act section 211(f)(4) or the Court of Appeals order which took effect on June 3, 1993, Ethyl and EPA have agreed that Ethyl will withdraw its July 12, 1991, waiver application, as remanded to EPA by the Court of Appeals, and will immediately resubmit that application for further action by EPA. Ethyl's agreement to withdraw the application is only intended to relieve EPA of its obligation under the terms of the Court of Appeals order to act on the remanded application by November 30, 1993, and to extend any deadline for final administrative action under section 211(f)(4) by an additional 180 days. Ethyl's agreement to withdraw its pending application does not constitute an acknowledgement by Ethyl that its application is deficient in any respect, nor does it reflect any decision by EPA concerning the ultimate disposition of the resubmitted application.

Ethyl and EPA both desire and intend to assure continuity between the proceedings concerning the July 12, 1991 waiver application, as remanded to EPA by the Court of Appeals, and Ethyl's resubmitted waiver application. The entire administrative record compiled by EPA in support of the original denial decision, as well as all submissions to the public docket concerning the remanded application, will be incorporated in the record concerning any final decision on the resubmitted application. The public docket number for the resubmitted waiver application will also remain the same.

For the reasons explained below, EPA has determined that, for purposes of any final decision concerning Ethyl's resubmitted waiver application, Ethyl has satisfied its statutory burden under section 211(f)(4) to demonstrate that use of HiTEC 3000 at the concentrations specified in the July 12, 1991 and resubmitted applications will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified. EPA will incorporate this determination in any final decision concerning Ethyl's resubmitted waiver application. This determination does not preclude any subsequent regulatory action based on emission effects under Clean Air Act section 211(c) or any other provision of the Clean Air Act in the event that Ethyl's resubmitted waiver application is granted. Moreover, this determination does not apply with respect to any new waiver application concerning HiTEC 3000 or MMT in the event that EPA denies Ethyl's resubmitted waiver application on other grounds and such denial is upheld in any subsequent judicial review.

The additional 180 days provided by Ethyl's agreement to resubmit the waiver application will be utilized by EPA to evaluate remaining issues which may be relevant to a final decision by EPA whether to grant or to deny Ethyl's resubmitted application. In particular, EPA will examine the effects on public health which might be associated with

[3] In 1991, in conjunction with review by EPA of Ethyl's previous waiver applications for MMT, ORD held a workshop on manganese/MMT involving scientists from academic institutions, government, industry, and public interest groups. The purpose of this workshop was to assist EPA in assessing information needs for manganese and MMT.

approval of Ethyl's application. EPA will consider any additional underlying data concerning studies of occupational manganese exposure which are obtained by or submitted to EPA, as well as any additional data or information pertaining to the health effects of manganese submitted by Ethyl or other interested persons during the comment period. Based on any additional information submitted, EPA will determine whether it is appropriate to make any adjustments to or revisions of the RfC for inhaled manganese. EPA will also decide how the RfC should be utilized in assessing health effects which may be associated with MMT use, evaluate potential exposure to manganese compounds associated with MMT use, prepare a risk assessment concerning Ethyl's application, and decide what additional data, if any, should be provided by Ethyl either before or after MMT is introduced into the market. EPA will then take final action either granting or denying Ethyl's resubmitted waiver application within 180 days from November 30, 1993.

III. Finding Concerning Emission Effects

The EPA Administrator has determined that, for purposes of any final decision by EPA concerning Ethyl's resubmitted waiver application for HiTEC 3000, Ethyl has satisfied its burden under Clean Air Act section 211(f)(4) to establish that use of HiTEC 3000 at the specified concentration will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified. This EPA determination is based on all of the information concerning the effect of MMT on emissions and emission control devices or systems submitted to EPA during review of Ethyl's July 12, 1991, waiver application. The reasons for this determination are briefly described below.

Ethyl has submitted data concerning the effect of MMT use on emissions which is far greater in magnitude than the data provided by any other applicant for a fuel additive waiver under section 211(f)(4). The test data submitted by Ethyl in connection with the July 12, 1991 waiver application involve a total test fleet of 102 vehicles representing 18 different models. The test data represent a variety of engine types, emission control configurations, and driving conditions. In this instance, EPA believes that the voluminous data submitted by Ethyl has been necessary to properly characterize and evaluate the subtle issues which are presented when the potential effect of an additive on vehicle emissions is related primarily to long-term efficacy and durability of emission control devices or systems rather than instantaneous effects on emissions. However, EPA believes that Ethyl has made a good faith effort to develop and submit data in support of its statutory burden with respect to emission exceedances and effects on emission control systems, and that the data submitted are now sufficient to support the determination regarding emissions required by section 211(f)(4).

EPA has determined that the emissions data concerning MMT submitted by Ethyl and others pass the statistical tests which EPA has used previously to examine durability waiver applications. When all of the available and appropriate[4] long-term emissions data on MMT are evaluated using the tests, emissions are increased sufficiently to fail the last and most pivotal test[5] in only 4 (for hydrocarbons) or 5 (for carbon monoxide) of the 18 model groups tested. Failure of that test must occur in at least 13 of the 18 model groups examined before the additive is deemed to have failed the overall test (at either the 90% or 95% confidence level). A similar result is obtained by examining only the 1992 and 1993 vehicles tested by Ethyl—none of the eight models failed the test for hydrocarbons and only one failed for carbon monoxide. Seven of the eight would have to fail for the additive to fail the test overall.

EPA has stated that it is concerned that these previously used tests may be insufficiently stringent to adequately address vehicle emissions problems in the present regulatory context. Accordingly, EPA has been considering the adoption of new criteria or tests to examine emission effects in future fuel additive waiver proceedings. Although it is probable that EPA will adopt more stringent criteria or tests in the future, EPA has determined that formal application of such new tests to Ethyl's application would be inappropriate and impractical. EPA is still evaluating what revisions of its criteria or tests should be adopted and Ethyl has not been given sufficient notice concerning any revised criteria that EPA might adopt. Moreover, there would be significant practical problems in deciding how to apply any new criteria or tests retroactively to the data generated and submitted by Ethyl.

Although EPA has concluded that it would not be appropriate or practical to apply specific new criteria or tests for evaluating emission exceedances to Ethyl's resubmitted application, EPA believes that the data submitted by Ethyl would satisfy a standard substantially greater than that embodied in the previously used tests. The models tested by Ethyl in 1992 and 1993 were deliberately selected to be representative of forward-leaning technologies and closely coupled catalyst designs. Although EPA was concerned that any adverse effects of MMT use on hydrocarbon emissions might be greater in such vehicles, the increases in hydrocarbon emissions observed in these most recent tests were less than in the vehicles previously tested by Ethyl. Indeed, EPA has determined that the increases in hydrocarbon emissions observed in the entire fleet of 1992 and 1993 vehicles tested by Ethyl since the EPA Administrator's January 8, 1992 denial decision are not statistically significant. For these reasons, the EPA Administrator has determined that MMT use in unleaded gas at the specified concentration will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified.

Vehicle manufacturers have argued that MMT may impair the operation of on-board diagnostic systems installed in future low emission vehicles. EPA considers this issue important and takes this argument seriously. However, no empirical data has been submitted in support of this argument and it is therefore totally speculative at this time. This argument provides no present basis for denial of Ethyl's resubmitted waiver application. If EPA ultimately grants Ethyl's resubmitted waiver application and evidence developed in the future indicates that use of MMT is interfering with the proper operation of on-board diagnostic systems, EPA will retain the authority to take appropriate action pursuant to Clean Air Act section 211(c).

The determination by EPA that Ethyl has demonstrated that use of HiTEC

[4] This includes all data collected with Federal Test Procedure (FTP) testing using an experimental design with a control group and no obvious sources of bias. The data referred to here include the eight 1988 models tested by Ethyl, the two 1991 models tested by Ford, and the eight 1992 and 1993 models tested by Ethyl.

[5] This test addresses the question of whether the additive results in a failure to meet the certified standard for a regulated pollutant for each model group and then looks to see if enough model groups failed the test to warrant the conclusion with high confidence that more than half of the models are caused to fail by the additive.

3000 at the specified concentration will not cause or contribute to emission exceedances is specific to Ethyl's resubmitted waiver application. In the event that EPA grants Ethyl's resubmitted waiver application, this determination does not preclude or otherwise affect or constrain any future regulatory action based on emission effects under section 211(c) or any other provision of the Clean Air Act. Moreover, this determination does not apply to any new application concerning either HiTEC 3000 or MMT in the event that EPA denies Ethyl's resubmitted waiver application on other grounds and that denial is upheld in any subsequent judicial review.

IV. Opportunity for Comment

EPA is affording all interested parties until February 7, 1994 to comment on the remaining issues presented by Ethyl's resubmitted waiver application. EPA will not consider any further comments pertaining to the effect of MMT on emissions of pollutants which are subject to motor vehicle emission standards or to the Agency's determination that Ethyl has demonstrated that use of MMT will not cause or contribute to exceedances of emission standards. EPA is especially interested in receiving comments or information pertaining to potential effects on public health associated with approval of Ethyl's application.

Both EPA and Ethyl are anxious to assemble a complete record incorporating all of the substantive scientific and other evidence bearing on the Agency's decision on Ethyl's resubmitted application well before expiration of the 180 day period for decision. Accordingly, EPA strongly discourages submission of new information after the expiration of the 60 day comment period.

Dated: November 30, 1993.

Carol M. Browner,

EPA Administrator.

[FR Doc. 93–30118 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–40012–2]

Public Water System Supervision Program: Program Revision for the State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Kansas is revising its approved State Public Water System Supervision (PWSS) Program. Kansas has adopted regulations for: (1) Filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotropic bacteria published by EPA on June 29, 1989 (54 FR 27486); (2) total coliforms (including fecal coliforms and *E. coli* that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli* published by EPA on June 29, 1989 (54 FR 27544); (3) public notification requirements that correspond to the National Primary Drinking Water Regulations for public notification published by EPA on October 28, 1987 (52 FR 41534) and (4) synthetic organic chemicals (Phase I VOCs) that correspond to the National Primary Drinking Water Regulations for synthetic organic chemicals, and monitoring for unregulated contaminants published by EPA on July 8, 1987 (52 FR 25690) and corrections, published on July 1, 1988 (53 FR 25108).

EPA has determined that these State program revisions are no less stringent than the corresponding federal regulation. This determination was based upon a thorough evaluation of Kansas' PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this Notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief; Drinking Water Branch; U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Kansas. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Kansas. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue on order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primary application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Kansas Department of Health and Environment, Public Water Supply Program, Bureau of Water, Forbes Field, Building 740, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Murtagh Yaw, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551–7440.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 29, 1993.

William W. Rice,

Acting Regional Administrator, EPA, Region VII.

[FR Doc. 93–30121 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4812–1]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the NSR Reform Subcommittee will hold an open meeting on January 20–21, 1994 at the Omni Hotel, 201 Foster Street, Durham, North Carolina 27702, telephone (919) 683–6664, telefax (919) 683–2046. The Subcommittee is scheduled to meet from 8 a.m. to 5 p.m. on January 20, 1994 and from 8 a.m. to 1 p.m. on January 21, 1994. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

The Subcommittee will review final recommendations developed by subgroups on specific issues regarding Class I area impacts and best available control technology. In addition, the Subcommittee will address issues dealing with the impact of existing sources on Class I areas and NSR applicability.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with the transcript of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The transcript of the upcoming meeting will be available to the public through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee, at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

Dated: November 26, 1993.

James Weigold,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–30117 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4812–3]

Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed purchaser agreement associated with the Mid-Atlantic Wood Preservers Superfund Site in Harmans, Anne Arundel County, Maryland, was executed by the Agency on September 30, 1993 and is subject to final approval by the United States Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against Gunther's Leasing Transport, Inc. and Mark D. Gunther, ("The purchasers"). The settlement would require the purchasers to pay a principal payment of $10,000.00 to the Hazardous Substances Superfund within thirty (30) calendar days of the date Respondents receive a copy of the Agreement which has been executed by EPA and approved by the U.S. Department of Justice.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before January 10, 1994.

ADDRESSES: *Availability:* The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Mid-Atlantic Wood Preservers Superfund Site" and "EPA docket no. III–93–48–DC" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew Goldman (3RC21), Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–4840.

Dated: October 6, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 93–30119 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–M

Office of Research and Development

[FRL–4812]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on November 2, 1993, the Environmental Protection Agency received an application from Columbia Scientific Industries Corporation, 11950 Jollyville Road, Austin, Texas 78759, to determine if their Model 5700 Sulfur Dioxide Analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–30116 Filed 12–8–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 2, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0018.

Title: Application for Renewal of License for FM Translator or Low Power Television Broadcast Station.

Form Number: FCC Form 348.

Action: Reinstatement of a previously approved collection for which approval has expired.

Respondents: State or local governments and businesses or other for-profit (including small businesses).

Frequency of Response: Other: Every 5 years for TV; every 7 years for FM (including translators).

Estimated Annual Burden: 950 responses; 0.67 hours average burden per response; 637 hours total annual burden.

Needs and Uses: FCC Form 348 is required to be filed for the renewal of station license for a TV or FM translator or low power television broadcast station. FCC 348 is basically a checklist which assures the Commission that all necessary reports have been filed and that the licensee is in full compliance with the FCC rules. On September 18, 1992, the Commission adopted a Memorandum Opinion and Order in the matter of Policy Regarding Character Qualifications in Broadcast Licensing. This MO&O eliminated the requirement that broadcast applicant report pending litigation. The portion of the character question regarding pending litigation has been removed. There will be no change in the burden as a result of this action. The data is used by FCC staff to assure that the necessary forms connected with the renewal application have been filed and that licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station.

OMB Number: 3060–0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station.

Form Number: FCC Form 345.

Action: Reinstatement of a previously approved collection for which approval has expired.

Respondents: State or local governments and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 360 responses; 10.166 hours average burden per response; 3,660 hours total annual burden.

Needs and Uses: Filing of FCC Form 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control of corporate licensee or permittee for an FM or TV translator station, or lower power TV station. On September 18, 1992, the Commission adopted a Memorandum Opinion and Order in the matter of Policy Regarding Character Qualifications in Broadcast Licensing. This MO&O eliminated the requirement that broadcast applicant report pending litigation. The portion of the character question regarding pending litigation has been removed. There will be no change in the burden as a result of this action. The data is used by FCC staff to determine if the applicant meets basic statutory requirements to operate the station.

OMB Number: 3060–0404.

Title: Application for an FM Translator or FM Booster Station.

Action: Revision of a currently approved collection.

Form Number: FCC Form 350.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 175 responses; 3.5 hours average burden per response; 613 hours total annual burden.

Needs and Uses: FCC Form 350 is required to be filed when applying for an FM Translator or FM Booster Station License. On September 18, 1992, the Commission adopted a Memorandum Opinion and Order in the matter of Policy Regarding Character Qualifications in Broadcast Licensing. This MO&O eliminated the requirement that broadcast applicant report pending litigation. The portion of the character question regarding pending litigation has been removed. There will be no change in the burden as a result of this action. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from FCC Form 350 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–29983 Filed 12–8–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Costa Cruise Lines, N.V., American Family Cruise Lines, N.V. and Costa Crociere S.p.A., 80 Southwest 8th Street, Miami, Florida 33130–3097.

Vessel: AMERICAN ADVENTURE

Dated: December 6, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–30112 Filed 12–8–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Kloster Cruise Limited (d/b/a Royal Viking Line), 95 Merrick Way, Coral Gables, Florida 33134.

Vessel: ROYAL VIKING QUEEN

Dated: December 6, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–30113 Filed 12–8–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of Final Fiscal Year 1994 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1994 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. No comments were received from the public.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–653–5320.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees—FY1994

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 1994 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. In FY94, a self-help (45 min.) videotape on "How To Apply For An FMCS Grant" will also be included, on two-week loan, as part of the application kit. Applicants will be responsible for return postage of the tape. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1994, competition will be open to plant, area, private industry, and public sector committees. Where possible, committee applications should involve innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee as a demonstration effort will accomplish

during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationable for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 1994, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committees meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problem/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or

other third parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given an allocation of $769,000 for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least one award will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least one outstanding application exists in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 10 percent of the FY94 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation project are available, these grants may be continued up to an additional 12 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 24 months. Initial awards to establish new labor-management committee (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY94 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 14, 1994. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grants and Projects, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY94 grant applicants will be notified of results and all grant awards will be made before September 30, 1994. Applications submitted after the May 14 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants and Projects.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as the videotape and additional information or clarification, can be obtained free of charge by contacting Linda Stubbs, Lee A. Buddendeck, or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC 20427; or by calling 202/653–5320.

John Calhoun Wells,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 93–30001 Filed 12–8–93; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Jo Ann and Verle Burgason, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 29, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jo Ann and Verle Burgason, Ames, Iowa; to acquire 55 percent, and Charles L. Ryan Trust, Charles L. Ryan PC P/S, Connie Ryan Trust, Venice, Florida, to acquire 38.23 percent of the voting shares of Wabeno Bancorporation, Venice, Florida, and thereby indirectly acquire State Bank of Wabeno, Wabeno, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Philip G. Amundson, Columbus, Montana; to acquire 39.83 percent of the voting shares of Beulah Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire D & B Holding Co., Sioux Falls, South Dakota, and Bank of Beulah, Beulah, North Dakota.

2. Hugo or Elaine Asbeck, Jr., to acquire an additional 1.24 percent for a total of 4.0 percent; Duane or Sheryl Douglas, to acquire an additional 2.53 percent for a total of 6.32 percent; John Franklin, to acquire an additional 8.36 percent for a total of 14.17 percent; Marvin & Marsha Holas, to acquire an additional 1.24 percent for a total of 2.08 percent; Walter or Karen McNutt, to acquire an additional 1.24 percent, and thereby indirectly acquire 2.08 percetn; Chantz Prewitt, to acquire an additional 3.74 percent for a total of 6.25 percent; Rodney Prewitt, to acquire an additional 3.74 percent for a total of 6.25 percent; Donald or Leona Steinbeisser, to acquire an additional 4.18 percent for a total of 19.55 percent; and Joe and Mary Ann Steinbeisser, to acquire 4.18 percent for a total of 19.00 percent of the voting shares of 1st United Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire 1st United Bank of Sidney, Sidney, Montana.

3. Heritage Financial Corporation Employee Stock Ownership Bonus Plan, Ruston, Louisiana; to acquire an additional 2.80 percent for a total of 10.64 percent of the voting shares of Heritage Financial Corporation, Ruston, Louisiana, and thereby indirectly acquire Heritage Bank of Morehouse, Bastrop, Louisiana; The D'Arbonne Bank & Trust Company, Farmerville, Louisiana; Heritage Bank of Natchitoches, Natchitoches, Louisiana; and Ruston State Bank and Trust Company, Ruston, Louisiana.

Board of Governors of the Federal Reserve System, December 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-30065 Filed 12-8-93; 8:45 am]

BILLING CODE 6210-01-F

Chemical Banking Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemical Banking Corporation, New York, New York; to acquire, through its subsidiary, The CIT Group Holdings, Inc., New York, New York, Barclays Commercial Corporation, Charlotte, North Carolina, and thereby engage in acquiring or servicing of loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-30066 Filed 12-8-93; 8:45 am]

BILLING CODE 6210-01-F

CoreStates Financial Corp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 30, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice

President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp, Philadelphia, Pennsylvania; to merge with Constellation Bancorp, Elizabeth, New Jersey, and thereby indirectly acquire Constellation Bank, N.A., Elizabeth, New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. C&F Financial Corporation, West Point, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens and Farmers Bank, West Point, Virginia.

2. Independent Community Bankshares, Inc., Middleburg, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Middleburg Bank, formerly known as The Middleburg National Bank, Middleburg, Virginia.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to merge with Metro Bancorp, Inc., Douglasville, Georgia, and thereby indirectly acquire The Commercial Bank, Douglasville, Georgia.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Bancshares, formerly known as Muscatine Bancorporation, Muscatine, Iowa; to acquire 100 percent of the voting shares of Farmers Savings Bank, Kalona, Iowa, and thereby indirectly acquire Westchester Savings Bank, Westchester, Iowa, and to acquire FSB Holding Company, Kalona, Iowa.

Board of Governors of the Federal Reserve System, December 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-30067 Filed 12-8-93; 8:45 am]

BILLING CODE 6210-01-F

Hibernia Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Commercial Bancshares, Inc., Franklin, Louisiana, and thereby indirectly acquire First Commercial Bank, Franklin, Louisiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community First Bankshares, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Cherry Creek, N.A., Denver, Colorado; Mesa National Bank, Grand Junction, Colorado; Western National Bank of Colorado, Colorado Springs, Colorado; and Southern Colorado Bankshares, Inc., Pueblo, Colorado, and thereby indirectly acquire Bank of Southern Colorado, Pueblo West, Colorado.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Eldorado Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring The First National Bank of Eldorado, Eldorado, Texas.

2. First Eldorado Bancshares, Inc., Eldorado, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Eldorado Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire The First National Bank of Eldorado, Eldorado, Texas.

3. First Abilene Bankshares of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Concho Bancshares, Inc., San Angelo, Texas, and thereby indirectly acquire Southwest Bank of San Angelo, San Angelo, Texas.

4. First Financial Bankshares, Inc., Abilene, Texas; to acquire 100 percent of the voting shares of Concho Bancshares, Inc., San Angelo, Texas, and thereby indirectly acquire Southwest Bank of San Angelo, San Angelo, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. California Bancshares, Inc., San Ramon, California; to merge with MBC Corp., Modesto, California, and thereby indirectly acquire Modesto Banking Company, Modesto, California.

Board of Governors of the Federal Reserve System, December 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-30068 Filed 12-8-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR Vol. 57, No. 171, pg. 40192, dated Wednesday, September 2, 1992) is amended to reflect a change within the Bureau of Program Operations. The specific change will transfer the Medicare Transaction System responsibilities from the Medicare Systems Development Task Force to the Division of Operational Systems Development.

The specific amendments to part F are described below:

Section FH.20.3.d. is amended to add the Medicare Transaction System function to the Division of Operational Systems Development. The amendment reads as follows:

d. Division of Operational Systems Development (FPB34)

- Designs, develops, and manages, at the national level, activities required to enhance and maintain Medicare eligibility systems for Part A and Part B claims processing and the Medicare Program database.
- Prepares systems plans and develops policies for the design, implementation, and evaluation of all

claims processing systems and standardized modules for use by Medicare contractors.

- Directs the design, development, testing, and implementation of innovative system enhancements to the Common Working File, shared claims processing systems, and the Medicare Transaction System resulting in improvements to the national Medicare claims payment process.
- Provides national analysis and planning for changes to claims processing systems as required by legislative initiatives.
- Evaluates HCFA-wide systems plans for their impact on functions related to Part A and Part B of Medicare.
- Integrates systems changes within the framework of HCFA policies, goals, and objectives in an efficient and cost effective manner and coordinates system changes with other HCFA components, the Social Security Administration, HCFA regional offices, provider groups, and other affected organizations.
- Directs reviews and evaluations of the functions of the various automated systems involved in Medicare claims processing and recommends alternatives to existing processes and procedures, as well as methods of improvements.

Dated: December 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–30091 Filed 12–8–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3623; FR–3437–N–02]

NOFA for Lead-Based Paint (LBP) Risk Assessments: Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Based Paint (LBP) Risk Assessments. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410, telephone (202) 708–1800, or (202) 708–0850 (voice/TDD). For information related to Indian Housing Authorities, contact: Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410, telephone (202) 708–1015, or (202) 708–0850 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide funds to Public Housing Agencies and Indian Housing Authorities (referred to jointly as "HAs") for LBP risk assessments, in accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937 Act). The Department issued a Fiscal Year 1993 NOFA announcing the availability of $14,797,634 for Housing Authorities to conduct risk assessments. Risk assessments are intended "to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families." Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The goal of the risk assessment is to enable a HA to identify lead hazards so that appropriate interim measures can be implemented until testing and abatement can be fully undertaken.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a Federal Register Notice published on June 4, 1993, 58 FR 31842. Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $2,857,023 was awarded to 63 HAs. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing (by Region) the names of the HAs, state and amounts of those awards as follows:

NOFA for Lead-Based Paint (LBP) Risk Assessments FY 1993 Awardees

Region I:	
Stamford, CT	$20,295
Norwalk, CT	15,800
Wayland, MA	9,900
Gloucester, MA	3,465
Brookline, MA	23,760
Region II:	
Plattsburgh, NY	8,415
Elizabeth, NJ	23,760
Union City, NJ	9,405
Beacon, NY	4,950
New York, NY	349,965
Region III:	
Pittsburgh, PA	163,600
Huntington, WV	14,850
Philadelphia, PA	235,625
Region IV:	
Atlanta, GA	128,205
Lyons, GA	11,600
Calhoun, GA	6,650
Perry, GA	2,475
Puerto Rico	187,000
Wilmington, NC	16,830
Fairmont, NC	2,475
Clearwater, FL	10,890
Chipley, FL	7,425
Seminole Co., FL	2,475
Lexington-Fayette, KY	8,415
Clarksville, TN	18,810
Cookeville, TN	33,165
Covington, TN	14,850
Dyersburg, TN	29,205
Fayetteville, TN	22,770
Franklin, TN	13,860
Gallatin, TN	17,325
Laurenceburg, TN	10,395
Lebanon, TN	29,700
Manchester, TN	7,425
Marin, TN	9,900
McMinnville, TN	16,335
Murfreesboro, TN	11,385
Ripley, TN	7,920
Springfield, TN	17,325
Region V:	
Chicago, IL	348,975
Marion Co., IL	10,395
Cambridge, OH	9,405
Butler, OH	87,000
Iron Co., MI	12,375
Detroit, MI	250,000
Ypsilanti, MI	61,380
White Earth, MN (IHA)	9,920
Region VI:	
Houston, TX	52,470
Beaumont, TX	14,355
Laredo, TX	14,560
Aransas Pass, TX	2,970
Carrizo Springs, TX	29,700
Crystal City, TX	17,820
Corpus Christi, TX	44,055
Region VII:	
No applications received.	
Region VIII:	
No applications received.	
Region IX:	
Oxnard, CA	17,325
San Bernardino, CA	207,000
Riverside Co., CA	22,770
Contra Costa Co., CA	32,175
Guam	16,453
Yuma Co., AZ	4,950
Region X:	
Alaska HFC, AK	37,620
Lane Co., OR	12,375

NOFA for Lead-Based Paint (LBP) Risk Assessments FY 1993 Awardees—Continued

Kodiak Island, AK (IHA)	12,375

Dated: December 2, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–30060 Filed 12–8–93; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Carter's Panicgrass (Panicum Fauriei Var. Carteri) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Carter's panicgrass (*Panicum fauriei* var. *carteri*). This endangered plant taxa occurs in four populations on the islands of Oahu, Maui, and Molokai.

DATES: Comments on the draft recovery plan must be received on or before February 7, 1994, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building address: 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813) (Telephone: 808/541–2749). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the Honolulu address given above. Comments and materials received are available upon request for public inspection, and by appointment during normal business hours at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address. Telephone 808–541–2749.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The taxa being considered in this recovery plan is Carter's panicgrass. There are currently four populations: 1 on Mokolii Islet off the island of Oahu; one near Maliko Gulch on the island of Maui; one near Makamakaole Stream on the island of Maui; and one near Kukaiwaa Point on the island of Molokai. The estimates for each of these populations, based on field work conducted in 1992, range from 40 to 200 plants. All populations occur on the basalt substrate of windward coastal cliffs well within the salt spray zone. The surrounding vegetation is mostly that of a windswept herb and low shrub coastal community. Current threats, depending on the population, include: Competition from alien plants; direct human disturbance; damage by feral ungulates and livestock; and catastrophic events, such as fire, hurricanes and tsunamis. Other possible limiting factors are damage by rodents and insects.

Recovery efforts will focus on protection of all the populations from current threats, research studies to better manage the species, augmentation of existing populations, and establishment of new populations where necessary.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 3, 1993.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93–30093 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for Morefield's Leather Flower for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Morefield's leather flower (*Clematis morefieldii*). Only five populations are known to occur and all occur in rocky limestone woods in northern Alabama (Madison County). With the exception of two sites on land owned by the City of Huntsville, all populations are on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 15, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is Morefield's leather flower (*Clematis morefieldii*). This plant, which is a perennial vine, occurs near seeps or springs in rocky limestone woods in north Alabama (Madison County). This species was listed as endangered in 1992 due to its limited distribution, small population sizes, and habitat destruction or modification from residential development. Since only five sites are currently known for this species, the immediate and more realistic recovery objective is to reclassify this species to threatened status. Reclassification will be considered when a total of 10 viable populations are protected to the degree that all foreseeable threats have been removed. Reclassification will be accomplished through: (1) Protection and management of extant populations through landowner cooperation and regulatory means, (2) monitoring of extant sites and searching for additional populations, (3) evaluating habitat needs and conducting species' biology studies, and (4) preserving genetic stock.

This Plan is being submitted for technical/agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 1, 1993.

Robert Bowker,

Field Supervisor.

[FR Doc. 93–30073 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: New York Zoological Society Bronx, NY

PRT–784491

The applicant requests a permit to export one male and one female captive-born Siberian tigers (*Panthera tigris altaica*) to the Emperor Valley Zoo, Trinidad & Tobago, to enhance the propagation or survival of the species.

Applicant: AAZPA SSP for Black Rhino Brownsville, TX

PRT–784253

The applicant requests a permit to export two male Black rhinoceros (*Diceros bicornis minor*) to the Western Plains Zoo, Dubbo, New South Wales, Australia, for the purposes of enhancing the propagation or survival of the species.

Applicant: International Animal Exchange Ferndale, MI

PRT–784823

The applicant requests a permit to export one captive-born female chimpanzee (*Pan troglodytes*) to Noichi Zoological Park, Japan, for educational display and breeding for purposes of enhancement of propagation or survival of the species.

Applicant: George Garden Circus Springfield, MO

PRT–784521

The applicant requests a permit to export and reimport two wild-caught Asian elephants (Elephas maximus) to Canada to enhance the survival through conservation education.

Applicant: Exotic Animals Tarzana, CA

PRT–781383

The applicant requests to add one female captive-born tiger (*Panthera tigris*) to the export and reimport permit application submitted for enhancement of survival through conservation education.

Applicant: Chicago Zoological Society Brookfield, IL

PRT–770279

The applicant requests a permit to import blood samples taken from captive-held black-handed spider monkeys (*Ateles geoffroyi frontatus and Ateles geoffroyi panamensis*) of wild origin from Panama, Costa Rica, Mexico, Nicaragua, El Salavador, Honduras, Belize and Guatemala for the purposes of scientific research and enhancement of and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 3, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–30057 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–030–93–4191–03]

Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping for the Proposed Jackpot Uranium Mine in Fremont County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the proposed opening of an underground uranium mine on Green Mountain located approximately 14

miles southeast of Jeffrey City, Wyoming.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office will be directing the preparation of an EIS to be prepared by a third party contractor on the potential impacts of the proposed opening of an underground uranium mine on Green Mountain located approximately 14 miles southeast of Jeffrey City, Wyoming. The proposed mine would produce about 3,000 tons of uranium ore per day and would have an expected mine life of 13 to 22 years. All uranium ore produced at the mine would be transported approximately 39 miles southwest to the existing Sweetwater Mill in the Great Divide Basin.

DATES: Comments on the scoping process will be accepted through January 18, 1994.

ADDRESSES: Comments should be sent to Bureau of Land Management, Larry Kmoch, Project Leader, 1300 3rd Street N, P.O. Box 670, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: For further information contact Larry Kmoch at the Rawlins District Office, phone number (307) 324–7171.

SUPPLEMENTARY INFORMATION: U.S. Energy Corporation and its affiliate, Crested Corporation, has entered into a mining venture with Kennecott Uranium Company, known as Green Mountain Mining Venture and proposes to open an underground uranium mine on Green Mountain. A maximum of 534 acres of surface area could be disturbed by the proposed mine operations and transportation corridors. It is anticipated that the number of employees at the mine would range from 200 to 250 and would probably reside in Riverton, Lander and Jeffrey City. The number of employees at the mill would range from 25 to 35 and would probably reside in Rawlins.

Dated: December 3, 1993.

Ray Brubaker,

State Director, Wyoming.

[FR Doc. 93–30094 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–22–M

[NM–940–4110–03; OKNM 89195]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease OKNM 89195, Ellis County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dated: November 30, 1993.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 93–30074 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–FB–M

[WY–920–41–5700; WYW111031]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

November 30, 1993.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111031 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111031 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93–29996 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–22–M

[CO–930–4210–05; C–0112703]

Order Providing for Opening of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 38.25 acres of reconveyed land to allow for disposal by exchange. The land has been and continues to be open to mineral leasing.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office, (303) 239–3713.

ADDRESSES: Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Recreation and Pubic Purposes Act of June 14, 1926 (44 Stat. 741), as amended and supplemented (43 U.S.C. 869 et seq.), the following described land has been voluntarily reconveyed to the United States:

Sixth Principal Meridian

T. 1 N., R. 72 W.,
Sec. 6, lots 75, 82, and 91.
Containing 38.25 acres in Boulder County.

At 9 a.m. on January 10, 1994, the land will be opened to disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The lands remain closed to all forms of entry except exchange. The lands remain open to mineral leasing.

Dated: December 1, 1993.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–30075 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–2300–02; GP4–039; OR–48585]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 8.848 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: January 15, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 17 S., R. 4 W.,

Sec. 34. That portion of the NE¼ more particularly described as follows: Commencing at the southeast corner of the Matthew Wallis Donation Land Claim No. 40; Thence north 02°04′08″ east along the east line of said Donation Land Claim No. 40 and the east line of said Sec. 34, 662.92 feet to the point on the westerly extension of the north line of West 7th Avenue and the point of beginning of the herein described parcel; Thence north 87°33′58″ west along said westerly extension, 591.82 feet to a point on the west line of said parcel described in Reel Number 1696R, Instrument No. 9122686; Thence north 02°04′08″ east along said west line, 791.82 feet to a point on the south right-of-way of the Soil Conservation Service A–3 floodway channel; Thence south 87°28′21″ east along said right-of-way, 591.82 feet to a point on said east line of said Donation Land Claim No. 40 and sec. 34; Thence south 02°04′08″ west along said east line, 790.87 feet to the point of beginning; excepting therefrom two parcels of land in the E½NE¼ described as Parcel 1, the 5th Avenue Extension, and Parcel 2, the Bailey Hill Road Widening, as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains 8.848 acres in Lane County.

At 8:30 a.m., on January 15, 1994, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on January 15, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on January 15, 1994, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on January 15, 1994, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: December 2, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–30136 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–33–M

[NM–060–04–4760–01–(604); NM–89726]

Realty Action; Direct Sale of Public Lands in Lea County, NM

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of realty action.

SUMMARY: The following land has been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value:

New Mexico Principal Meridian, New Mexico

T. 14 S., R. 38 E.,

Sec. 5, NE¼,SE¼

Containing 40 acres more or less.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, or from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register,** whichever occurs first.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. Sale of the tract would eliminate from Federal ownership lands that have a high potential for unauthorized use and are difficult and uneconomic to manage as part of the public lands. The public lands are being offered by direct sale to assure land use compatibility with adjoining private lands. The lands are completely surrounded by private lands owned by the sale proponent.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals, together with the right to prospect for, mine, and remove the minerals.

3. Any other reservations that the authorized officer determines to be appropriate to ensure public access and proper management of Federal lands and interest therein.

And will be subject to: 1. Those rights for pipeline purposes that have been granted to El Paso Natural Gas, its successors, or assigns by BLM Permit Nos. NM–012334 and NM–014560 under the Act of February 25, 1920, 41 Stat. 437; 30 U.S.C. 185, Sec 28.

2. Those rights for pipeline purposes that have been granted to Cortez Pipeline Co., it's successors, or assigns by BLM permit No. NM–29081, under the Act of October 21, 1976, 90 Stat. 2776; 43 U.S.C. 1761.

3. Any and all valid existing rights documented on the official public land records at the time of patent issuance.

DATES: The land will not be offered for sale any sooner than 60 days after the publication of this notice in the **Federal Register.** For a period of 45 days from the date of publication in the **Federal Register,** interested parties may submit comments to the Area Manager, Carlsbad Resource Area Office, Bureau of Land Management, P.O. Box 1778, Carlsbad, NM 88221–1778. Any adverse comments will be reviewed by the New Mexico State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, sale procedures and environmental documents is available at the Carlsbad Resource Area, 620 E. Greene St., Carlsbad, NM.

FOR FURTHER INFORMATION CONTACT: Gary Bowers, Carlsbad Resource Area, at (505) 887–6544.

Dated: December 2, 1993.

Leslie M. Cone,

District Manager.

[FR Doc. 93–30076 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–FB–M

[AZ-040-4210-05]

Notice of Intent To Amend the Safford District Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Safford District, AZ, Interior.

ACTION: Notice of intent to amend the Safford District Resource Management Plan.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to amend the Safford District Resource Management Plan for the purpose of identifying certain public land for potential disposal. Upon completion of the amendment, the lands identified would qualify for sale or exchange under the authorities of section 203 and section 205 of the Federal Land Policy and Management Act of 1976.

1. Identification of the geographic area involved: The proposed amendment affects the Safford District which is located in Southeastern Arizona.

2. General types of issues anticipated: The proposed amendment addresses changes to the Land Tenure Adjustment section of the Resource Management Plan. Issues are expected to involve the natural resource values of these lands, their manageability and the merits of maintaining them in public ownership.

3. Disciplines to be represented and used to prepare the amendment: Air quality, hydrology, soils, vegetation, wildlife, mineral and energy resources, floodplain, rangeland resources, recreation resources, and cultural resources.

DATES: The kind and extent of public participation: A public meeting will be held on January 5, 1994 from 2 p.m. to 7 p.m. at the Safford District office located at 711 14th Avenue, Safford, Arizona 85546. Public input may be submitted during the public meeting or in writing to the above address. Public comments will be accepted until February 5, 1994.

ADDRESSES: The location and availability of documents relevant to the planning process: Documents will be available for public review at the Safford District Office, 711 14th Avenue, Safford, AZ 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, AZ 85546. Phone (602) 428-4040.

Dated: December 1, 1993.

Frank Rowley,

Acting District Manager.

[FR Doc. 93-30077 Filed 12-8-93; 8:45 am]

BILLING CODE 4310-32-M

[ID-942-04-4060-02]

Idaho: Filing of Plats of Survey

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 2, 1993.

The supplemental plat, prepared to show amended lottings in section 29, Township 4 North, Range 17 East, Boise Meridian, Idaho, was accepted November 29, 1993.

This plat was prepared to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 2, 1993.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-30078 Filed 12-8-93; 8:45 am]

BILLING CODE 4310-GG-M

[NM-920-4210-06; NMNM 2074]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes that a 1,659.98-acre withdrawal of National Forest System lands for the New Mexico State Highway 337 Recreation Zone and the Oak Flat Picnic Area continue for an additional 20-years. The lands will remain closed to mining, but have been and will remain open to surface entry and mineral leasing.

DATES: Comments should be received by March 9, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7501.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4505 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

New Mexico State Highway 337 Recreation Zone (Formerly New Mexico State Highway No. 10 Recreation Zone)

A trip of land 1,320 feet on each side of the centerline of State Highway No. 337, through the following legal subdivisions:

T. 9 N., R. 5 E.,
- Sec. 1, S½SW¼NE¼, S½S½NW¼, N½SW¼, N½S½SW¼, W½NE¼SE¼, W½SE¼, and SE¼SE¼;
- Sec. 2, lot 4, S½N½, and N½S½;
- Sec. 3, E½ of lot 1, and E½SE¼NE¼.

T. 10 N., R. 5 E.,
- Sec. 26, lots 5, 6, 11, N½ of lot 12, 13, and 14;
- Sec. 34, lots 8, 9, and 16;
- Sec. 35, lots 3, 4, 5, 6, 12, and 13.

T. 9 N., R. 6 E.,
- Sec. 7, lots 2, 6, and 8;
- Sec. 18, E½SE¼, E½E½W½SE¼, and NW¼NW¼SE¼;
- Sec. 92, NE¼NE¼, E½NW¼NE¼, N½SE¼NE¼, and N½SE¼SE¼NE¼;
- Sec. 20, NW¼NW¼.

Oak Flat Picnic Area

T. 9 N., R. 6 E.,
- Sec. 17, lot 8.

The areas described aggregate 1,659.98 acres in Bernalillo County.

The purpose of the withdrawal is to protect the New Mexico State Highway 337 Recreation Zone and the Oak Flat Picnic Area. The withdrawal segregates the lands from location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Realty, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 30, 1993.

Frank Splendoria,

Acting State Director.

[FR Doc. 93-30079 Filed 12-8-93; 8:45 am]

BILLING CODE 4310-FB-M

[NM–030–4210–02; NMNM 86816]

Proposed Withdrawal and Opportunity for Public Meeting, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 6,690 acres of public land in Otero County to protect the Sacramento Escarpment Area of Critical Environmental Concern (ACEC). This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting should be received by March 9, 1994.

ADDRESSES: Comments and meeting requests should be sent to the BLM, Las Cruces District Manager, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Bernie Creager, BLM, Caballo Resource Area, 1800 Marquess, Las Cruces, NM 88005 or telephone (505) 525–4325.

SUPPLEMENTARY INFORMATION: On November 19, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 17 S., R. 10 E.,
Sec. 4, S½NW¼ and SW¼ (unsurveyed);
Sec. 5, lot 4, NW¼NW¼, S½N½, and S½;
Sec. 6, SE¼;
Sec. 7, N½N½, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 8, NE¼, W½, NW¼SE¼, and S½SE¼;
Sec. 17, E½ (unsurveyed) and N½NW¼;
Sec. 20, NE¼, E½NW¼, S½SW¼, and E½SE¼;
Sec. 28, (unsurveyed);
Sec. 29, E½, NW¼, NE¼SW¼, and S½SW¼;
Sec. 32, NW¼NW¼;
Sec. 33, (unsurveyed).
T. 18 S., R. 10 E.,
Sec. 4, (unsurveyed);
Sec. 5, lots 1 to 4 inclusive and S½;
Sec. 8, N½ and SE¼SE¼;
Sec. 9, (unsurveyed);
Sec. 35, E½ (unsurveyed).
T. 19 S., R. 10 E.,
Sec. 2, E½NE¼, NW¼NE¼, N½SW¼NE¼, and N½NE¼SE¼.

The area described aggregates 6,690 acres in Otero County.

The purpose of the withdrawal is to protect the scenic values, threatened and endangered species, and recreational integrity for the Sacramento Escarpment ACEC.

For a period of 90 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 BLM Las Cruces District Manager.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Las Cruces District Manager 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 part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the BLM under existing laws and regulations.

The temporary segregation of land in connection with this withdrawal application or proposal shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the United States Department of the Interior.

Dated: December 1, 1993.

Stephanie Hargrove,

Associate District Manager.

[FR Doc. 93–30080 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–FB–M

Stillwater Area Remediation Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to develop the Stillwater Area Remediation Plan and hold public meetings.

SUMMARY: The Bureau of Reclamation is initiating a Stillwater Area Remediation Plan in order to reduce contamination of wetlands in the Newlands Project area. Initial meetings will be held, as shown below, to discuss planning and the public involvement of interested and concerned individuals, groups, and agencies.

DATES AND LOCATIONS: The dates and locations of the public meetings are as follows:

- 5 p.m., December 15, 1993, at the Fallon Tribal Administrative Building, Fallon Indian Reservation, Nevada;
- 7 p.m., December 15, 1993, at the Fallon Community Center, 100 Campus Way, Fallon, Nevada;
- 2:30 p.m., December 16, 1993, at the Center Conference Room, Washoe County Administration Building, 1001 East Ninth Street, Reno, Nevada;
- 7 p.m., December 16, 1993, at the Lyon County Library, 575 Silver Lace Boulevard, Fernley, Nevada.

FOR FURTHER INFORMATION CONTACT: Dave Overvold, Study Team Leader, Lahontan Basin Projects Office, Bureau of Reclamation, PO Box 640, Carson City, Nevada; telephone: (702) 882–3436.

SUPPLEMENTARY INFORMATION: The Stillwater Area Remediation Plan is part of the Department of the Interior's National Irrigation Water Quality Program, which is an effort to identify the nature and extent of irrigation-induced water quality problems that may exist at Bureau of Reclamation projects in the Western United States and to remediate problems where warranted.

Reconnaissance investigations, conducted jointly by the Bureau of Indian Affairs, Geological Survey, and Fish and Wildlife Service, found elevated concentrations of various toxic trace elements in the Stillwater and Fernley Wildlife Management Areas, Carson Lake, and Massie and Mahala Sloughs.

Planning will comply with the National Environmental Policy Act. Issues to be addressed during planning will be identified through public scoping meetings and other information-gathering techniques, such as other meetings, newsletters, mailings, and announcements in local newspapers.

Dated: December 2, 1993.

Felix W. Cook, Sr.,

Acting Deputy Commissioner.

[FR Doc. 93–30095 Filed 12–8–93; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for

the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–32 (Sub-No. 54X), Boston & Maine Corporation—Abandonment Exemption—In Hampden County, Massachusetts; and

AB–355 (Sub-No. 6X), Springfield Terminal Railway Company—Discontinuance of Service—In Hampden County, Massachusetts. EA available 12/1/93.

Comments on the following assessment are due 30 days after the date of availability:

WC–1476, Foss Maritime Company—Application for water contract carrier license. EA available 12/1/93.

AB–6 (Sub-No. 357X), Burlington Northern Railroad Company—Abandonment—in Seattle between Interbay and Terry Avenue in King County, Washington. EA available 12/3/93.

AB–6 (Sub-No. 358X), Burlington Northern Railroad Company—Abandonment Exemption—in Sedgwick, Harvey and Reno Counties, Kansas. EA available 12/3/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–30108 Filed 12–8–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Bank of Canton et al.

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Bank of Canton et al.*, Civ No. 93–1850–WBS–PAN, was lodged with the United States District Court for the Eastern District of California on November 29, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against the defendants pursuant to sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413. In its complaint, the United States alleged that the defendants failed to comply with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, prior to and during the demolition of a building in Stockton, California. The Complaint alleges that the defendants failed to provide notice of the demolition and failed to properly remove asbestos containing materials and failed to adequately wet asbestos containing materials exposed by the demolition.

The proposed Consent Decree provides that the defendants will pay a total civil penalty of $90,000 in settlement of claims alleged in the Complaint. In addition, the Decree requires that the defendants institute procedures designed to prevent future violations of the asbestos NESHAP.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bank of Canton et al.*, D.O.J. Ref. No. 90–5–2–1–1561.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814; at the Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29997 Filed 12–8–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Foodland Supermarket, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Foodland Supermarket, Inc., et al.*, Civil Action No. 92–00564 (D. Hawaii), was lodged on November 18, 1993 with the United States District Court for the District of Hawaii. This is a civil action against Foodland Supermarket, Inc. and H & H Builders, Inc., under section 113(b) of the Clean Air Act. ("Act"), 42 U.S.C. 7413, for violation of the Asbestos National Emission Standard for Hazardous Air Pollutants ("NESHAP"). The Complaint sought civil penalties and injunctive relief to ensure future compliance with the NESHAP regulations. The alleged violations involved failure to notify EPA prior to commencement of a renovation; failure to follow proper procedures for handling the asbestos material during removal; failure to properly dispose of the asbestos material following removal; and allowing visible emissions in violation of the asbestos NESHAP. Foodland Supermarket, Inc. is the owner of the building where the alleged violations occurred and H & H Builders, Inc. was the contractor in charge of the renovation that resulted in the alleged violations.

Under the Consent Decree, Foodland Supermarket, Inc. and H & H Builders, Inc. will jointly pay a civil penalty of $40,000. Each defendant is required by the Consent Decree to perform diligent inspection prior to any future demolition or renovation activity, to immediately stop all work at any site where suspect regulated asbestos containing material ("RACM") is discovered during a demolition or renovation until the materials have been sampled, analyzed, and if found to be RACM, removed by trained asbestos abatement workers.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Foodland Supermarket, Inc. et al.*, DOJ Ref. #90–5–2–1–1693.

The proposed consent decree may be examined at the office of the United States Attorney, room 6100, Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the

referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–30081 Filed 12–8–93; 8:45 am]

BILLING CODE 4410–05–M

Drug Enforcement Administration

[Docket No. 92–37]

Suresh Gandotra, M.D.; Partial Revocation of Registration

On February 3, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Suresh Gandotra, M.D. (Respondent), of Anaheim, California, proposing to revoke his DEA Certificate of Registration, AG6893932, and deny any pending applications for registration as a practitioner. The statutory basis for seeking the revocation of the Certificate of Registration was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Santa Ana, California on September 16, 1992. On January 11, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended that the Administrator grant Respondent a DEA Certificate of Registration.

On January 27, 1993, the Government filed exceptions to Judge Tenney's opinion, and on February 19, 1993, the administrative law judge transmitted the record to the Administrator. On March 28, 1993, the Respondent filed a response to the Government's exceptions to the recommendation of the administrative law judge. While Respondent's response to the Government's exceptions was not timely filed pursuant to 21 CFR 1316.66, the Acting Administrator has nonetheless considered it in rendering his decision. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereafter set forth.

The administrative law judge found that the Respondent graduated from medical school in India, and emigrated to the United States in 1972, after which he completed several intern and residency programs. In 1978, and formally in 1983, the Respondent took over the practice at the Coast Urgent Care Medical Clinic, located in Huntington Park, California, where he primarily practiced industrial medicine. The Respondent also simultaneously operated a clinic in San Ysidro, California.

The administrative law judge found that in October 1987, a medical consultant with the California Department of Justice, Bureau of Medi-Cal Fraud (Bureau) conducted an audit of the Coast Urgent Care Medical Clinic. The audit led the consultant to believe that the Respondent was operating the clinic on a 24 hour a day basis, and was employing unlicensed personnel to render medical services. During the course of the audit, the medical consultant questioned the Respondent about inconsistencies in certain medical records of clinic patients. The medical consultant found, among other things, that the differences in the writing patterns in the medical records were not consistent with a clinic that was run by a sole practitioner.

In response, the Respondent informed the medical consultant that he employed assistants who were licensed physicians in foreign countries, to assist him in his practice. The Respondent referred to these "assistants" as physician's assistants, and further informed the medical consultant that he hired no "medical" assistants. However, Respondent later changed this response when asked to proffer the licenses of the "physician's assistants" and admitted that the individuals he earlier identified as physician's assistants were actually medical assistants.

In California, the distinction between physician's assistants and medical assistants is significant, since under State law, physician's assistants are required to undergo specific education and training. Upon completion of these requirements, candidates must complete a State board examination in order to become licensed. Licensed physician's assistants may issue prescriptions under the supervision of a licensed physician, however, medical assistants cannot prescribe controlled substances, even under the supervision of a physician. A subsequent check of licensure records by the California Office of the Attorney General verified that Respondent employed no physician's assistants.

Based upon this information, the Bureau initiated a preliminary investigation of Coast Urgent Care Medical Clinic in November 1987. This investigation revealed that six assistants employed by the Respondent to render medical services were not licensed as physicians or physician's assistants. In addition, a visual inspection of the exterior of the clinic revealed a sign which indicated that the clinic was open 24 hours a day.

Subsequently, the Board initiated an undercover investigation of the clinic. On February 27, 1988, three Bureau investigators using assumed names, and claiming a variety of illnesses, were treated by one of Respondent's medical assistants, but were not prescribed any controlled substances. The Respondent was not present during the treatment of the investigators.

On March 4, 1988, four different Bureau investigators, again using assumed names and claiming a variety of illnesses, went to Coast Urgent Care Medical Clinic. Two of the investigators were treated simultaneously by a medical assistant to the clinic. The medical assistant prescribed Valium, a Schedule IV controlled substance, for one of the investigators, and signed the Respondent's name to the prescription. When the second pair of investigators visited the clinic, they were both examined by the same medical assistant and prescribed controlled substances; one of the investigators received a prescription for Tylenol with codeine No. 3, a Schedule III controlled substance, and the second investigator was issued a prescription for Fiorinal with codeine, also a Schedule III controlled substance. The Respondent's name appeared on both prescriptions forms. Again, the Respondent was not present during the treatment of these investigators.

The California Medi-Cal Fraud Unit executed a search warrant at the clinic on January 5, 1989, and seized presigned prescription pads bearing the Respondent's signature. The Medi-Cal Fraud Unit also seized prescription pads from the lab coat pockets of medical assistants that had previously treated the Bureau investigators.

On May 16, 1989, Respondent was charged in the Superior Court of Los Angeles with 17 criminal counts, five of which were related to controlled substances. On February 21, 1990, the Respondent's criminal trial commenced. Two of the medical assistants that treated Bureau investigators during its undercover investigation, testified on behalf of the State of California. They both testified that they not only medically diagnosed and treated patients, but that they routinely prescribed controlled substances with the Respondent's knowledge, and that all of the medical assistants had keys to

a locker where controlled substances were stored.

On March 22, 1990, the Respondent was convicted in the Superior Court of California of all 17 counts, and was fined $347,800.00. Respondent served five months in the state prison, and three months in a halfway house. On June 6, 1990, the Respondent received a stay of execution of county jail time, and was placed on probation for five years.

On August 26, 1992, the California Court of Appeals, Second Appellate District, modified the trial court's judgment against the Respondent by staying the fines imposed on five of the noncontrolled substance counts. As modified, the judgment was affirmed.

On May 10, 1991, the United States Department of Health and Human Services mandatorily excluded the Respondent from the Medicare program for 25 years, pursuant to 42 U.S.C. 1320a–7(a).

The Government also alleged that the Respondent ordered controlled substances at an unregistered location. At the administrative hearing on this matter, the Government placed into evidence, a copy of a December 20, 1990, invoice for an order of sodium pentothal, a Schedule III controlled substance, bearing the Respondent's name, and the address of his San Ysidro clinic. Until February 20, 1991, the San Ysidro clinic was not registered with DEA to handle controlled substances. The administrative law judge found that the Government failed to demonstrate any connection between the order of sodium pentothal on December 17, 1990, and the Respondent. The administrative law judge based his determination upon the fact that Respondent's signature did not appear on the invoice; that Respondent was working at the Coast Urgent Care Medical Clinic in Huntington Park, California, under the supervision of another medical practitioner at the time the order was placed; and that the San Ysidro clinic was managed by another doctor during the same period.

During the administrative hearing in this matter, the Respondent testified as to his remorse over past events, but also denied that he was ever involved in any unlawful conduct. Respondent presented the testimony of several individuals whom all spoke of his exceptional character.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of title 42.

Subsection (4) of 824(a) incorporates the provision of 21 U.S.C. 823(f), which provides that:

"* * * In determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found factors three, four and five relevant based upon Respondent's felony convictions, his presigning prescriptions for use by his medical assistants, and his authorizing medical assistants to issue prescriptions for controlled substances. The administrative law judge however, did not find factor four relevant to the Government's allegation concerning the ordering of sodium pentothal to an unregistered location.

The administrative law judge also found that the Government met its burden of proving a basis for revocation under 21 U.S.C. 824(a)(5) in that the Department of Health and Human Services excluded the Respondent from the Medicare Program for 25 years.

The administrative law judge found that, based upon the Respondent's testimony and demeanor during the administrative hearing, as well as the character testimony of friends and professionals on Respondent's behalf, the Respondent demonstrated remorse, and has made successful efforts to rehabilitate himself. The administrative law judge also noted that Respondent served five months in prison, and three months in a halfway house for his criminal convictions. The administrative law judge therefore, recommended that the Administrator grant the continuance of Respondent's DEA Certificate of Registration.

The Government filed an exception to the administrative law judge's finding that the Respondent was remorseful for actions which led to his imprisonment and 25-year exclusion from the Medicare program. The Government argued that the administrative law judge's findings of remorse must be weighed in conjunction with Respondent's persistent denials regarding his unlawful activity. The Government further argued that such patterns of denial are not consistent with remorsefulness and do not permit an inference of future conduct consistent with the public interest. The Government also took exception to the administrative law judge's finding in that it failed to reference Respondent's admitted lack of familiarity with DEA regulations relating to controlled substances. The Government based its argument upon Respondent's testimony during the administrative hearing that he was unfamiliar with DEA regulations relating to controlled substances.

In its exceptions, the Government urged the Administrator to revoke Respondent's registration in its entirety. However, the Government also argued in the alternative, that at the very least, Respondent should only be registered in Schedule IV and V, with the following restrictions placed on his registration: Respondent must keep a meticulous log of all controlled substances that he prescribes in the course of his medical practice; the log must include the date, name and address of the patient and the name, quantity and strength of the controlled substance prescribed; and the log shall be forwarded to the DEA, San Diego Division Office, on a monthly basis for a period of three years.

On March 28, 1993, the Respondent responded to the Government's exceptions to the decision of the

administrative law judge. The Respondent argued that remorse is but a factor to be looked at in combination with other factors, and that the real issue for consideration by the Administrator is whether Respondent has been adequately rehabilitated so that he is no longer a present threat to the community.

The Acting Administrator, having considered the entire record, adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling in part. Inasmuch as there is no evidence that Respondent or his employees prescribed or dispensed controlled substances for other than medical purposes, the Acting Administrator sustains the administrative law judge's recommended ruling, i.e., that Respondent be granted a continuance of his DEA Certificate of Registration. However, the Respondent's DEA Certificate of Registration is to be restricted to Schedules IV and V, subject to the following terms: Respondent shall keep a meticulous log of all controlled substances that he prescribes in the course of his medical practice; the log must include the date, name and address of the patient and the name, quantity and strength of the controlled substance prescribed; and the log shall be forwarded to the DEA, San Diego Division Office, on a monthly basis for a period of three years. Further, the Acting Administrator notes that if Respondent presigns any prescriptions for use by non-registered employees; violates any of the restrictions that have been placed on his Certificate of Registration; or violates any of the requirements of the Controlled Substances Act, proceedings will be initiated to revoke his DEA Certificate of Registration.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, AG6893932, of Suresh Gandotra, M.D., be, and it hereby is, revoked in Schedules II, IIN, III, and IIIN, and that it is renewed in Schedules IV and V only, subject to the above-referenced restrictions.

This order is effective January 10, 1994.

Dated: December 2, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93–30008 Filed 12–8–93; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

[DD–93–18]

U.S. Department of Energy (Hanford Site); Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of July 9, 1991, by the Confederated Tribes and Bands of the Yakima Indian Nation (The Petitioner). The Petitioner requested that the Director of the Office of Nuclear Material Safety and Safeguards exercise his authority to require a license application from the U.S. Department of Energy (DOE) with respect to certain high-level radioactive wastes at the Hanford Site in the State of Washington and to expedite regulation thereof in accordance with the provisions of 10 CFR part 30 or other applicable chapters of the Code of Federal Regulations. The Petition asserted, in support of this request, that DOE currently is in violation of 10 CFR part 30 requirements for a license since "various near surface geologic repositories, referred to as cribs, ditches, trenches, and single shell tanks," but meeting the 10 CFR part 60 definition of "geologic repository," have received and currently hold in "long-term storage" or "disposal," "high-level radioactive waste." The Petition was signed by Mr. Russell Jim, Manager, Environmental Restoration/Waste Management Program of the Yakima Indian Nation, on behalf of Petitioner.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–93–18), which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 2d day of December 1993.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–30087 Filed 12–8–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Detroit Tigers, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the Detroit Tigers, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request of exemption from the requirement was published on May 3, 1993 (58 FR 26363). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The nonconfidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, at the address below, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Karen L. Morris, Attorney, Office of General Counsel (22550), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8822 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered to result in a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the lease practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On May 3, 1993 (58 FR 26363), the PBGC published a request from the Detroit Tigers, Inc. ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Detroit Tigers Baseball Team from John E. Fetzer, Inc. ("the Seller"). The sale of assets became effective on August 12, 1992. No comments were received in response to the notice.

According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between the twelve (12) clubs comprising The National League of Professional Baseball Clubs, the fourteen (14) clubs comprising The American League of Professional Baseball Clubs (the "Clubs") and the Major League Baseball Players Association (the "Association"). The Clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's contribution obligation arising under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradvision play-offs and All-Star games, and (iii) certain other radio and television revenues from regular and exhibition games, including those from foreign broadcasts.

Effective August 12, 1992, the Buyer and the Seller entered into an Asset Purchase Agreement for the Buyer to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business employing the employees covered by the Plan. The final closing of the transaction occurred on August 26, 1992. Under the Asset Purchase Agreement, the Buyer assumed the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller was obligated to contribute to the Plan. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Plan within five years of the sale.

The amount of the bond/escrow that would be required under section 4204(a)(1)(B) of ERISA beginning as of April 1, 1993, is $1,412,077 (the annual contribution the Seller made for the Plan year preceding the Plan year in which the sale of assets occurred). The estimated amount of the withdrawal liability that the Seller would incur if not for section 4204 is $4,796,483.

The Buyer would be able to satisfy the condition for a variance under 29 CFR 2643.11, on a controlled group basis, by meeting the net tangible assets test described in 29 CFR 2643.14(a)(2). The Buyer has declined to provide copies of its financial statements to the Plan as required by 29 CFR 2643.11(c) on the ground that they are confidential within the meaning of 5 U.S.C. 552(b)(4).

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 2nd day of December 1993.

Martin Slate,

Executive Director.

[FR Doc. 93–30120 Filed 12–8–93; 8:45 am]

BILLING CODE 7708–01–M

RAILROAD RETIREMENT BOARD

1994 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The monthly compensation base under section 1(i) of the Act is $840 for months in calendar year 1994;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $2,100.00 for base year (calendar year) 1994;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $1,085 for months in calendar year 1994;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $2,100.00 for base year (calendar year) 1994;

5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $2,100.00 with respect to disqualifications ending in calendar year 1994;

6. The maximum daily benefit rate under section 2(a)(3) of the Act is $36 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1994.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1994. The determination made in notice (6) is effective for registration periods beginning after June 30, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Timothy H. Hogueisson, Bureau of Research and Employment Accounts, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4789.

SUPPLEMENTARY INFORMATION: The RRB is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Public Law 100–647, to publish by December 11, 1993, the computation of the calendar year 1994 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 1994, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1994.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1994 shall be equal to the greater of (a) $600 and (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1994 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1994 tier 1 tax base is $60,600. Subtracting $37,800 from $60,600 produces $22,800. Dividing $22,800 by $56,700 yields a ratio of 0.40211640. Adding one gives 1.40211640. Multiplying $600 by the amount 1.40211640 produces the amount of $841.27, which must then be rounded to $840. Accordingly, the monthly compensation base is determined to be $840 for months in calendar year 1994.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1994 monthly compensation base of $840 produces $2,100.00. Accordingly, the amount determined under section 1(k) is $2,100.00 for calendar year 1994.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1994 monthly compensation base is $840. The ratio of $840 to $600 is 1.40000000. Multiplying 1.40000000 by $775 produces $1,085. Accordingly, the amount determined under section 2(c) is $1,085 for months in calendar year 1994.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1994 monthly compensation base of $840 produces $2,100.00. Accordingly, the amount determined under section 3 is $2,100.00 for calendar year 1994.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1994 monthly compensation base of $840 produces $2,100.00. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,100.00 for calendar year 1994.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1994, shall be equal to the greater of (a) $30 and (b) $25 [1 + {(A − 600)/900}], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1994 tier 1 tax base is $60,600. Dividing $60,600 by 60

yields $1,010. This amount is rounded down to $1,000, the nearest multiple of $100. Subtracting $600 from $1,000 produces $400. The ratio of $400 to $900 is 0.44444444. Adding 1 produces 1.44444444. Multiplying $25 by 1.44444444 produces $36.11, which must then be rounded to $36. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 1994, is determined to be $36.

Dated: December 1, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–30082 Filed 12–8–93; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Carlton Communication Plc
Exch. Capital Securities (File No. 7–11655)
Frederick's of Hollywood, Inc.
Class A Capital Stock, $1.00 Par Value (File No. 7–11656)
Frederick's of Hollywood, Inc.
Class B Capital Stock, $1.00 Par Value (File No. 7–11657)
Global Partners Income Fund
Common Stock, $.001 Par Value (File No. 7–11658)
McArthur/Glen Realty Corp.
Common Stock, $.01 Par Value (File No. 7–11659)
National Data Corp.
Common Stock, $.125 Par Value (File No. 7–11660)
Oasis Residential, Inc.
Common Stock, $.01 Par Value (File No. 7–11661)
Senior High Income Portfolio II, Inc.
Common Stock, $.10 Par Value (File No. 7–11662)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 27, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly market and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–30092 Filed 12–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19922; 812–8620]

Insurance Management Series, et al.; Application for Exemption

December 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Insurance Management Series (the "Fund"), Federated Advisers ("Federated"), and certain life insurance companies and their separate accounts (the "Accounts") investing now or in the future in the Fund.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies").

FILING DATE: The application was filed on October 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 1993 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Mr. Michael Berenson, Jorden Burt Berenson & Klingensmith, 1025 Thomas Jefferson Street NW., Suite 400 East, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund, a Massachusetts business trust, is registered under the 1940 Act as an open-end, diversified management investment company of the series type. The Fund intends to offer its shares to the Accounts of the Participating Insurance Companies for the purpose of funding variable annuity and variable life insurance contracts. The Participating Insurance Companies will establish their own Accounts and design their own variable annuity or variable life insurance products. Federated, a Delaware business trust and a registered investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser to the Fund.

2. The Fund currently offers shares in five separate investment portfolios: The equity growth and income fund; the utility fund; the prime money fund; the U.S. Government bond fund; and the corporate bond fund.

3. The Fund intends to offer shares of its portfolios to separate accounts of interested insurance companies, including insurance companies not affiliated with Federated. Consequently, the Fund would serve as the investment vehicle for various insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

4. The use of a common management investment company as the underlying investment medium for both variable

annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund the variable annuity and variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (a "Trust"), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T) permits mixed funding. Rule 6e–3(T), however, does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts, including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts, of unaffiliated life insurance companies.

3. Applicants therefore request relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, the Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or of any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund.

5. Applicants state that the partial relief from section 9(a) found in Rules 63–2(b)(15) and 63–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants state that it is therefore unnecessary to apply section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of those Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts.

6. Rules 6e–(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that pass-through voting privileges will be provided with respect to all contract owners so long as the Commission interprets sections 13(a), 15(a) and 15(b) of the 1940 Act to require such privileges for variable contract owners.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

8. Applicants represent that the right of the Participating Insurance Companies to disregard voting instructions of contract owners provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under the rules, an insurer can disregard voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or

legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be both reasonable and based on specific good faith determinations.

9. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and funding an investment medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of public name recognition of certain insurers as investment experts. Applicants argue that use of the Fund as a common investment medium for variable contracts would reduce or eliminate these reservations of the insurance companies because the companies would benefit from the investment and administrative expertise of Federated and its affiliates as well as from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts which will then increase competition with respect to both the design and the pricing of variable contracts. This can be expected to result in greater product variation and lower charges. Thus, Applicants argue that contract owners would benefit because mixed and shared funding will eliminate a significant amount of the cost of establishing and administering separate funds. Mixed and shared funding would also provide a greater amount of assets available for investment by the Fund, thereby promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new portfolios more feasible.

10. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds not affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the requested order is granted:

1. A majority of the Board of Trustees of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended:

(a) For a period of 45 days if the vacancy or vacancies may be filled by the Board;

(b) For a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or

(c) For such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all of the Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including:

(a) An action by any state insurance regulatory authority;

(b) A change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities;

(c) An administrative or judicial decision in any relevant proceeding;

(d) The manner in which the investments of the Fund are managed;

(e) A difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or

(f) A decision by an insurer to disregard the voting instructions of contract owners.

3. The Participating Insurance Companies and Federated will report any potential or existing conflicts to the Board. Participating Insurance Companies and Federated will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised, including information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of the Participating Insurance Companies under the agreements governing their participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested trustees, that an irreconcilable material conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable, take steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Fund and reinvesting such assets in a different investment medium including another portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account.

If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would precluded a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw the separate account investment in the Fund and no charge or penalty will be imposed as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. The responsibility to take such remedial action shall be carried out with a view only to the interests of contract owners. For purposes of this Condition Four, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Fund or Federated be required to establish a new funding medium for any variable contract. Further, no Participating Insurance Company shall be required by this Condition Four to establish a new

funding medium for any variable contract if any offer to do so has been declined by a vote of a majority of the affected contract owners.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide passthrough voting privileges to all variable contract owners so long as the Commission interprets the 1940 Act to require passthrough voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. The Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions.

7. All reports received by the Board of potential or existing conflicts, all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participating Insurance Companies of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that:

(a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by affiliated and unaffiliated insurance companies;

(b) Material irreconcilable conflicts may arise from mixed and shared funding arrangements; and

(c) The Board will monitor for the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts.

9. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Fund is not within the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a), and, if applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Participating Insurance Companies and/or Federated shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund.

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30052 Filed 12–8–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by January 10, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Supplemental Guaranty Agreement

Form No.: SBA 1347

Frequency: Biennially

Description of Respondents: SBA Preferred Lenders

Annual Responses: 200

Annual: 300

Dated: November 23, 1993.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 93–30137 Filed 12–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000102]

Stratford Capitol Group, Inc.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Stratford Capital Group, Inc., 200 Crescent Court, suite 1650, Dallas, Texas 75201, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of ownership
Michael D. Brown, 200 Crescent Court, Suite 1650, Dallas, Texas 75201.	President, Chief Operating Officer and Assistant Secretary and Director.	0
George E. Councill, 200 Crescent Court, Suite 1650, Dallas, Texas 75201.	Executive Vice President and Director.	0
Donald Campbell, 200 Crescent Court, Suite 1650, Dallas, Texas 75201.	Senior Vice President and Secretary and Director.	0
Gene H. Bishop, 200 Crescent Court, Suite 1650, Dallas, Texas 75201.	Chairman of the Board and Chief Executive Officer and Director.	0
Gregory J. Palmquist, 200 Crescent Court, Suite 1650, Dallas, Texas 75201.	Executive Vice President and Treasurer and Director.	0
Wabash Life Insurance Company, 7887 East Belleview Ave., Englewood, Colorado 80111.	Parent Company.	100

The applicant will begin operations with a capitalization of $5,000,000 and will be a source of equity capital and long-term funds for qualified small business concerns.

The applicant is incorporated in the State of Texas and will conduct its operations in Texas as well as the Southwest region of the United States.

Matters involved in SBA's consideration of the application include the general businesses reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 3, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–30111 Filed 12–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of Secretary

[Public Notice 1911]

Cattle Crossing Near Douglas, Arizona: Receipt of Application

ACTION: Notice of receipt of application to build an international cattle crossing.

SUMMARY: The Department of State is announcing the receipt of an application to build an international cattle crossing at a point on the U.S.-Mexico boundary between IBWC boundary monuments 83 and 84, East of Douglas, Arizona, from Mr. Gary L. Poulson of Scottsdale, Arizona.

ADDRESSES: Copies of the application submitted by Mr. Poulson on August 3, 1993 may be obtained from Stephen R. Gibson, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, room 4258, Department of State, Washington, DC 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: Pursuant to interagency agreement, the Department of State will coordinate review of the application by concerned federal agencies, including the Immigration and Naturalization Service, General Services Administration, Department of Interior Fish and Wildlife Service, Department of Agriculture, Department of Commerce, U.S. Customs Service, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission-U.S. Section, Department of Defense, and the Department of State. Interested persons may submit their views regarding the application in writing by January 15, 1994 to the Coordinator for U.S.-Mexico Border Affairs at the above address.

Dated: December 2, 1993.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 93–30083 Filed 12–8–93; 8:45 am]

BILLING CODE 4710–29–M

Office of the Secretary

[Public Notice 1908]

Rescission of Delegation of Authority 194

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby rescind Delegation of Authority 194, which delegated all functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued, to the Deputy Secretary.

Dated: November 26, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93–30000 Filed 12–8–93; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1910; Delegation of Authority No. 207]

Diplomatic Parking Fines

AGENCY: Office of Foreign Missions, State.

ACTION: Notice.

SUMMARY: Public Law 103–87 requires the Secretary of State to certify to the Congress that diplomatic parking fines in the District of Columbia are fully paid. Until certification by the Secretary, aid is to be withheld at 100% of the fines owed, plus 10% penalty. This notice delegates the authority of the Secretary to make such certifications to the Director of the Office of Foreign Missions.

EFFECTIVE DATE: January 10, 1994.

Dated: November 17, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93–30084 Filed 12–8–93; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–083]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on matters related to shallow-draft inland and coastal waterway navigation and towing safety. The committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard.

Ten members will be appointed as follows: Three members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; two members from port districts, authorities or terminal operators; one member from maritime labor; one member from a shipper; and two members from the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

DATES: Completed Applications and resumes should be submitted no later than February 15, 1994.

ADDRESSES: Persons interested in applying should write to Commandant (G–MTH–4), room 1304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Roger Dent, Towing Safety Advisory Committee (G–MTH–4), room 1304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2997.

Dated: December 1, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–30138 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–078]

Oil Spill Removal Organization Classification Workshop

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard will conduct a workshop covering various topics, to solicit comments from the public and to serve as an open forum for the discussion of improving the Coast Guard program for classification and inspection of Oil Spill Removal Organizations (OSROs). Members of Federal, State, and local agencies, and the public are invited to participate and provide oral or written comments. This notice announces the date, time, location, format and topics for the workshop.

DATES: Comments should be submitted by February 28, 1994. The workshop is scheduled for January 20 and 21, 1994, in Alexandria, VA. Individuals interested in attending the public workshop should contact LTJG Chris Hayes by January 12, as further explained in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments may be either mailed to COMMANDANT (G–MEP–2), room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, ATTN: LTJG Chris Hayes, or delivered to the moderator at the workshop.

FOR FURTHER INFORMATION CONTACT: LTJG Chris Hayes, Office of Marine Safety, Security and Environmental Protection (G–MEP–2), (202) 267–2614.

SUPPLEMENTARY INFORMATION:

Background Information

In accordance with the requirements of the Clean Water Act (33 U.S.C. 1321 *et seq.*), as amended by the Oil Pollution Act of 1990 (Pub. L. 101–380) (the Act), the Coast Guard issued regulations on February 5, 1993 (58 FR 7330, 7376) requiring owners or operators of vessels and marine transportation-related facilities of submit response plans to the Coast Guard for approval. The purpose of the response plans is to enhance private sector planning and response capabilities in order to minimize the environmental impacts of spilled oil.

Under the Act, an owner or operator of a vessel or marine-transportation related facility who is required to submit a response plan must, among other things, identify, and ensure by contract or other approved means the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge, and to mitigate or prevent a substantial threat of such discharge. (33 U.S.C. 1321(j)(5)(c)(iii)).

Under response plan regulations response plans must list all required response resources unless the plan lists an OSRO(s) which has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed. (33 CFR 154.1035, 154.1040, 155.1035, 155.1040; (58 FR 7330, 7376)). Coast Guard Navigation and Inspection Circular No. 12–92 (NVIC 12–92), Guidelines for the Classification and Inspection of Oil Spill Removal Organizations (OSROs), provides voluntary guidelines based on standard oil spill removal capacities for use by OSROs seeking Coast Guard classification. Vessel and facility owners or operators who are required to prepare and submit response plans to the Coast Guard may use the provisions of NVIC 12–92 to identify OSROs with the capacity to meet their individual planning volume requirements as described in Coast Guard response plan regulations. NVIC 12–92 is voluntary and owners or operators need not limit their response to OSROs that have been classified by the Coast Guard. Owners or operators remain responsible for determining that OSROs identified in their plan are capable of meeting the various response time requirements specified in Coast Guard response plan regulations. (33 CFR 154.1045, 154.1047, 154.1049, 1054.1135, 155.1050, 155.1052, 155.1054; (58 FR 7330, 7376)).

The purpose of the workshop is to discuss possible revisions to improve the OSRO classification guidelines provided in NVIC 12–92. The workshops will address, at a minimum, the following topics:

(1) Identifying overlapping resources used by OSROs in a manner that alerts planners to potential shortfalls when considering the aggregate capabilities of multiple OSROs.

(2) Inclusion of verification of written agreements for the use of equipment by OSROs requesting classification based entirely or in part on equipment owned by other resource holders.

(3) Identifying the geographical area(s) of response coverage in which the OSRO intends to operate.

(4) Appropriate levels or percentages of equipment to be owned or controlled solely by the OSRO requesting classification.

(5) Appropriate number of classified OSROs in which a single resource holder should be a member.

(6) Minimum levels of spill management ability and logistics coordination ability for OSROs

commensurate with the desired level of classification.

(7) Revising equipment recovery capacity estimating standards.

(8) Addressing portable oil storage capabilities and boats.

(9) Coast Guard OSRO site inspection visits.

With input received through the workshop process, the voluntary guidelines of NVIC 12–92 may be revised to better assist all members of the response community in meeting statutory goals and requirements.

Workshop Format and Schedule

The workshop format will consist of presentations by a panel, followed by discussions and a question and answer period. Due to limited time, the Coast Guard will limit the number and duration of panel presentations. The Coast Guard will select panel members to make the presentations in a manner designed to ensure the broadest possible representation of viewpoints. The Coast Guard specifically solicits presentations from representatives of the following groups:

Federal government.

State government.

Oil and hazardous substance handling facilities.

Environmental organizations.

Spill removal organizations.

Vessel owners and operators.

Those wishing to participate as a panel member and give an oral presentation should submit their names, address, organization represented (if any), identify the specific topic, and provide a summation of their presentation by December 31, 1993 to the address listed under **ADDRESSES**. Written comments may be submitted before or after the workshop or comments may be submitted to the moderator at the workshop. All comments should be submitted prior to February 28, 1994. Any changes to location or dates of the workshop will be announced in the **Federal Register**.

The public workshop schedule is as follows: January 20 and 21, 1994; 9 a.m. to 4 p.m. each day; Best Western Old Colony Inn, 625 1st Street, Alexandria, Virginia.

The Coast Guard also plans to hold a workshop on January 18 and 19, 1994 to discuss the exercise evaluation process for the National Preparedness for Response Exercise Program (PREP). A separate notice will be published in the **Federal Register** to address the PREP workshop.

Dated: November 29, 1993.

A.E. Henn,

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

[FR Doc. 93–30139 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Jasper County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Jasper County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Neumann, Federal Highway Administration, Post Office Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Robert Sfreddo, Design Engineer, Missouri Highway and Transportation Department, Post Office Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to build a new highway immediately east of Joplin, Missouri in Jasper County. An MHTD reconnaissance report has determined that a new highway, known as the Range Line Bypass, would have a positive economic and social impact on the region around Joplin by providing traffic congestion relief, increased mobility, and enhanced social and economic opportunities.

1. The proposed highway project begins in Jasper County at the terminus of Interstate 44 and southbound Route 71, and travels north to meet existing northbound Route 71 near Carterville City. The total project distance is approximately 5.8 miles. The proposal will provide relocation of U.S. Route 71 to a Range Line Road bypass artery immediately east of Joplin city limits. The new north-south route would provide a needed eastern access to the east-west arterials to Joplin. The proposed project would provide a four-lane fully limited access roadway on total relocation for the entire length of the project. Interchanges will be provided at major arterial crossroads.

2. Alternatives currently under consideration include three "build" alternatives, the "no build" alternative, and upgrading of existing facilities.

3. To date, preliminary information has been furnished to local officials, legislators, and other interested parties. Presentation of the concept has been made at the local level and input received. The scoping process will be initiated with Federal, State, and local agencies as the study progresses. Further public hearings also will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on: November 18, 1993.

Donald L. Neumann,

Program Engineer, Jefferson City, Missouri

[FR Doc. 93–30085 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Pierce County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway construction project in Pierce County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, 711 South Capitol Way, suite 501, Olympia, WA 98501, telephone: (206) 753–9480; or Gary Demich, District Administrator, District 3, Washington State Department of Transportation, P.O. Box 7440, Olympia, WA 98504, telephone: (206) 357–2659.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department of Transportation will prepare an environmental impact statement on a proposal to improve State Route 16 (SR 16) in Pierce County, Washington. The proposed improvement would provide additional capacity in the form of High Occupancy Vehicle (HOV) lanes from the Jackson Street Interchange in Tacoma, to the Gig Harbor (Pioneer Way) interchange on the Kitsap Peninsula, a distance of 5 miles. Additional capacity across the Tacoma

Narrows would be provided by either retrofitting the Tacoma Narrows Bridge or by construction of a new parallel span. Also included in this proposal is the replacement of interchanges at 14th Avenue NW., 24th Street NW. and the construction of a new full interchange somewhere between Stone Drive and 36th Street NW.

This highway improvement is considered necessary to alleviate congestion, decrease delays, and improve safety. The SR 16 corridor between SR 5 and Gig Harbor has experienced substantial increases in traffic volumes, congestion and accidents as a result of regional growth as regional growth patterns have established this corridor as a major commute route. There are no alternate routes between Tacoma and Gig Harbor and the existing roadway geometrics on the Tacoma Narrows Bridge are substandard. These factors result in even minor traffic accidents in the corridor causing major backups and long delays. The proposed improvement would resolve safety concerns by relieving congestion and correcting substandard roadway geometrics. The proposed HOV lanes are consistent with, and a part of, WSDOT's overall Traffic Management System (TMS) for the SR 16 corridor. The goal of this TMS is to increase the people carrying capacity of the existing facilities by encouraging the use of transit, carpools and vanpools while decreasing reliance on single occupancy vehicles.

Alternatives under consideration include (1) no action; (2) placing HOV lanes in the highway median combined with a retrofit of the existing bridge to accommodate HOV lanes; and (3) placing HOV lanes in the highway median combined with a new bridge on a parallel alignment. Incorporated into and studied with the various build alternatives will be (1) design variations for HOV lane placement within the right of way, (2) bridge retrofit and new span design options and (3) siting options for the proposed new interchange between Stone Drive and 36th Street NW.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. These will also be sent to affected Indian Tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings were held in Gig Harbor, Port Orchard, and Tacoma on November 29, December 1 and December 2, 1993 respectively. Additional public meetings will be held prior to the release of the Draft EIS on the project. A Public Hearing will be held after the release of the Draft EIS to receive public and agency comments on the EIS. Public notice will be given of the time and place of the future meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

It is important that the full range of issues related to this proposal action be addressed and that all significant issues be identified. To ensure this, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above.

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

Issued on December 1, 1993.

José M. Miranda,

Environmental Program Manager, Federal Highway Administration, Washington Division.

[FR Doc. 93–30086 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–86; Notice 1]

General Tire, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Tire, Inc., (General Tire) of Akron, Ohio, has determined that some of its tires fail to comply with 49 CFR 571.119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 119), and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." General Tire has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Section S6.5 of FMVSS No. 119 specifies that each tire be labeled with the name of the manufacturer or brand name, and number assigned to the manufacturer in the manner specified in Part 574. In addition, if the tire is manufactured for a brand name owner, a code must be included for this brand name owner.

During the week of August 8 to August 14, 1993, General Tire manufactured approximately 420 285/75R24.5 M101Z Toyo truck tires that bear incorrect serial numbers. These tires were produced with the GTY plant code for Yokohama (6B) and the brand name owner code for Yokohama (9LA). These tires should have been produced with the GTY plant code for Toyo (3C) and the brand name owner code for Toyo (9LB). The remaining nomenclature in the serial number is correct. The full serial number on the tires was labeled as 6B4K9LA323. Instead the serial number should have been 3C4K9LB323.

General Tire supports its petition for inconsequential noncompliance with the following:

The tires can still be identified as to the GTY Tire Company and the appropriate plant of manufacture, size and date of manufacture. The tires are branded with the correct brand owner name "Toyo."

Interested persons are invited to submit written data, views, and arguments on the petition of General Tire, described above. Comments should refer to the Document Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 10, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: December 3, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–30054 Filed 12–8–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewal of the Charter of the Information Reporting Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of renewal of the charter of the Information Reporting Program Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), this announcement serves as notice that the Department of the Treasury and the General Services Administration's Committee Management Secretariat have renewed the charter of the Information Reporting Program Advisory Committee (IRPAC) for a two-year period beginning on November 22, 1993. As the services of IRPAC are expected to be needed for an indefinite period of time, no termination date has been established which is less than two years from this date.

SUPPLEMENTARY INFORMATION: In 1991 the Internal Revenue IRS established IRPAC. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC reports to the Executive Director, Information Reporting Program (IRP), who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system has furthered the goals of increasing voluntary compliance and reduction of burden. IRPAC is currently comprised of 18 representatives from various segments of the private sector payer community and one member from the Social Security Administration. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two or three meetings each year.

DATES: The request for renewal of the charter was signed by the Secretary of the Treasury on November 22, 1993. Official approval from the General Service Administration's Committee Management Secretariat was obtained on the same day. This charter renewal will expire in two years.

ADDRESSES: Questions or concerns should be directed to Ms. Katherine LaBuda at IRS, IRP Planning and Management Staff, CP:EX:I:P, room 2011, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Ms. Katherine LaBuda at 202–622–3404 (not a toll-free number).

Dated: December 1, 1993.

Don Jung,

Acting Staff Chief, Planning and Management Staff, Information Reporting Program.

[FR Doc. 93–30003 Filed 12–8–93; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: 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 "Ludovico Carracci" (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 temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, beginning on or about January 22, 1994, to on or about April 10, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: December 3, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–30049 Filed 12–8–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975; the address is room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547

Sunshine Act Meetings

Federal Register
Vol. 58, No. 235
Thursday, December 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Monday, December 13, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Monday, December 13, 1993, which is scheduled to commence at 10:00 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Briefing to the Commission on Cable Enforcement Matters. Summary: The Mass Media Bureau will report to the Commission on cable enforcement activities.

2—Mass Media Managing Director—Title: Amendment of Part 0 of the Commission's Rules and Regulations. Summary: The Commission will consider a proposal related to the organization of its cable television activities.

3—Office of Engineering and Technology—Title: Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610–1626.5 MHz and 2483.5–2500 MHz Bands for the Mobile-Satellite Service (MSS) Including Non-geostationary Satellites (ET Docket No. 92–28, RM–7771, RM–7773, RM–7805, RM–7806 and RM–7927). Summary: The Commission will consider adoption of a *Report and Order* addressing allocation of the 1610–1626.5 MHz and 2483.5–2500 MHz bands for MSS use.

4—Private Radio—Title: Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, and Deletion of Private Entity Call Sign Administrators from Amateur Service Rules. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning whether to issue vanity call signs for a fee, and a *Memorandum Opinion and Order* concerning whether to delete rules that provide for private entity call sign administrators.

The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summaries may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 93–30178 Filed 12–7–93; 11:24 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 14, 1993, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Report to Congress analyzing the effect of early resolution on the deposit insurance funds.

Discussion Agenda:

Memorandum re: The Corporation's 1994 Business Plan.

Memorandum and resolution re: The Corporation's Information Resources Management Plan.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would revise the definition of common stockholders' equity under the Corporation's leverage and risk-based capital standards to include the net unrealized holding gains and losses on available-for-sale securities.

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which assigns loans secured by multifamily residential properties ("multifamily housing loans") that meet certain prudential criteria to the 50 percent risk weight category.

Memorandum and resolution re: Final amendments to Part 360 of the Corporation's rules and regulations, entitled "Receivership Rules," which comply with the statutory requirement of prescribing regulations on the prohibition against increasing losses to the insurance funds by protecting uninsured depositors and non-depositor creditors of insured depository institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 7, 1993.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 93–30275 Filed 12–7–93; 3:01 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, December 14, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removal, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 7, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–30276 Filed 12–7–93; 3:01 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–29188.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 2, 1993, 10:00 a.m., meeting open to the public.

The following item was added to the agenda to be discussed under administrative matters:

Program Evaluation of the Efficacy of the Allocation Regulations.

"FEDERAL REGISTER" NUMBER: 93–29649.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 9, 1993, 10:00 a.m., meeting open to the public.

The following item was continued from meeting of December 2, 1993:

Program Evaluation of the Efficacy of the Allocation Regulations.

DATE AND TIME: Wednesday, December 15, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Chairman and Vice Chairman for 1994.

Advisory Opinion 1993–22: The Honorable Robert A. Roe.

Administrative Matters.

DATE AND TIME: Wednesday, December 15, 1993, to convene after the open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–30278 Filed 12–7–93; 3:02 pm]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., December 20, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 15, 1993, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan System Enhancements and Software Change Controls at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

4. Appointment of acting chairman.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 7, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–30273 Filed 12–7–93; 2:57 pm]

BILLING CODE 6760–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, December 14, 1993.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. International Credit Union Assistance.
3. Community Development Revolving Loan Program for Credit Unions: Notice Regarding Applications for Participation.

RECESS: 10:30 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, December 14, 1993.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal of Determination under Part 709, NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).
3. Appeal of Determination under Part 745, NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), and (10).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–30215 Filed 12–7–93; 1:07 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pubic Law 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of December 13, 1993.

An open meeting will be held on Wednesday, December 15, 1993, at 9:30 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Wednesday, December 15, 1993, at 9:30 a.m., will be:

1. Consideration of whether to issue a release proposing for public comment amendments to the proxy rules applicable to registered investment companies under the Investment Company Act of 1940 and the Securities Exchange Act of 1934. The Amendments would revise the information required in investment company proxy statements. For further information, please contact Kathleen K. Clarke at (202) 272–2097.

2. Consideration of whether to propose for public comment rule 18f–3 under the Investment Company Act of 1940 (the "Act"), and an amendment to rule 12b–1 under the Act. Rule 18f–3 would exempt mutual funds that issue multiple classes of shares from certain restrictions on "senior securities" in section 18 of the Act. The amendment to rule 12b–1 would clarify the applicability of the rule to multiple class funds. Additionally, the Commission is considering whether to propose for public comment amendments to Forms N–1A, N–14, and N–SAR, rule 34b–1 under the Act, and rules 134 and 482 under the Securities Act of 1933. These amendments would add certain disclosure requirements for multiple class funds and funds using the two-tier "master-feeder" structure. For further information, please contact Roseanne Harford at (202) 272–7943.

3. Consideration of whether to propose for public comment amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 that govern money market funds. The proposed amendments would tighten the risk-limiting conditions imposed on tax exempt money market funds by rule 2a–7 under the Investment Company Act of 1940; impose additional disclosure requirements on tax exempt funds; and make certain other changes to the Commission rules and forms applicable to all money market funds. For further information, please contact Martha Platt at (202) 504–2838.

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: Bruce Rosenblum at (202) 272–2300.

Dated: December 6, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–30274 Filed 12–7–93; 2:58 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 235
Thursday, December 9, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 931199–3299; I.D. 110193B]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In proposed rule document 93-28171 beginning on page 60575 in the issue of Wednesday, November 17, 1993, make the following corrections:

1. On page 60578, in the table, in the first column, in the eighth entry, remove "Helvetica".

2. On the same page, in footnote 13, in the first line, "*Sebastes malanops*" should read "*Sebastes melanops*".

3. On page 60582, in Table 5., in the second, fourth, and sixth columns, "Amounts" should read "Amount".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 232

[Docket No. R–150]

RIN 2133–AB05

Uniform Financial Reporting Requirements

Correction

In rule document 93-28704 beginning on page 62043 in the issue of Wednesday, November 24, 1993, make the following correction:

§ 232.4 [Corrected]

On page 62044, in the first column, in amendatory instruction 6., in paragraph d., in the first line, "(h)(A)(*8*)(i)" should read "(b)(A)(*8*)(i)".

BILLING CODE 1505-01-D

federal register

Thursday
December 9, 1993

Part II

Department of the Interior

National Park Service

Concessions Rate Administration Program; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Rate Administration Program

AGENCY: National Park Service, Interior.

ACTION: Notices.

SUMMARY: NPS–48, "The Concessions Guideline" is an administrative staff manual for use by National Park Service employees involved with the administration of concessions in areas of the National Park System. Chapter 18 of NPS–48 is concerned with procedures through which NPS officials review and approve prices charged by NPS concessioners. Chapter 18 is being published in its entirety for the convenience of the public. Pursuant to law, it need only be made available by NPS for public inspection and copying.

Dated: November 30, 1993.

David L. Moffitt,

Acting Associate Director, Operations.

Rate Administration Program

A. Law, Regulation and Policy

Public Law 89–249 (Concessions Policy Act) requires the Secretary to exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

The reasonableness of a concessioner's rates to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character and operating under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

16 U.S.C. 1b(4) Provides for NPS to furnish, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittee, or other users of such services, within the National Park System provided, that reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

OMB Circular A–25, User Charges, September 3, 1959, outlines the scope of user charges for certain government services and property including utilities and defines policies, guidelines, and reporting forms for user charge systems.

National Park Service Management Policies, Chapter 10, Concessions Management, provides for the NPS to approve concessioner rates based on comparable facilities and services provided in the private sector. Concessioner rates are to be determined in accordance with rate study procedures contained in the "Concessions Guideline" (NPS–48). Concessioners that provide overnight accommodations will provide a reasonable proportion of the accommodations at low prices.

The NPS may provide utilities to concessioners. The cost to the concessioner for utilities will be based on operating costs or on comparability, whichever is greater. Concessioners will be permitted to pass through to visitors utility costs that exceed comparable utility charges. When operating costs are so high that they could jeopardize the economic viability of the concession, and when they cannot be passed through to visitors because the prices would be unreasonable, the utility charges may be reduced, but not lower than comparable utility costs.

B. Objectives

The objective of rate approval is to assure that concessioner rates and charges to the public are commensurate with the level of services and facilities provided, as well as reasonable and comparable with similar services and facilities provided by the private sector.

The Superintendent is responsible for meeting this objective to the greatest extent possible through approving, disapproving, or modifying concessioner rate requests after conducting a study using one of the rate approval methods discussed in Paragraph D. 4. and Paragraph E.

Rate approval decisions must be properly documented by supporting rate approval studies. These studies must meet the objective stated above and should also:

1. Produce defendable results which are valid and reliable.
2. Provide a degree of uniformity and consistency Servicewide.
3. Be as simple and as objective as possible.
4. Address all types of facilities and services found in the park area.

C. Responsibilities

1. Washington

a. Establish and update policy.

b. Ensure actions by Regions are consistent with policy and coordinated among Regions.

c. Upon request, provide current price increase/decrease index to Regions and rates for hostel operations as charged by American Youth Hostels, Inc.

d. Provide training to the Regions in the use of the rate approval process.

2. Region

a. Provide assistance to park areas as required and requested.

b. Ensure that the application of the rate approval procedure is consistent with policy.

c. Provide guidance and training.

d. Approves the selection of rate approval methods proposed by the park, except the method used to approve rates for operations conducted under a Limited Permit.

e. Rule on rate appeals.

f. Provide current price increase/decrease index to parks as needed and/or requested.

3. Park

a. In cooperation with concessioners, establish a time frame in which rate requests are to be submitted.

b. Perform rate approval studies for each concession service as needed, using the method agreed to between the Region and park after the park has consulted with the concessioner, "except as stated in h., below."

c. Approve a rate schedule, including each product, category of products in some cases, or service offered by the concessioner.

d. As necessary, adjust rates to recoup utility costs.

e. Monitor the concessioner to assure that only approved rates are charged for the specified quality and quantity of goods or services sold.

f. Provide Region with such rate studies and current rate schedules if they are desired by the Region for overview purposes.

g. Maintain current rate schedules at the park.

"h. Approves own rate approval method for Limited Concession Permits."

D. Elements of the program

1. Preparation And Use Of Rate Schedules

a. Rate request submission.— Timeliness—The Superintendent, in cooperation with the concessioner, will establish deadlines in which the concessioner will submit rate requests which the Superintendent will review and act upon. Due to different conditions in each park and the method of operating by concessioners, timetables will vary. It is, therefore, incumbent upon the Superintendent and the concessioner to establish submittal and review time frames for

rate requests, taking into consideration the need for concessioners to prepare advertising material, brochures, rate schedules for the public, and supplying these to commercial tour agents and others who prepare tour information. The established time frames are to be documented and made part of the concessioner's pricing file. Time frames should not be construed to deny the concessioner the privilege of requesting reviews consistent with comparability.

Utilizing the procedures in the rate approval process, rate requests can be reviewed in minimal time, once the method has been determined and used once. Therefore, to expedite requests, the concessioners should be encouraged to notify the Superintendent of their intent to submit price increase requests so that the Superintendent can begin to update the pricing data, and thereby minimize the review time, and yet be able to conduct a thorough pricing review.

b. Required information.—When requesting an increase in prices, the concessioner is to provide the following information as appropriate. This data is to be made part of the rate schedule that is discussed in Paragraph d., below.

(1) Portions of all food service items.

(2) Items provided with dinners, i.e., salads, beverage, dessert, etc.

(3) All menus to be used, including children's menus.

(4) Description of room accommodations, such as two double beds, with or without bath, etc.

(5) In-season and off-season rates, special rates, group rates, if appropriate.

(6) Price per extra person, crib, etc.

(7) Distance, routes to be followed, ratio of guides to visitors utilizing service, narrators, etc., for tour and guide-type operations.

(8) The cost basis of markup is to be specified indicating transportation, trade, or cash discounts.

(9) Reservation deposits and cancellation refunds and charges. (See Chapter 29 of this Guideline, Reservations and Conventions).

(10) Reduced Rates to Federal Employees. (See Chapter 30 of this Guideline, Accepting Reduced Rates and Items of Nominal Value From Concessioners.)

(11) Complete description of service/product to be provided for the price charged.

(12) Any additional information needed to assist in the price analysis.

c. Other provisions.—In administering the concessioner rate process, the following provisions are to be followed:

(1) Approved Rates—Approved prices are to be the maximum charged the visiting public. Under no circumstances will higher prices be charged. In addition to a maximum price, the approved rate includes the minimum product or service. As an example, smaller food portions than those portion sizes approved on the rate schedule will be regarded as an unauthorized rate.

Many times, rates for the next year are requested by the concessioner in late fall or winter because of the need to print rate schedules, complete budgets, and commit prices to certain organizations. In some cases, the comparables will take a wait-and-see attitude. This results in the concessioner's needing the year's rates approved in, say, January, to be effective at the beginning of the season, when the comparables are not ready to decide on their rates until late spring.

When this situation occurs, the concessioner should be allowed a rate based on the previous year's rates, with consideration being given for known cost increases, i.e., labor costs, or by other expected increases. This will allow rates to be set early enough for the concessioner to work out budgets as well as promotional materials, and should not result in a significant disparity of rates if they are reviewed and adjusted each year. However, when this system is used, a rate study is to be done during the upcoming season to readjust the rates so that this system is not a perpetually used method, thus skirting the use of an approved rate method.

(2) Special Requests—No requests for an approved price should be submitted by the concessioner unless the item is to be normally offered on a regular basis, except food items as explained below. The Superintendent may decide not to specifically approve rates for special occasions or groups and may allow the concessioner latitude to determine these prices.

The concessioner may request prices for food items which are not normally served but which he/she desires to serve as a result of special purchases, special meals for groups or emergencies.

In certain cases, telephone requests may be made to obtain approval if expediency is needed. These should be immediately followed by a written request if required by the Superintendent.

(3) Food Service Menus—The approval of individual food item prices are only part of the pricing program. During the rate approval process, the concessioner will also prepare the menu and submit such to the Superintendent for approval. The Superintendent is to review the menu for appropriate selection of entrees, food variety, price range for food categories, i.e., beef, fish, fowl, etc., and overall pricing.

(4) Rate Request Supplement—Normally, in only three situations should the Superintendent ask the concessioner to submit information indicating an estimate of the effect the price charged will have on gross sales and/or profits. The three situations are: When the Financial Analysis Method (7) is to be used, when the situation exists which was mentioned in D.1.c.(1) and when prices are adjusted to recoup utility costs as discussed in Paragraph F.1. In such situations, a broad estimate will be accepted for food prices, while a more stringent estimate would be required for lodging, marina, and other high-priced services. Under the Financial Analysis Method, and adjusting to recoup utility costs specific estimates will be required for all price increase requests, as well as other information.

(5) Individual Item Rates—All rates for goods and services are to be approved on an individual basis as far as practicable. However, the merchandise pricing method for groups or categories of products should be used, instead of specific items for general merchandise, groceries, souvenirs, and other similar items.

d. *The rate schedule.* After rates have been approved, a rate schedule is to be prepared by the Superintendent and a copy provided the concessioner and an initial copy provided the Regional Office as requested. The rate schedule should be as specific as possible to show the value received for the price charged, i.e., food portion.

For ease in administering, rate schedules should be divided into sections for the various services and facilities provided, and possibly retained in looseleaf notebook form. The following outline is suggested:

(1) Food and Beverage (Including Menus)

—Full Service Restaurants (breakfast, lunch, dinner)
—Cafe-Family Restaurants (breakfast, lunch, dinner)
—Cafeteria (breakfast, lunch, dinner)
—Fast food
—Cocktail and Other Beverages

(2) Lodging

—Lodges and Cabins
—Hostels
—Campgrounds
—European Plan/Rates
—American Plan/Rates
—Discounts
—Package Plans

(3) Retail Merchandise

—General Merchandise
—Grocery

—Genuine Native and/or Indian Handcraft

(4) Marina Operations

—Slips, Moorings, etc.
—Boat Rentals
—Gasoline and Other Miscellaneous Items

(5) Tour Operations

(6) Gasoline and Service Stations

—Petroleum Products
—Repair Services
—Towing and Other Services

(7) Miscellaneous and Other Services

Reservation deposit and cancellation refunds and charges (See Chapter 29, Reservations and Conventions).

Reduced Rates to Federal Employees (See Chapter 30, Accepting Reduced Rates and Items of Nominal Value From Concessioners).

Each page should be numbered and each section heading of the rate schedule and all amendments thereto are to contain the following wording:

These rates are to remain in effect until specific changes are approved by the Superintendent.

Minor changes to rates are to be made on a page-by-page amendment to the basic schedule, and for major changes, the entire schedule should be redone. Each page amended should show the approval date of the basic schedule and the amendment date.

A sample rate schedule follows:

Lodging Rate Schedule

Sample

XYZ

Concessioner

TOE PAW—RMR

Park Region

Motel-European Plan

Service

Big Circle Basin

Location

	Description	Approved
Rooms 101–236.	w/Bath, 2 Dbl Beds.	$XXXX
	2 Person	XXXX
	3 Person	.....
	4 Person	.....
Rooms 301–420.	w/Bath, 1 Dbl Bed.	$XXXX
	1 Person	XXXX
	2 Person	.....

Above rates are reduced by $3.00 between October 15 and February 29, inclusive. Rates reduced 10 percent for Federal employees conducting official business. The rates include an add-on of 50¢ for utility charges. The amount of gross receipts as a result of the add-on may be excluded from the franchise fee calculation.

Other:

Deposit—$XXXX—Refunded if reservation cancelled within 48 hours of scheduled arrival

Additional Per Person Rate $XXXX

Roll-Away, Crib $XXXX

Room Service: Menu Attached

Above Rates Approved:

Date/Signature

Previous Rates Approved:

Date

These rates are to remain in effect until specific changes are approved by the Superintendent.

2. Appeal Process

In situations where a concessioner is not satisfied with the rates approved or comparables selected by the Superintendent or the adjustment for recouping utility costs, the concessioner may appeal the Superintendent's decision. If not settled at the park level, the concessioner may appeal to the Regional Director.

The appeal should be in the form of a letter to the Superintendent with the statement that the concessioner is appealing to the Regional Director. The letter should contain whatever support or statement of the problem that the concessioner feels is necessary.

Immediately upon receipt, the Superintendent will forward the letter to the Regional Director along with his/her comments and all related correspondence. A final determination will then be made by the Regional Director. While a determination is being made, the rates in effect shall be those most recently approved by the Superintendent. A breach of these approved prices may result in a contract violation.

The decision of the Regional Director shall be transmitted to the concessioner by letter through the Superintendent. If the Regional Director has changed the Superintendent's decision, the Regional Director's memorandum shall become an amendment to the Superintendent's approved rates. This appeal should be acted upon without unreasonable delay. This process is not intended to circumvent any of the concessioner's legal rights.

3. Complaint System

In order to obtain valid and responsible visitor comments, the following notice will be prominently posted at locations deemed appropriate by the Superintendent.

This service is operated by (*name of concessioner*), a concessioner under contract with the U.S. Government and administered by the National Park Service. The concessioner is responsible for conducting these operations in a satisfactory manner and the reasonableness of prices are based on comparability. That is, the prices are based on those prices charged by closely similar private enterprises outside the park for similar services with due consideration for appropriate differences in operating conditions. Such considerations may include length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant.

Please address any comments to: (Superintendent's name and address)

4. Methods And Criteria For Use

Below is a brief description of each rate approval method and criteria for their use. The criteria elements must generally be met before a given method is to be used. Any exceptions should be documented and agreed to by the Region. The Rate Approval Method is proposed by the park and approved by the Region, except that the Superintendent may approve rate methods for Limited Concession Permits.

a. Full review of similar services. (1) Description. A process by which the Superintendent makes a detailed analysis of comparable features and prices.

The analysis utilizes the traditional comparability methods and concept contained in Volume I of Concessioner Comparability Study Procedures prepared by Cooper and Lybrand in March 1979, which should be retained for background reading. The following is a brief comparison of this approach and Coopers and Lybrand's:

(a) Will stress competition and price, where C/L Volume I puts more emphasis on cost.

(b) Will modify C/L Volume I criteria so that each item is considered in the process, however, every item is not absolutely required as in the past.

(c) Will eliminate all arithmetical processes except the use of price averaging for comparative purposes.

(d) Will retain extra quality feature worksheet for the purposes of comparing quality to price which may be used in upgrading (if necessary) a concessioner's services.

(2) Criteria. (a) To be given first consideration.

(b) Comparables operating in a competitive market are available.

(c) Quality of service and amenities are important factors in establishing prices.

b. *Simplified review of similar services.* (1) Description. A process by which the Superintendent makes a quick review of rates charged by the private sector by use of a simplified

worksheet for his judgment in determining if rates are comparable.

(2) Criteria. (a) Cost effectiveness—in view of budgetary constraints, travel, personnel, etc.

(b) Low Volume sales (minor economic impact).

(c) Service not one covered by full review method. (Exception is permissible if full justification is approved by Region).

(d) Sensitive merchandise items, i.e., limited edition items with fluctuating selling price.

(e) Comparables available.

c. *Specified rate on authorization.* (1) Description. A process by which the provision in P.L. 89–249 allowing rates to be determined as "provided in the contract" is used. Approved rates are specified in the authorization as well as method of indexing adjustment. Initial rates are determined by:

(a) The NPS following standard rate approval process; rates are published as part of the Fact Sheet or Prospectus: Or:

(b) Competition through the response to the Fact Sheet or Prospectus bidding process. Or:

(c) Negotiation with a successful bidder, documented in the contract file to show basis of rate.

(2) Criteria. (a) Limited number of items or services, e.g., transportation.

(b) No comparables readily available.

(c) Usually a unique service.

(d) Administratively determined at Region or higher level to be advantageous to the Government.

d. *Merchandising pricing.* (1) Description. On a Servicewide basis, maximum markups for specific merchandise categories are established by the Service for use by the Superintendent in determining rate approval. These markup guidelines are determined by a survey of similar industries. The application will be to price merchandise by percentage formulas applied to cost, e.g., curio, handcrafts, groceries, sundries, etc. However, the manufacturer's or product's suggested retail price, if available, shall be followed, except in cases where this causes undue hardship on the concessioner because of the availability cost.

(2) Criteria. The first preference for all retail categories of goods where it is the industry practice to set prices according to desired margin for a product line. Examples include curios, handcrafts, groceries, general merchandise, etc.

e. *Competitive market declaration.* (1) Description. A process by which the Superintendent determines that the pricing of a specific item, or service is not related to or enhanced by operating within the NPS area. Such services include those in a highly competitive market, negotiated sales items, and unique items (such as antiques) whose value is unrelated to the location where they are sold. In these circumstances, a declaration is made that further rate reviews are unnecessary as the concessioner's pricing must be competitive to secure business and is therefore comparable. This declaration must be reviewed annually and will require that the basic maximum rate increase still be required and approved.

(2) Criteria. (a) Either must exist in a highly competitive market, or:

(b) If price is routinely negotiated between vendor and customer, or:

(c) One of a kind items. Although a few handcraft items may fall in this category, the intent is to generally review handcraft by the merchandise pricing method.

f. Indexing. (1) Description. A fast and easily implemented process by which the Superintendent can approve or adjust prices without the need to go through the complete process of using one of the other comparability methods. Indexing uses consumer price index for all Urban Wage Earners and Clerical Workers (cost of living changes) prepared by the U.S. Department of Labor, Bureau of Statistics, to establish a price increase or decrease as in a particular class of service. This process may only be used when a base price has been established by one of the other approved methods.

(2) Criteria. (a) Used in conjunction with and/or subsequent to rates established by another method.

(b) Used for interim rate approvals, except for Method 3, where it becomes a part of that method. Base rates adjusted by indexing shall be reestablished at least every 12 months.

(c) When dictated by management constraints; example: Time, travel, money, turnover, (Must be documented).

g. Financial Analysis. (1) Description. This is a process by which the Superintendent determines if prices are comparable with the industry, after considering, documenting, and exhausting all other possible methods to comparability. The Superintendent will then approve rates through the use of a financial analysis system approved by WASO. These rates will be derived from the concessioner's submittal of financial data. Specific financial ratios of the concessioner are compared to industry norms, considering sales, investments, and expenses. With this information, the Superintendent would then approve prices after considering operating performance and other specifics of the concessioner.

(2) Criteria. (a) No other method is applicable; used as last resort.

(b) No comparables available.

(c) May be used to initiate rate for Method 3 (Specified Rate On Authorization).

E. Methods—Detailed Explanation

1. Method 1, Full Review of Similar Services

This study method is accomplished by tying the concessioner's rates to those of a competitive marketplace and adjusting for operating differences as required by statute and similar to the old Concessioner Comparability Study Procedures, Vol. I. One might want to review that document for some good background knowledge. Under this method it will be the Superintendent's responsibility to search for similar businesses (the comparables) and use these in a rate study which provides the basis for approving prices.

The purpose of comparability rate approval is to offset the possibility of monopoly pricing on the part of concessioners. By selecting a business which provides a service similar to that of the concessioner that is operating in a competitive situation outside the park, the comparability procedures should introduce competitive pricing to the in-park operations. For this reason, it is important to select businesses that are not only comparable in character, but that derive their prices from a competitive market.

The selection of comparables is the cornerstone of the entire process. The ultimate success and fairness of the approved rates—both for the visitor and the concessioner—hinge on these choices. For our purposes, a comparable is defined as a retail or service enterprise providing essentially the same product in similar facilities and under similar conditions as our concessioner, and whose prices potentially can be used to assist in determining appropriate rates to be charged by the concessioner.

Since selection of the comparable is fundamental to the Superintendent's ability to analyze the information gathered, it is desirable that the Superintendent and the concessioner be in agreement concerning the comparables selected. If the parties fail to agree on the comparables selected by the Superintendent, then the concessioner may appeal the decision as defined in the appeal process.

Once the similar operations are selected and the products and/or services are reviewed, the most comparable operations should surface. The facilities that match the most points

listed as criteria will generally be the most comparable. The rates offered by the concessioner are to be based on those considered most comparable. Rates may be modified according to how the operating conditions and product quality of the comparables differ from the concessioner. Those comparables that are so different that adjustment is not possible must be eliminated from consideration. However, in most cases, with careful selection of the comparables, only minor adjustments will be necessary.

Transportation and/or delivery costs (surcharges) for food, for example, often are identified separately on vendor invoices. Another such cost would be employee housing cost to the extent that it exceeds revenues from employees when it is not provided by the comparable operator. When such cost can be directly attributed to a service or product, this cost can be allocated directly to the service or product and the price can be adjusted accordingly. When considering direct adjustments to the price the concessioner should provide all necessary documentation. The Superintendent must assure himself that any adjustment is completely justified.

The final step in the process, the actual determination of the concessioner's prices, is based on the Superintendent's analysis of information gathered and the relationship between facilities, services, products, and other mitigating factors.

This method of full review of similar services provides criteria to use in the selection of comparable operations and provides extra quality features to consider. Services currently provided for include: (a) Food and beverage service, (b) Lodges and cabins, (c) Hostels, (d) Campgrounds, (e) Marina operations, (f) Tour operations, and (g) Gasoline service stations.

Standards for additional services may be produced when it is determined to be desirable to do so.

It is essential that the person conducting the studies for this method be appropriately trained by the Regional Concessions staff in the process for each industry he encounters.

a. Food and Beverage Service Industry. In order to determine comparability for this industry, the following criteria should be examined:

(1) Facility type or food service classification. Restaurants can be classified according to different criteria—types of service, menu, atmosphere, etc. A restaurant should be similar in each of these classifications before it is deemed comparable.

(a) Fast Food Style
—Stand-up
—Sit-down
—Carry-out
—Paper Service
—Table Service

(b) Coffee Shop
—Buffet
—Cafeteria
—Dining Room Informal
—Dining Room Formal

These are important criteria because of the variance in operating costs and any variance should be well-documented and thoroughly thought out.

(2) Similar sales mix: Food/alcoholic beverage. The comparable should have approximately the same mix between its alcoholic beverage sales and its food sales. Beer, wine, and alcoholic beverages are high profit sources and an operator who sells any significant quantity of these products has an economic advantage over one who does not. This can off-set or add to food sales and may affect food prices.

(3) Similar number of seats. Ideally, the comparable should have the same range of seating capacity. This will greatly ensure similar costs, all other things being equal, although it is certainly not clear that a restaurant with a greater seating capacity will charge more or less for its menu offerings. Ideally, the comparable should have the same range (variance should not exceed 50 seats).
—less than 100 seats
—100–250 seats

(4) Similar menus. It is essential that the comparable facility offer a similar menu—otherwise there will be nothing to compare with the concessioner's menu offerings.
—Fast food type
—Sandwiches
—Family style
—Ethnic
—Limited
—Specialty
—Gourmet or fine dining

(5) Similar number of meals. Ideally, the comparable facility will offer the same number of meals as the concessioner. That is to say breakfast, lunch and dinner.

(6) Degree of competition. Each comparable operation should have at least two other restaurants in competition with its own. The greater the degree of competition (more restaurants used in the study) the greater the assurance of accuracy and fairness in the pricing approval.

(7) Geographical proximity of suppliers. Comparables should be in the same range:
—Less than 50 miles
—51–100 miles
—Over 100 miles

(8) Seasonality. The comparable facility should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(9) Location and clientele. Ideally, the comparable facility should be in a similar location as the comparable and depend heavily on the same type of clientele, i.e., tourist-oriented, etc.

(10) Employees. Ideally, the comparable facility should have a similar ratio of employees to the number of seats.

Seats
Employees × 100=_____

(11) Methodology. Menus should be collected from those facilities deemed comparable under the above criteria. The concessioner's menu items should then be compared with similar menu items from the comparable restaurants. Considering the extent to which the comparable and concession match up with the selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner possible changes to his menu offering (size, quantity, quality) and/or services (table tops, decor, number of waiters, etc.) to match price, menu offering and services.

FOOD SERVICE: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables
Facility related:					
Carpeting.					
Booths.					
Counter seats.					
Provisions for the handicapped.					

FOOD SERVICE: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES—Continued

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables
Comfort related:					
Smoking/non-smoking Area.					
Air conditioning.					
Recorded music.					
Live entertainment/stage.					
Service related:					
Flowers or plants on tables.					
Take-out service available.					
Liquor license held—wine and beer.					
Caters to tour groups and organizations.					
Major credit cards accepted.					
Linen tablecloths (dinner).					
Glass vs. paper cups or plastic cups.					
Stainless or silverplated tablesetting vs. plastic.					

More features may be added as they are observed during the comparability review, i.e., toothpicks, mints, wetnaps, and so on.

b. Lodges and Cabins. In order to ensure that the Concessioner's rates are evaluated fairly and consistently within the constraints of Public Law 89–249 as it pertains to comparability, the person responsible for the comparability study procedure should cover each of the following criteria and explain why each was or wasn't used in selecting a comparable operation.

(1) Similar size. Lodging properties of varying size (numbers of guest rooms) can have different costs of construction and different costs of operation. Ideally the comparable would fall within a similar size range as the concessioner. This is not absolutely essential because the concessioner's property and those of the potential comparable are most apt to have been constructed at different times and, therefore, a different cost per room. Facility size has been divided into the following categories:

—Less than 75 rooms
—75–150 rooms
—Over 150 rooms

Ideally they should have the same range.

(2) In-season occupancy rate. A comparable facility should lie within the same in-season occupancy rate category as the concessioner. This is a very important consideration and would require an indepth justification for deviation. Categories are defined as:

—Under 68% occupancy
—Over 68% occupancy

Ideally they should have the same range.

(3) Building type. A comparable facility should be of the same building type in order to select a facility which has similar construction and maintenance costs. Again, this is the ideal and could be waived with justification. For example, a new one or two story property could have higher construction costs than a multi-story old inn. At the same time, the newer facility could have lower maintenance costs than the other property, which may tend to off-set or negate any differences when it comes to price determination. Categories are:

—High Rise (3/more stories)
—Low Rise (2 stories)
—Single Story Attached
—Detached Rooms or Cabins
—Tents

(4) Seasonality. A potential comparable must account for 75% of his annual business in a season which is within two months of the concessioner.

(5) Competition. A comparable must have at least one, and should have at least two other competitors in order to avoid the appearance of monopoly pricing. They should be located in an area where entry and exit is relatively free and unencumbered by permits or corporate restrictions. (This generally would exclude other properties located on Federal, State or local lands).

(6) Similarity of area. A comparable property should be located in a similar environment. This is to say properties located in or around downtown center cities and airports should not be compared to those in remote, natural settings. Ideally a concessioner located in a mountain setting would be compared to one also in a mountain setting. One in an ocean front setting with another ocean front setting, etc.

(7) Similarity of clientele. A comparable facility should serve a clientele similar to that of the concessioner. The concessioner will be serving the vacationing public almost exclusively. Properties that serve a significant percentage of commercial or convention business will operate differently, have different costs and average revenues, for the most part, than those serving the tourist trade.

The average length of stay is of prime consideration under this criterion (i.e., 1, 2, 3 . . . or more days).

(8) Similar age of facility. Either new construction or renovation.

(9) Construction type.

—Masonry/Steel Exterior—Finished Interior
—Masonry/Steel Exterior—Unfinished
—Frame/Wood
—Canvas

(10) Remoteness. Distance from major suppliers (50–150 miles).

(11) Affiliation.

—National Chain
—Regional Chain
—Nonaffiliated

(12) Employees. Number of employees per 100 rooms.

(13) Housing of employees. Is the operator responsible for housing employees? If yes, the percent to the total number of employees.

(14) Rating by other organizations. Consider rating by other organizations (AAA, Mobil, etc.). As an example, 4-Star in the park to 4-Star outside the park, or if different, then analyze the reason for that.

(15) Methodology. Utilizing a spread sheet showing the rates per number of people, the room rates should be compared with those facilities deemed comparable under the above criteria. Considering the extent to which the comparable and concessioner match up with the selection criteria and the extra quality work-sheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

LODGES AND CABIN FACILITIES: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables
Facility related:					
Television:					
—color/no charge.					
—BW/no charge.					
—movies via TV/no charge.					
Telephone:					
—direct dial.					
—switchboard operated.					
Swimming pool:					
—indoor.					
—outdoor/heated.					
—outdoor/not heated.					
—pool deck/patio area.					
Retail facilities:					
—gifts/souvenirs.					
—personal needs/drugs.					
—outdoor equipment (i.e., camping, fishing, etc.).					
—other (i.e., groceries, sundries, etc.).					
Restaurant/bar facilities:					
—cafeteria.					
—full-service dining room.					
—bar.					
Rooms:					
—temperature control.					
—shower or bath in each.					
—suites.					
—rooms adapted for handicapped.					
—conference or meeting rooms.					
—rooms with kitchens.					
Vending:					
—in-room.					
—common area.					
Fireplaces:					
—in common areas.					
—in rooms.					
Designated bus/camper parking.					
Children play/area.					
Recreation room.					
Marina.					
Beach.					
Tennis courts.					
Golf privileges.					
Convenience/comfort related:					
Air conditioned guest rooms.					
Wall-to-wall carpets in rooms.					
Grade A furniture.					
Special bed equipment (i.e., magic fingers, bedside lighting controls, etc.).					
Service related:					
Baggage (bell hop).					
Valet parking.					
Room service.					
Entertainment.					
Medical assistance/RN on duty.					
Audio visual/movies.					
Make other reservations.					
Have rental cars available.					
Major credit cards accepted.					
Registration office open 24 hours.					

More features may be added as they are observed during the comparability review, i.e., free ice, king size beds, and so on.

c. Hostels. The nature of these operations are unique in that they provide only bare essentials. Sleeping accommodations may be either individual or dormitory type sleeping quarters, guests may prepare their own meals and provide their own bedding (sheets or sleeping bags) and normally share in domestic duties. Many hostels are operated on a non-profit or subsidized basis. Due to this uniqueness, comparable facilities may be difficult to locate but consideration should be given to the following and rates approved accordingly.

(1) Type of facility. For our purposes hostels are divided into four types, which parallel the classification used by American Youth Hostels, Inc. (AYH). Generally, all facilities will have basic elements including: Kitchen, eating area, lounge and separate sleeping areas and bath for men and women. The

primary difference between the four types is size and other amentities. The four types beginning with the most basic are:

(a) Shelter hostel. The operation is not fully developed to include all of the basic elements stated above. The facilities are more primitive than the other three types in that dormitories may be shared by male and female, more bunks in a smaller area, beds may be cots, pads, or simply a mattress on a floor, inadequate heating, there may be only one toilet per 20 people and possibly be no electricity or garbage disposal.

(b) Simple hostel. This is a more developed operation. There are at least 25 square feet per person in sleeping quarters, bunkbeds, laundry of all bed covers, at least cold water, washing facilities and fully equipped kitchen.

(c) Standard hostel. In addition to containing the amenities for a simple type, the standard hostel has at least 30 square feet of floor space per bed in dormitory type quarters, hot and cold water, showers or tubs, large dining room and common rooms.

(d) Superior hostel. This type is much larger and has more amentities than the other types. Some of the sleeping quarters have six or fewer beds. There is a minimum of 40 square feet per bed, sheet sack or linen rental is available, facility may be accessible in daytime, there may be separate game rooms, quiet rooms and common rooms, and washer and dryers are available.

(2) MPS assistance. Consideration should be given to the amount of assistance the Service provides a hostel. Such assistance may be in major building renovations, maintenance or establishing service, registration assistance or other services.

(3) Guest assistance. Consideration may be given to the degree that guests will be required to participate in maintenance and domestic chores that are directly related to the hostel operation.

(4) American Youth Hostels, Incorporated (AYH). This organization directly operates about 40 hostels and approximately 240 independent operations are affiliated with AYH. AYH has developed standards for four types of facilities and have established maximum summer and winter rates for each. The size of the AYH operation and their reasonable standard rate structure provides an excellent basis for rate comparability and for adjusting rates upward or downward. Upon request the Washington Concessions Division will provide information on AYH rates and location of their facilities.

(5) Separate fees. AYH and other such organizations frequently charge a special user fee or charge that goes toward a development fund. Concessioners are prohibited from charging a fee independent of the approved accommodation rate.

(6) Methodology. Considering the extent to where other hostel operations and the concessioner match up with the selection criteria or with the rates charged by American Youth Hostels, Inc., approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities to match the prices of like operations.

d. Campground accommodations. Campground facilities can include provisions for tent camping and/or recreation vehicles (RVS). Comparables are to be selected from a similar area and environment as the concession operation. To determine comparability for campground facilities, the following criteria should be examined.

(1) Similar size. Campgrounds of varying size (number of sites) can have different operating costs. Ideally the comparable would fall within a similar size range as the concessioner. Campground size has been divided into the following categories:

Less than 100 sites
100–200 sites
200–350 sites
over 350 sites

(2) Site type. A comparable campground should serve a clientele similar to that of the concessioner. Many commercial campgrounds provide distinctly different areas for RV users and tenters or mixed use. In these cases, it is appropriate to compare the concessioner campground with just that segment of the commercial campground which it most resembles; extra features such as bathhouses, laundries or swimming pools, are credited according to the degree to which they serve the selected segment. Sites can be classified by three types:

(a) Primarily RV. High density, sites are small, close together, tent space is lacking or minimal, hook-ups are the rule.

(b) Primarily tent. Access roads are narrow or steep, or may be lacking, few sites are level, no large vehicle parking, hookups are lacking or scarce.

(c) Mixed use. More than half of the sites are equally useable by tenters or RV's (up to about 26'), average site separation is 50't, hookups may or may not be provided [their presence of absence would be taken into account as extra quality features). Most National Park Service Campgrounds fall into this category.

(3) Seasonality. The comparable campgrounds should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(4) Average annual occupancy. Annualized average percentage of site rentals of the comparable should normally be within 10% + or − of the concessioners. If this range is not available a wider range may be used but should be taken into consideration in the final rate adjustment.

(5) Degree of competition. Campgrounds should have two competitors to be regarded as a comparable. The competitors should offer similar services and amenities as that of the comparable and have separate ownership.

(6) Affiliation.

—National chain
—Regional chain
—Non affiliated.

(7) Ratings by other organizations. As a matter of policy, most campground rating organizations do not rate government-owned campgrounds. Direct comparison will not therefore be possible. Their directories do, however, provide a useful catalog of facilities from which to select tentative comparables.

(8) Methodology. Utilizing a spread sheet matching the rates for those facilities deemed comparable under the above criteria, comparable campgrounds should be compared with those of the concessioner. Considering the extent to which the comparables and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

It is not uncommon for a campground operator to offer a service free to campers and allow others to use it for a fee (swimming pools, for instance). In such cases it will be easy to determine the value placed on that service.

Note: Concessioner Rate Schedules should state that the concessioner will honor the Golden Age and Golden Access Passports.

CAMPGROUNDS: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES

Features (Check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables	Comparables
Facility related:						
Water hook up:						
Electric hook up:						
Free						
Extra charge						
Extra charge for air cond. only						
Showers:						
Cold water—free						
Hot and cold water—free						
Coin operated						
Rest room service:						
Pit type toilets						
Flush type toilets						
Cold water						
Hot and cold water						
Rest room—construction:						
Wood						
Interior—rough finish						
Interior—finished walls and ceilings						
Showers—common area						
Showers—partitioned stalls						
Heated						
Water:						
At individual site						
Scattered hydrants						
Central only						
Dumping station:						
Free						
Extra charge						
Sewage hook up:						
Free						
Extra charge						
Site Accessibility:						
Rough or gravel road						
Paved						
Pull-through for RVs and trailers						
Provisions for handicapped						
Lighted areas and path						
Picnic table at site						
Fireplace/grill at site						
Site seclusion:						
Utmost						
Moderate						
Limited						
Trash Receptacles:						
At site						
Centralized						
Service related:						
Camper store						
Food service						
Gasoline service station						
24 Hour on site attendant						
Firewood available						
Coin laundry available						
Ice available						
Vending machines						
Swimming pools						
Tennis courts						
Children's playground						
Hiking						
Interpretation program						
Entertainment program						
Recreation room						

Other factors may be added as they are observed during the comparability review.

e. Marina operations. The essential service that marinas provide to boaters is access to a body of water. The primary physical attribute of a marina is a dock or mooring area and, often, a launching area for smaller boats. Although marinas provide other services, this study method deals only with dock slip rental, mooring rental and launching.

In order to determine comparability for this industry, the following criteria should be examined:

(1) Similarity of operation. Marinas should serve the same basic type of boats. Marinas that serve primarily large boats over 25 feet in length, are normally designed and operated as home berths for these boats. They provide some degree of protection from a variety of weather conditions, security, and, usually, additional services such as a marine railway and facilities for major repairs. Smaller boats are usually launched for each use and are kept on land in storage or on trailers between uses. Launching facilities and small motor repair are important services in these marinas. One should note the area where most of the revenues are derived (launch or home berth) when selecting a comparable.

(2) Degree of competition. Marinas should have two competitors to be regarded as a comparable. The competitors should offer similar services and amenities as that of the comparable and have separate ownership.

(3) Similarity of natural area. Oceanside marinas or marinas on saltwater bays may have a different degree of investment and boaters expect a certain type of experience when using these facilities. Inland marinas, may be compared to oceanside and bay marinas when they are built to protect boats from similar extremes of weather and from similar effects of waves or tidal action. Another factor to be considered is the method of anchoring the marina, i.e., piling or cable based on the fluctuation of the water.

(4) Type of service. The comparable should offer similar type services, slip rental, mooring, launchings, restaurant, store, etc.

(5) Seasonality. The comparable facility should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(6) Geographical proximity of suppliers. Comparables should be in the same range:

—less than 50 miles
—50 to 100 miles
—Over 100 miles

(7) Average annual occupancy. Annualized average percentage of slips or mooring rentals. The comparables' annual average percent of occupancy should normally be within 10% + or − of the concessioner's.

(8) Market area/clientele.

—National
—Regional
—Local

(9) Dock type.

—Floating, capable of being moved relative to the shore
—Floating, fixed to the shore
—Non-floating fixed

(10) Weather protection. Covering.

(11) Breakwater.

—Man-made
—Natural
—No Breakwater

(12) Methodology. Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

MARINAS: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables	Comparables
Facility Related:						
Hotel/motel.						
Restaurant/bar.						
Groceries.						
Marine supplies.						
Fuel dock.						
Maintenance facility.						
Sewage pump-out.						
Refuse receptacles.						
Showers.						
Laundry.						
Hoists.						
Transient berths/moorings.						
Dry storage.						
Trailer parking.						
Fish cleaning area.						
Telephone hookup at berths.						
Electrical hookup at berths.						
Cable TV hookup at berths.						
Boat club.						
Picnic areas.						
Service Related:						
Charter boat operation.						
Camping.						
Swimming.						
Water Skiing.						
Fishing.						
Beach rentals.						
Boat rentals.						
Fishing equipment.						

More feature items may be added as they are observed, i.e. boat cleaning service, hull cleaning and refurbishment, large engine repairs, interior and appliance service, firefighting facilities, and so on.

f. Tour operations. Concessioners provide tours by bus, van, horseback, boat, raft, tram, and other types of vehicles. In addition, there are walking tours in a number of areas. Tours can be of short duration—less than 1 day—or they can last for a week or more. Tour operators usually provide some guide service and may also arrange for meals and overnight accommodations. Given this great variety, this portion of the comparability study will focus on the types of tours generally provided by concessioners in National Parks, that is, guided tours that last less than one day. In addition, these procedures focus on motorized tours only, i.e., excluding, however, all raft trips as well as walking tours. The rate approval for many of these tour services may best be accommodated through another study method, as an example, Method 3 will lend itself well for tour services which do not have comparables readily available.

(1) Similarity of operations. Type of Vehicles should be of the same type. It is not possible to compare tours in different vehicles, e.g., bus, boat, tram, etc., because investment levels, operating cost, and clientele are different.

Guide service—The provision, or absence, of a guide or narrator is a significant factor.

(2) Similarity of market area/clientele.

—National
—Regional
—Local

(3) Length of tour. Tours lasting one day or less cannot be compared to tours that last longer. On tours lasting less than one day, the amount of time and distance traveled are significant cost factors.

(4) Age of vehicles. The age and/or appearance of the vehicles should be similar.

(5) Seasonality. Number of months required to obtain 75% of the annual volume should be within 2 months + or − for comparables.

(6) Remoteness. Distance to major suppliers or supplies, i.e., fuel, parts, labor supply. Comparables should be in the same range:

—Less than 50 miles
—50 to 100 miles
—Over 100 miles

(7) Natural area type of terrain.

—Mountainous
—Hilly
—Flat
—Water-oriented
—Salt water/brackish
—Freshwater

(8) Methodology. Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

TOURS: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURES

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables
Facility related:					
Restrooms (aboard vehicle)					
Eating facilities					
Bar					
Public address system					
Handicapped facilities					
Glass bottomed (boats only)					
Comfort related:					
Air ride suspension					
Reclining seats					
Air conditioning					
Vistadome					
Service related:					
Hotel/motel accommodations arranged					
Meal stops arranged					
Baggage accommodations					
Special activities included					
Accept major credit cards					
MCO (Miscellaneous charge order/airline tour order)					
Direct billing					
Transfer bus service					
Bilingual escort guides					
Special escort guides					
Hospitality suite or desk					

Other feature items may be added as they are observed during the comparability review.

g. Gasoline service station. The services include gasoline sales, emergency and routine services such as tires, batteries, and accessories (TBA), and major repair. Gasoline sales may also be handled through the Simplified Review Of Similar Services Method. "Also, during periods when gasoline prices are widely fluctuating, the use of cents per gallon mark-up may be used." See Note at end of this subparagraph.

(1) Ownership/management. Do they have the same type ownership/management structure?

—Oil company ownership leased to independent operator/manager
—Oil company owned and managed
—Independently owned and managed

(2) Type of service.

—Full-service
—Self-service
—Split island

(3) Degree of competition. Service stations should have at least two competitors to be regarded as a comparable.

(4) Geographical proximity. Normally, the most comparable facilities will be those that are located closest to the concessioner because of distance from supplies.

(5) Volume of business. The monthly volume of business is a very important factor in gasoline pricing and may be

very hard to obtain from the comparables.

(6) Seasonality. In addition to the volume, the season is also an important factor. Seventy-five percent of the annual volume should be reached within 2 months + or − of the concessioner.

(7) Methodology. Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

Note: "Gasoline prices are to be approved utilizing comparable pump prices in accordance with Method 1, Full Review of Similar Services or Method 2, Simplified Review of Similar Services, unless during period when gasoline prices are rapidly changing, the Regional Director authorizes the use of cents per gallon mark-up. This entails contacting the jobber of the particular brand of gasoline sold by the concessioner to ascertain eight or ten stations in the area which have volume and location characteristics similar to that of the concessioner. Contact the stations to find out their mark-up in cents per gallon on delivered gasoline (including cost of transportation). The average add-on in cents per gallon then becomes the concessioner's allowable add-on."

GASOLINE SERVICE STATIONS: ADJUSTMENTS TO COMPARABLES—EXTRA QUALITY FEATURE

Features (check if present)	Concessioner	Comparables	Comparables	Comparables	Comparables
Facility related:					
Restrooms.					
Public telephone.					
Car wash.					
Adjoins restaurant or motel.					
Adjoins retail store.					
Comfort related:					
Waiting room (for customers awaiting auto repairs).					
Service related:					
Trailer/RV service.					
Accepts membership road service.					
Provides free maps.					
Tires, batteries, and accessories.					
Repair service available.					
Tow service available.					
Mechanics licenses held.					
Open 24 hours.					
Open 7 days a week.					
Accepts major oil company card.					
Accepts major credit cards.					

Other features may be added as they are observed during the comparability review, i.e., vending service, self-service, and so on.

2. Method 2—Simplified Review of Similar Services

a. Description. This method of rate evaluation may be characterized as a quick review, rather than a detailed study. It consists of a simple comparison of prices between the concessioner's proposed rates on items and services that meet the established criteria for this method and those items and services of selected private businesses. The comparison process is very brief, limited to minimum background information on the available comparative businesses, the price of similar items and services, and the essential information concerning differences in the items and services being considered.

To the extent possible, similar service businesses will be located on non-Federal lands, however, in cases where the only comparative businesses available are so located (such as national parks or national forests) they will be acceptable.

In some cases, a Superintendent may choose to use a screening factor in selecting a similar business, e.g., the presence of a boat mechanic. The park may require the concessioner to have trained mechanics on duty to provide this service. In this case, "Required Training" would be a screening factor rather than a consideration. A business not meeting the screening factor would be eliminated from consideration. However, because basic comparables are not available, most of the factors to be developed by the park, will be used as consideration factors only when selecting the similar services business and when evaluating the comparative value of the rates against the concessioner's rate approval.

Failing one "consideration factor" would not necessarily rule out the business as a usable similar service.

The Simplified Review of Similar Services Worksheet or a similar document will be used in conducting the rate comparison review and to establish the approved rates. The worksheets appear at the end of this explanation.

b. Application of the method. It is anticipated that this simplified review process may be conducted by telephone to known similar service businesses. However, on-site visits are to be encouraged whenever possible, considering administrative constraints.

When the determination has been made to use this method of rate comparison, an inquiry will be made in the nearby, in some cases distant, communities to locate similar businesses. The personal knowledge of the park staff and local business leaders can be utilized to help locate similar businesses that might provide the same goods and services as those being reviewed for rate approval.

Where possible, three or four similar service businesses which should have two or more competitors each, should be reviewed. Special screening and consideration factors will be established by the Superintendent to help evaluate the similarity of rate values of the businesses being reviewed. (See worksheets.) Again, because of the many one-of-a-kind types of items and the unique character of some concession services, it may be found that only one or two similar businesses can be located. In this case, you will use what

you have and explain the efforts to locate others in the footnote section.

Concession items and services to be included under the heading "Items and Services" will be related, where possible, to a functional operation such as: recreational equipment rental and services at a small, isolated marina operation. One or more items may be listed for review on a single form. The Superintendent has the flexibility of using this form to adapt to the difficulty in locating similar service businesses and/or similar services. A new form will be used for each concessioner.

Once the "Service Items" and "Proposed Rates" have been listed on the worksheet, the similar service businesses will be queried by phone or in person to obtain their current rates for comparison. In those cases where there is a similar service or item but a distinct difference exists which might affect the price comparison, it will be footnoted to explain the difference. In some cases, this may be grounds for rejecting the rate comparison for this item. (See worksheets that follow.)

When the similar service rates have been recorded, an average will be computed to service as an indicator and comparison with the proposed rates. A recommended rate approval based on the comparison will be entered in the right hand column. An analysis of the data will be recorded at the bottom of the form to briefly describe the extenuating consideration given in making the final rate recommendation.

Subsequent individual rate increase requests that are made during mid-season can be handled quickly by contacting the similar services business to check their current prices and if changes have occurred to warrant an increase it can be quickly approved.

Simplified Review of Similar Services (Worksheet)

Date _____

Analyst _____

Park _____

Concessioner _____

Contract/Permit _____

Screening or consideration factors	Concessioner	Similar service businesses				Comments
1.						
2.						
3.						
4.						

RATE COMPARISONS

Items and services	Proposed rate	Established rate/similar service businesses	Averg. rate	Recommended rate
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

Footnotes:
Brief Analysis:

Simplified Review of Similar Services (Worksheet)

Date _____

Analyst _____

Park _____

Concessioner _____

Contract/Permit _____

Screening or consideration factors	Concession	Similar service businesses				Comments
		Reservoir	Other	Marina/store	Other	
1. Length of season	3 months	4 months	3 months	4 months	5 months	First two on private property; third on State land; fourth, NPS.
2. General appearance	Very good	Average	Poor	Average	Very good.	
3. Equipment condition	New	Old	Old	Good	Good.	
4. Size of business	Very small	Medium	Medium	Small	Small.	

RATE COMPARISONS

Items and services	Proposed rate	Established rates of similar services	Established rates of similar services	Established rates of similar services	Established rates of similar services	Average rate	Recommended rate
1. Rental Boats 14', 10hp, w/ gas.	$10 per hour	6 per hour[1] ..	$11 per hour	$10 per hour	10 per ½ day[2].	$9	$10
	25 per ½ day	10 per ½ day	20 per ½ day			13	25
	30 per day	15 per day	25 per day			20	30
2. Ski and equipment skis/ rope/PFD.	3 per day	4.25 per day .	2.75 per day .	.....	5 per day[2]	4	3
3. Zip sled	4 per day	.....	2.50 per day .	3.25 per day .	3.75[2] per day	3.17	3
4. Fishing gear (pole/lures/bait)	5 per day	4.50 per day .	5.50 per day .	2.75 per day .	5.25[2] per day	4.50	5
5. Canoes PFD	2 per hour	1.75 per hour	1.50 per hour	2.25 per hour	2 per hour	1.87	2
	5 per ½ day .			5 per ½ day .	5.50 per ½ day[2]	5.25	5

[1] Gas not provided. [2] Only had 2 old boats. [3] Old and poor quality equipment. [4] PFD not provided—getting out of business.
Brief Analysis: (1) Higher rate recommended because new equipment, better service, higher quality. (2) Rate not recommended, other services equal in quality and condition.

3. Method 3—Specified Rate on Authorization

a. Description. This method will probably represent the easiest process for adjusting and approving rates in many situations. Once the contract or permit has been written or amended as described herein, the procedure will be nothing more than that described in indexing, Method 6.

The tasks to deal with in this method are:

(1) Establishing the initial rate.

(2) Writing or amending the contract or permit to accommodate the method while very specifically spelling out the exact index to be used.

(3) Following up on adjusting the rate for Indexing as spelled out in the authorization. Indexing for this method is not to exceed 5 years before reestablishing the rate.

Specified rates on authorization method is intended for use when comparables are not readily available and when dealing with a limited number of services with a simple rate structure. The method should have special value for unique and unusual services such as seaplane rides, some horseback rides, and mountain-climbing schools.

Perhaps the most important factor to consider is that this process should be determined to be administratively advantageous to the Service by (1) reducing the questions about rates that arise each year and (2) reducing the time and money used in approving rates. In many cases the concessioners will favor utilizing this method because it will give them a solid rate that they can plan on without the uncertainties that may be inherent in other rate approval methodologies.

b. Establishing the specified rate. The NPS representative making this determination should take advantage of any reasonable means to establish a rate that will be fair, in his/her best judgment, to the visitors and provide a reasonable opportunity for a return to the concessioner. In situations where there is an existing rate that is considered reasonable, then that may be used. In some situations, an economic feasibility study will be needed and in other cases it may require the use of the financial analysis method. The Superintendent may in some instances request assistance from Region, which might in turn request assistance from WASO or DSC.

(1) New authorization. Once the NPS-proposed rate has been established, this can be published in the Fact Sheet or Prospectus as the proposed rate. The Prospectus should ask that those responding specify the rate they propose, and the financial rationale to justify such rate.

Prospectus Language:

Inasmuch as there are no comparable _____ services in the area of _____ National _____, the rates charged shall be those approved in this (contract or permit) and subject to change annually. The maximum approved rate shall be adjusted annually to reflect the rise or fall in the U.S. Department of Labor, Bureau of Labor Statistics' C.P.I. for _____ covering the same period. If the said Consumer Price Index figure for the month of January of the year following the effective date of this contract shall show either a rise or fall from the index figure for the month of January of the preceding year, the maximum rates shall be correspondingly increased or decreased for the succeeding 12-month period, commencing on the 1st day of April, to the nearest (quarter) (half)(one)-dollar figure representing the percentage difference of increase or decrease of the current January Index figure over the preceding year figure. Likewise, similar recalculations of the rates to be used shall be made using the Index for the month of January in each succeeding year. In each instance, the figure shall be compared with the figure of the preceding January, and an adjustment made for the next succeeding 12 months in the manner aforesaid.

The National Park Service proposes (requires) _____ as the rates for the calendar year beginning on the execution date of this (contract or permit). *All prospective operators responding should submit their proposed rates along with financial rationale to substantiate the proposal*. (Words between asterisks are optional)

When this method is to be used, the proposed rate should be considered when evaluating the proposals responding to the Prospectus. This will provide competitive rate proposals, but still not consider them as the major element in the selection process but rather a part of the element of being responsive to the Prospectus. Should the proposals or the best proposal have a rate lower or higher than the NPS proposed rate, then the rate could be determined through negotiation.

Should all of the proposed rates be considered not reasonable, or too low, then the proposals may be treated as any other prospectus where no satisfactory proposals were made.

(2) Existing operations where a fact sheet is to be issued. When it has been determined that this method will be utilized and a Fact Sheet is being issued, the same basic procedures and Fact Sheet language can be used as was described in "new authorizations". The difference will, of course, be that preferential right will become injected into the negotiating and selection process. As with other points, the existing concessioner who has a preferential right of renewal shall be given the right of first refusal.

(3) Amendment to contract or permit.

A contract or permit can be amended for the purpose of specifying the rate and utilizing this method. In areas where a contract or permit has 3 or more years before expiration, and when mutually agreeable with the

concessioner, the Superintendent may wish to amend the contract or permit.

A contract amendment certainly takes a good deal of effort, especially on the part of the Regional Office staff, and possibly will not be considered by many. In some situations, however, it will be in the Government's best interest to amend the contract and, therefore, should be considered. The area and Regional Office staff will want to work together closely when considering this possibility.

4. Method 4—Merchandise Pricing

a. Description. Approving prices based on costs for various types of retail stores and categories of goods is a simple solution for approving prices for a wide range of goods that are normally priced by a percent markup, i.e., curios, handcrafts, groceries and general merchandise. This method is not to be applied to restaurants, hotels, transportation, marina operations or other service-related industries where quality of service and amenities are more important factors in approving rates charged park visitors.

This method achieves comparability by using national percentages. Comparability in the Merchandising Pricing Method is also realized by permitting variance from national markon/markup averages where local custom dictates, and by using Method 1 or 2 for unusual items. The use of manufacturers' suggested retail prices also provides comparability.

b. Determining retail prices. The grocery store and general merchandise retail industries have their own jargon, i.e., markon, markup, gross margin, gross profit, cost of sales, etc., and some prefer to quote the above in either dollar amounts or percentages. This is very confusing to the person responsible for implementing and/or administering price approvals, particularly if they are not familiar with retail merchandising.

Two closely related terms are markon and markup. The first, markon, is widely used by retailers, and represents the percentage of selling price which is profit. Markup, which is more commonly understood by lay persons, represents the profit percentage which is added to retailer's cost to establish a selling price.

Equivalent markup and markon percentages for each category of merchandise are attached as Exhibit 1. The percentage will be updated periodically. One method of price construction may be selected and the equivalent in terms of the other method is readily available in the adjoining column. The percentages should generally be used.

The two methods of price construction follow:

(1) Markup pricing: Selling price = Product Cost × (1 + approved markup percentage).

Example: Consider a carton of cigarettes with a product cost of $4.50. The approved markup percentage of 44.1 is taken from Exhibit 1. What should the selling price be? Selling Price = $4.50 × (1 + .441) = $6.48.

(2) Markon pricing: Operators need to know the percentage of the selling price that is represented by gross profit. Considering the expected volume and product mix, they need to make judgments as to whether the margin is sufficient to allow expected profit and cover expenses, or whether expenses must be pared. An example of margin of profit:

Selling Price	$6.48
Product Cost	4.50
Profit	1.98

$1.98 + $6.48 = .3055 or 30.6% of the selling price.

30.6% of the selling price represents gross profit. 30.6% is also the markon percentage corresponding to 44.1% markup listed for tobacco products in Table 1.

To determine the selling price from approved MARKON percentage:

Selling Price=Product Cost÷1−gross profit % (expressed in Table 1 as markon percent. Convert to a decimal equivalent.)

Using the same example cigarette carton, the approved markon percentage looked up in Table 1 and found to be 30.6%.

Selling Price=$4.50÷1−.306=$4.50÷.694=$6.48

Exhibit 1 contains equivalent approved maximum markups/markons, so neither party is forced to work with a method that may be uncomfortable.

(3) Application. Example: Suppose a Superintendent selects a grocery item from the shelf and finds the price to be marked $.75. Table 1 shows an approved markon of 29.9% and markup of 42.7%. Upon request, the concessioner produces documentation to show product cost per unit to be $.524 and volunteers a markon of 29.9% was used to construct the $.75 shelf price.

The Superintendent prefers to use the approved markup percentage of 42.7% to verify correctness of price and multiplies the produce cost and the markup %. $.524 (1.427)=$.7475. The $.75 shelf price is verified as correct.

Wholesalers will often provide pricing wheels, a circular sliderule type of tool that will read the appropriate price directly for a given product cost and desired gross profit percentage.

c. Variation from listed percentage. The percentages for markup/markon in Exhibit 1 are based on nationally published averages drawn from large samples, and represent the upper range of profitability. They should be used, in the absence of good evidence to the contrary, as maximum allowable percentages. Comparability may also be achieved as follows:

(1) Different items of merchandise within a particular category may be priced above or below the percentage listed in Exhibit 1, providing, the overall result, considering sales volume, does not exceed the markup/markon for the category.

(2) Where retailers in a particular area have a custom of pricing certain items above or below the national markup/markon averages, and it can be documented by contacting retailers in the area, the percentages in Exhibit 1 may be adjusted to conform.

(3) Manufacturers' suggested retail prices should be used when the produce has one, either by pre-marking or by a suggested retail price list. However, if local custom is to vary from the suggested retail price, then the local price should prevail. This may result in a retail price higher or lower than if calculated by markup/markon percentages.

(4) Unique items and items that are not marketed in the normal manner and do not fit an item or group of items listed in Exhibit 1 may be priced by using Method 1, Full Review of Similar Services or Method 2, Simplified Review of Similar Services.

d. Product cost. The following may be included in product cost by the concessioner:

(1) Due to the time value of money, merchandise on hand at the time the wholesaler announces a price change may be revalued to reflect new wholesale costs, and retail prices adjusted accordingly. This must be documented by a current wholesale price list.

(2) Cash discounts need not be deducted from product costs. Such discounts are normally 2% and expressed as 2/10,n/60 (2% discount if paid in 10 days from date of invoice, net due in 60 days) or 2/10 eom (2% discount if paid during the first 10 days following the end of the month). During times of high interest rates some wholesalers may offer 5% prompt payment discounts.

It is possible that a wholesaler may, to promote sales, increase prices in order to offer a discount greater than 5% thereby allowing for a higher retail price

and enhancement of the wholesaler's product to the concessioner. Discount above 5% should be regarded as a reduction in the wholesale price on which markup is based. If a larger discount is offered it must be reduced to 5% prior to calculating the retail price.

Example: Product cost—$10.00; 12/10eom. 12% offered discount less maximum allowable 5% discount, equals a 7% price reduction.

Listed product	$10.00
Less 7% price reduction	.70
=Product cost on which markup or markon may be computed	$9.30

In times of volatile cost of capital, the industry cash discount practice will be monitored to keep the above policy current. It is the intent of this cash discount policy to be consistent with current industry practices.

(3) Documented transportation expenses may be added to the product cost before markon or markup.

The concessioner must produce such documentation upon request. When the transportation is provided by the concessioner, the documentation is more difficult, but nevertheless must be explicit. An example of acceptable documentation is provided at the end of this discussion.

(4) Warehouse charges developed or cost incurred by the concessioner may not be added to the product cost to determine price.

Warehousing as used herein is intended to mean the normal labor and other expenses incurred by the concessioner in handling merchandise, etc., in the concessioner's storage structure and sales outlets. If the concessioner wishes to take advantage of warehousing, expense through:

—Increased sales volume due to lower retail prices

—Revalued merchandise due to documented wholesaler price increases

—Convenience and availability of product.

(5) Volume buying practices by the concessioners allow them to take advantage of discounts offered by suppliers. The NPS views this as an acceptable financial transaction and therefore we should not penalize concessioners for doing so by not allowing them to use the cost that would have been incurred by buying in smaller quantities.

The concessioner will provide the NPS with the supplier's volume price listing to justify the adjusted base to be used in the markup method. The markup should be based upon purchase prices for the quantity which the business would normally purchase in order to keep the product in stock.

Transportation Documentation by the Concessioner (Sample)

1. Invoice Documentation.

If it is necessary or desirable for a concessioner to pick up supplies at the wholesaler's dock, the wholesaler will often offer a discount in return for saving delivery costs. The amount of the discount should be stated on the invoice. The stated discount will serve as documentation to support the amount of transportation expense the concessioner claims as product cost.

2. Constructed Transportation Expense.

The objective is to construct as nearly as possible, the actual reasonable expense for transporting each item by the concessioner. Consider the need to find a transportation charge for a dozen eggs. The basic vehicle for this exercise is a truck of 500 cubic feet capacity.

Fixed Expenses	
Amortization	$3,000/year
Insurance	1,000/year
Service and Repairs	260/year
Taxes and License	240/year
Variable Expenses	
Driver	$9.00/hour.
Fuel	1.30/gal.
Laborer	4.00/hour.

Mileage, 20,000/year $4,500 + 20,000 = $.225/mile fixed expenses.

Consider a trip of 170 miles to a supplier.

$.23/mile fixed expenses × 170	$39.10
Driver $9/hour × 6 hours	54.00
Laborer $4/hour × 1 hour	4.00
Fuel $1.30/gal. × 26 gal	33.80
Trip Cost	130.90

Truck capacity 500 cubic feet.

Average 80% full = 400 cubic feet.

131 + 400 = .33

One carton of eggs = 3 cubic feet × .33 = 0.99 carton.

30 dozen per carton .99 + 30 = .03/dozen eggs transportation.

5. Method 5—Competitive Market Declaration

a. Description. Occasionally there are situations that exist in National Park areas where a service offered by a concessioner exists in a highly competitive market. That is, where identical or very similar services are offered by other private enterprises in the immediate vicinity, and the concessioner's location provides no particular competitive advantage. In such situations, the area manager may wish to write a "Competitive Market Declaration," which is an analysis of the situation and a statement that it is in the public's best interest to allow prices to be set in a free market rather than approved by the Service.

The purpose of the "Competitive Market Declaration" is to reduce the administrative burden of rate approvals in situations where, because of competition, the concession must charge comparable rates to survive. It does not relieve the Superintendent of the responsibility to ensure that the concessioner's rates are fair and reasonable.

A competitive market is defined as a marketplace where two or more parties act independently to secure the business of a third party by offering the most favorable terms and/or prices. The "marketplace" may be very small; as in the case of unusual one-of-a-kind items on sale within a major concession merchandising shop; or larger, as in the case of antique sales which may be miles from other antique dealers. The important concept is that if the concessioner's competitive position is not enhanced by his/her location in a park, then his/her pricing must be competitive to secure business and may, therefore, be considered comparable.

The argument has been made that if there is no competitive advantage to a service being offered in the park, then that service may not be "necessary and appropriate" and should not be located in the park. In response, we merely point out that rate reviews are not the place to make that decision, and that field personnel may safely proceed with "Competitive Market Declarations" without reference to a specific service being needed or appropriate.

Another situation where this concept of competitive market may be used is in rate reviews for goods or services where the price is routinely negotiated between vendor and customer. Examples of this would include unique, limited one-of-a-kind items such as art or antiques, and one time services such as banquets served in a concession restaurant. Again, the key element is that the sales price is not enhanced by the vendor's location in a park area.

b. Procedure. The decision to use a Competitive Market Declaration should not be made lightly, as it relaxes controls but not responsibility for rate reviews. It is required that the Regional Office agree to the use of this method.

The decision-making process should be well documented. This documentation should contain as a minimum a detailed description of the circumstances which justify the

declaration; a competitive market, negotiated price, etc.

The documentation should also assess alternative rate approval methods as applied to this particular situation.

The declaration itself is to be included as part of the approved rate schedule. As a minimum, the declaration needs to include a statement to the effect that market forces provide comparable pricing and that the concessioner is permitted to set and change prices without further review. The declaration shall require the concessioner to notify the Superintendent in writing of rate increase changes. The declaration must be reviewed at least annually to ensure that significant changes have not occurred in the marketplace necessitating use of another rate approval method. This review process must be documented. The park may rescind the use of this method if it is felt that the competitive situation has changed.

Example: Competitive Market Declaration for boat sales by Catfish Marina Services, Incorporated at Waterhole National Recreation Area.

Boat Sales at Catfish Marina

Catfish Marina is an authorized dealer for Glastron and Sea Ray boats, and in addition sells used Sterury rental boats. As a boat sales dealer, Catfish Marina directly competes for customers with the following firms:

—Rainbow Boats, Holioak, Wyoming—7 miles distance
—Evinrude Sales and Service, Holioak, Wyoming—7 miles distance
—Lemon's Leased Boat, Tidewater, Wyoming—3 miles distance
—Park Boats, ½ mile east of NRA boundary

As can be observed, the distance between Catfish Marina and its competitors is not great. All of the above firms sell boats in the same class as those offered by the concessioner.

In addition, the selling price of boats is normally negotiated between buyer and seller. The many variables which enter into boat sales price, such as changes in season, interest rates, model year; and intangibles of salemanship make the application of fixed prices unrealistic.

In consideration of those factors, it is determined that the concessioner's ability to compete in boat sales is not enhanced by the location of Catfish Marina within the Recreation Area. Prices are comparable based upon competitive pressures and negotiation. Our recommendation is to use a competitive market declaration for approving rates for this service.

Superintendent

Date

Example Rate Schedule—Waterhole National Recreation Area Section V—Marina Services (continued)

Boat Sales

Competitive Market Declaration.

It is determined that boats sold by Catfish Marina, Inc., at Catfish Basin, Waterhold Recreation Area are vended in a competitive market. Further, the price charged for boats sold are negotiated between buyer and seller. In consideration of these factors, it is declared that rates being charged by the concessioner are comparable and approved. Catfish Marina, Inc., may price their boat sales competitively without further approval from the National Park Service.

This declaration is for the period January 1, 1983 to December 31, 1983.

(signed)

Superintendent

Date

6. Method 6—Indexing

a. Description. Index pricing represents an easily-implemented procedure for approving or adjusting concessioner prices on an interim basis. It does not obviate the need for periodic rate approval processes aimed at ensuring both a reasonable opportunity for the concessioner to realize a profit and fair prices for the visitor. Index pricing would, however, reduce the administrative burden on both concessioners and NPS management personnel by eliminating the necessity of more elaborate study each time a price increase is requested by a concessioner.

Index pricing may, perhaps, be best understood by example. Suppose that in April 1978, concessioner XYZ requests a price increase to $27.50 per night for a double room in his facility. The most recent price for a double room of $26.00 was approved in January 1977, through a comparability study. The Superintendent refers to a list of price indices which indicate that from January 1977, to January 1978, (used for an example only), lodging while out of town prices have increased by 7.5%. On this basis, the concessioner would be entitled to $27.95, which is a 7.5% increase over the old price of $26.00. Therefore, the Superintendent approves the requested price of $27.50. At the same time, the concessioner requests that the price of his fish platter, established in January 1977, be increased from $3.50 to $4.00. The Superintendent determines from the same list of price indices that food away from home prices have increased 8.2% over the period from January 1977, to January 1978. On this basis, the Superintendent denies the requested increase to $4.00 and approves, instead, an increase to $3.75.

b. Price indices. At the heart of the procedure described above is the price index. A price index is a ratio which related prices for specific commodities or groups of commodities to prices in a "base" year. For instance, the CPI for all items for Urban Wage Earners and Clerical Workers for 1967 through 1982 was:

Year	CPI
1967	100.0
1968	104.2
1969	109.8
1970	116.3
1971	121.3
1972	125.3
1973	133.1
1974	147.7
1975	161.2
1976	170.5
1977	181.5
1978	195.3
1979	217.7
1980	247.0
1981	272.3
1982	288.6

This index has been calculated with a base year of 1967. Thus, the series can be read directly as the price level in some subsequent year relative to the base year of 1967. For example, prices in 1973 were 33.1% higher than they were in 1967, or, equivalently, it took $133.10 in 1973 to purchase goods that cost $100.00 in 1967.

Percentage change in prices (inflation rates) can be calculated from price index simply by dividing the change in the index over some period by the index at the beginning of the period. Thus, the percentage change in prices from 1970 to 1977 was:

181.5 − 116.3 = .561+ or 56.1%

c. Application of price indices. The Consumer Price Index, For Urban Wage Earners and Clerical Workers (CPI –W) on which the index pricing system is based, is compiled by the Bureau of Labor Statistics of the U.S. Department of Labor. The CPI covers a number of categories that might be useful to us. Certain data are broken down by city and region of the country.

These detailed categories offer Superintendents the ability to refer to price trends in their geographical area for *specific* product groups. The CPI detail indices for specific products and

services offered by NPS concessioners include the following:

NPS concessioner	Corresponding CPI index
Restaurants (food services).	Food away from home
Restaurants (alcoholic beverages).	Alchoholic beverages away from home
Lodging	Lodging while out of town
Retail sales:	
Grocery items	Food at home
Housekeeping	Housekeeping supplies
Clothing	Apparel commodities
Newspapers, magazines, etc.	Reading materials
Sporting goods	Sporting goods and equipment
Souvenirs	Toys, hobbies, and music equipment
Tobacco products	Tobacco products
Personnel care products.	Toilet goods and personal care appliances
Photographic sales.	Photographic supplies and equipment
Non-prescription drugs and medical supplies.	Non-prescription drugs and medical supplies
Gasoline sales:	
Gasoline, motor oil, coolant and other products.	Motor fuel, motor oil, coolant, and other products
Auto maintenance/repair.	Automobile maintenance and repairs
TBA (tires, batteries accessories).	Automobile parts and equipment
Bus transportation	Intercity bus fare

The CPI and associated indices are computed and available on a monthly basis. The indices are found in a number of Government publications* and are generally available within a three-month lag. Thus, the Index for February is typically available in May. The availability of monthly data makes possible an Index Pricing System with the finest practical time resolution.

Exhibit 2 is a sample of one of the pages from the monthly report. Upon request, WASO will provide the Regions with a copy of the statistics. As you can see, each page will address the CPI for specific cities and for the Regions under BLS. Each Region is broken down further by population size class as follows:

Class and Population

A—1,250,000 and above
B—385,000 to 1,250,000
C—75,000 to 385,000
D—Below 75,000

* For example, see "Monthly Labor Review," "Survey of Current Business," or Federal Reserve Bulletin.

Select the cities and Regions close to the park in question in determining the appropriate CPI to use in the indexing procedures.

Index pricing procedures are to be based on one of the recent applicable pricing methods. Implementation of the system should be straightforward. Instructions and Price Index Worksheets to be used in calculating the proper rate appear at the end of this explanation. When concessioners submit their price increase request, the Superintendent should break out the request by line of business (e.g., lodging, food service, etc.).

The initial application of indexing for a concessioner would involve an update of prices approved by a previous rate approval method. The inflation adjustment would be computed as the percentage change in the relevant index from the month and year of the time the request is made. If the requested percentage increase in the price of the concessioner's product is less than the increase in the index, then the concessioner's request price would be granted. If the percentage of the concessioner's requested price increase is greater than the increase in the index, then the request would not be approved, unless sufficiently justified by the concessioner.

Price increase requests over prices earlier established by indexing rather than a price approval method would be judged on the same basis. The only computational variation stems from the price index reporting lag. The percentage change in the price index should be calculated from the most recently available index at the time the earlier prices were granted, to the most recent index available for the current increase requested.

For example, suppose the price of "food away from home" in the West were:

Time	Index
August 1978	108.8
June 1979	118.8
August 1979	120.3

Assume that the concessioner established a $3.00 price for his fish platter in August 1978 through a rate approval method. He/she requests a price increase to $3.25 (an 8.3% increase in July 1979). The most recent price index available is the June 1979 figure of 118.8. This is a 9.2% increase over the index in August 1979, when the rate method was used. Since the concessioner's requested percentage increase is less than the percentage increase in the index, the request is granted and a new price of $3.25 is approved. If the concessioner's requested percentage increase was greater than the percentage increase in the index, the request would be denied. The percentage increase would be limited to the percentage rise in the index.

Suppose that the concessioner returns with a request to increase the price from $3.25 to $3.35 in October 1979. The Superintendent refers to the park records and determines that the last price was established in July 1979 and was based on the price index for June 1979. He therefore, calculates the increase in the index from June to August (the most recent index available) and determines the increase in the index to be 1.3%. Since the requested increase is 3.1% (from $3.25 to $3.35) and greater than the increase in the index, the request is denied and the increase is limited to $3.30.

A price approval method other than indexing is to be conducted within one year following the data that a concessioner price increase was approved which was based on price indexing procedures. This rquirement is necessary in order to (1) ensure that concessioner prices do not move significantly out of line when compared to prices in the unregulated economy and (2) preclude the continued use of the more easily-administered price indexing system.

d. Limitation of indexing.—The index pricing system should be understood to be a method of allevating the burden of other pricing methods on both concessioner and NPS personnel. It is not a panacea and cannot be used unquestioningly and unqualifiedly in every instance. It will, however, allow concessioner prices to be adjusted more frequently (if need be) in special circumstances with minimal administrative burden.

Index Pricing Work Sheet Instructions

Complete the required information regarding concessioner, date, location and specific item being priced, then initial the form in the space provided. Determine the price index which best fits the item being priced. If there is no close fit, use the "all items" index and complete the space provided at the top of Column C.

Line 1

Column A: Enter the proposed item price.
Column B: Enter the current month and year.
Column C: Enter the latest CPI for the item.

Column D: Enter the month and year for the latest CPI.

Line 2

If the previous price was established by comparability or other study—

Column A: Enter the previous price.

Column B&D: Enter the month and year the previous price was set.

Column C: Enter the CPI during the month and year the old price was set.

If the previous price was established through index pricing refer to the pricing form completed at that time and—

Column A: Enter amount on line 9 of the earlier form.

Column B, C, & D: Copy form Line 1, Columns B, C, & D of the earlier form.

Line 3

Column A: Subtract Line 2 from 1.

Column C: Subtract Line 2 from 1.

Line 4

Column A: Divide Line 3 by Line 2 (3 decimal places).

Column C: Divide Line 3 by Line 2 (3 decimal places).

Compare the amounts on Line 4, Column A and C.

If the amount in Column C, Line 4, is greater than or equal to the amount in Column A, place the figure shown on Line 1, Column A, on Line 9 below.

If the amount in Column A is greater than the amount in Column C, then proceed as follows:

Line 5: Enter the amount of Line 2, Column A.

Line 7: Enter the percent on Line 4, Column C.

Line 7: Multiply Line 5 by Line 6.

Line 8: Add Line 5 and Line 6.

Line 9: Round the amount on Line 8.

Release No. 2
Concessioner _____
Location _____
Specific Items _____
Date _____
NPS Initials _____

Line	Item price (A)	Date of column A (B)	CPI	Date of column C (D)
(1) Proposed				
(2) Previous				
(3) Line (1) minus line (2)				
(4) Line (3) divided by line (2)	%			

If Line (4) Column (A) is greater than Line (4) Column (C), see below. Otherwise, enter requested price on Line (9) below.

(5) Enter amount on Line (2) Column (A)	
(6) Enter amount on Line (4) Column (C)	
(7) Multiply Line (5) by Line (6)	
(8) Add Line (5) and Line (7)	
(9) Approved Indexed Price	

7. Method 7—Financial Analysis

a. Description. As a last resort, a financial analysis method could be used to approve concessioner rates. This method relies on certain financial statistics used by WASO after a decision is made by the Region and park to request this method be used:

b. Procedure. (1) Appropriate financial target(s); profitability ratio, direct cost percentage, operating cost ratio, or percentage price increase, is (are) chosen.

(2) Together with the price increase request, concessioners will submit the Concessioner Financial Worksheets which will depict the expected impact of the price increase on selected financial variables.

(3) WASO will compare the price increase data to concessioner historical, industry, and other appropriate NPS concessioner data to identify significant deviations.

(4) A number of factors which might serve to justify a higher-than-expected price are examined.

(5) Based on the above analysis, either approve or disapprove the concessioner's price request.

Each of the above five steps are described in detail in separate documents to be used by WASO. If interested, please request from WASO.

F. Utility Charges

Concessioner rates set under one of the seven approved methods may, under certain circumstances set forth below, require adjustment to allow the concessioner to pass through certain utility charges. This part establishes the procedures for such adjustments.

1. Procedures for Adjusting Comparable Rates

The procedures set forth herein apply only in those instances where the concessioner is to be charged by NPS for utilities (electricity, water, sewer, solid waste) at a rate higher than the comparable utility charge in the private sector. These procedures do not apply when the concessioner purchases all utilities from non-park sources or when the Service charges a comparable utility rate; normal concessioner comparability rate approval procedures are assumed to reflect such comparable utility costs.

In many cases, the concessioner will elect not to pass on utility charge increases, particularly when they are small in relation to all the costs of doing business. In such instances the documentation and calculations required in this section are not necessary. It must be understood, however, that such decision to request this pass through rests with the concessioner.

a. In outline the steps involved are. (1) The park calculates utility charges based on comparability and on operating cost, selects the higher, and provides the data to the concessioner.

(2) A "base price" for each item or category of goods and services is approved in accordance with regular concession rate approval methods.

(3) The concessioner calculates the total dollar amount by which utility charges based on actual NPS cost will exceed the amount based on comparability.

(4) The concessioner proposes an add-on to each base price and provides calculations to show that the total add-on for all goods and services equals the additional utilities charge identified in step (3).

(5) The Superintendent reviews and adjusts or approves the add-on and the resulting final rate schedule.

(6) If the concessioner feels the resulting price structure would cause undue competitive harm, the case is dealt with as a utility charge exception, as explained in Paragraph 2 below.

(7) At the end of the year actual results are compared to start of the year projections and significant variations reflected in the subsequent year's adjustment.

b. Detailed Explanation of each step. (1) Calculating utility charges. The procedures for calculating both actual and comparable utility charges are outside the scope of the Concessions Manual. Refer to Special Directive 83–2 for procedures. Whenever possible, however, comparable utility charges for comparison should be taken from the same locales as are used for concessioner rate comparables.

Notification of utility charges increases will be provided the concessioner 60 days in advance of the effective date. A request for adjustment of visitor prices or for a utility charge exception must be submitted to the Superintendent within 15 and must be acted upon by NPS within 45 days of the notification.

Notification of all utility charge increases higher than comparability should be provided the concessioner at the same time and far enough in advance of the main visitor season that only a one time yearly adjustment of prices to the visitor will be required.

(2) Establish base price. As before, rate schedules may be expressed in terms of unit price, markon, markup or other appropriate measure, add-ons would then be expressed in compatible units.

(3) Documenting additional utility charge impact. This will be done by the concessioner multiplying the difference between operation cost and comparability times anticipated usage.

(4) Requesting-rate adjustments. If the concessioner decides to request passing through the additional utility costs to park visitors he/she is to provide the Superintendent with a proposed adjusted rate increase schedule. The schedule is to clearly show:

(a) Past unit sales or sales volume for goods and services to be adjusted.

(b) Current comparable approved rate, markon or markup percentage.

(c) Estimated units or dollar volume to be sold.

(d) Amount of add-on shown as either a dollar amount or percentage.

(e) Adjusted rate shown as either a dollar amount or percentage.

(f) Estimated additional revenue.

(g) An explanation if a decrease in units or volume sold is to occur.

The table that follows illustrates the above procedure.

PROPOSED CONCESSIONER RATE ADJUSTMENT TO RECOUP $10,000 ADDITIONAL UTILITY CHARGES WHERE UTILITY OPERATING COSTS ARE HIGHER THAN COMPARABLE UTILITY COSTS

Products/services adjustment	Units or dollar volume sold last year	Comparable approved rate dollar amount or markon (percent)	Estimated units or dollar volume to be sold	Amount of add-on dollar amount or markon (percent)	Adjusted rate dollar amount or markon (percent)	Estimated additional revenues
Rooms (units)	$8,000	50.00	$8,000	.75	50.75	$6,000
Breakfast buffet (units)	9,200	3.75	[1] 8,000	.25	4.00	2,000
Sandwiches (units)	5,000	2.85	5,000	.15	3.00	750
Tobacco products	100,000	30.60	100,000	.40	31.00	400
Postcards	4,000	50.00	4,000	1.00	51.00	40
Groceries	30,000	29.90	30,000	2.00	31.90	600
Boat tours (units)	3,500	4.00	[2] 3,000	.10	4.10	300
Totals						$10,090

[1] Past History indicates approximately a 12 percent sales resistance when prices are increased by 25 cent. (Note: perhaps the rate change should be further reconsidered).[2] Boat dock will open one week later next season.

(5) Reviewing adjustment rate increase schedule. The schedule is to be reviewed by the Superintendent to assure:

(a) Accuracy of calculations

(b) Reasonableness of projections.

(c) If the add-on for any price exceeds 15 percent of the base price the concessioner should first be requested to spread the add-on over more items or classes of merchandise. Only if this is not practical should an exception for utility charges be considered.

(6) Ease of monitoring revenues generated as a result of the adjustment.

(7) Goods and services adjusted are well balanced so that a wide range of visitors participate in the adjusted rates.

If the Superintendent does not agree with the proposed adjusted rates he/she should discuss these concerns with the concessioner. Differences which cannot be resolved will be treated as an appeal and referred to the Regional Director in accordance with Paragraph D. 2., Appeal Process.

After an agreement has been reached as to the goods and services to be adjusted and the amount of increase, the Superintendent approves the new rates by showing the amount of add-on on the concession's previously approved Rate Schedule and provides the concessioner and regional office with a copy. The amount of gross receipts as a result of the add-on may be excluded from the concessioner's franchise fee calculation.

Copies of all concessioner rate increase schedules will be forwarded to WASO (ATTN: Concessions Division) for information.

2. Utility Charge Exception

A utility charge exception may be applied when the utility cost add-on is so high that consumer resistance begins to occur. At this point, higher item prices are offset by reduction in the number of items sold. The visitor suffers excessive prices and the concessioner suffers lost current sales and lost repeat business. There is no hard and fast rule as to when resistance might begin; there will be differences according to the types of goods and services involved, the type of clientele, and the part of the country. The sales mix of the concessioner will greatly affect the flexibility with which increases can be applied.

The utility charge exception procedure may be used when charging actual costs for utility services would create an infeasible financial situation and would frustrate the ability of NPS to carry out its statutory responsibilities to preserve and protect areas of the National Park System and to provide for their use and enjoyment by the public.

Authority to approve reduction of utility charges on the basis of a utility charge exception is reserved to the Regional Director. The request procedure will parallel that set forth in Paragraph D. 2 "Appeal Process." The Superintendent's forwarding recommendation should include discussion of the guidelines which are relevant to that situation. The Regional Director's approval for a utility charge exception is valid for only one year. Additional requests for exception must be made by the concessioner on an annual basis.

The following guidelines will apply:

a. As a general rule, price increases of 15% or less should not create a undue competitive situation.

b. Add-on must be spread over as wide a range of goods or services as possible, thus reducing the per item increase. It is not acceptable to concentrate price increases in a narrow

range of items, to produce an artificial need for the utility charge exception.

c. Items on which the manufacturer has printed a suggested resale price are not amenable to sale above that price.

d. Low profit, high dollar volume merchandise such as gasoline is not amenable to large increases.

e. Merchandise prices approved under a Competitive Market Declaration should not be subject to add-on for utility rates.

f. Price increases based on utility charges which occur about the same time as increases based on "normal" market comparability may have a combined effect which creates consumer resistance. In such circumstances, it may be prudent to limit the combined increase to 20% at one time and phase the remaining portion of the utility charge increase.

g. During the first year of implementation of the new utility price policies, a temporary utility charge exception may be necessary due to the late publication of directives, due to large "catchup" increases in comparability based utility costs when these have not been adjusted for a long period, or due to the fact that the concessioner's rates for the forthcoming season have been widely publicized. During the implementing period only, utility charge exceptions may be considered where large increases result only from increased comparability utility charges. Each such case shall be considered on its individual merits. Action by the Regional Director may include delay or phasing of the full rate increase. The implementing period will be considered to end on October 1, 1984. Thereafter, this sub-paragraph will no longer apply.

3. Monitoring

The following procedures are to be taken by the Superintendent and concessioner to assure that the results of adjusting rates for goods and services approximate the amount required to recoup the additional utility charges.

The concessioner, using sales records, invoices, inventory records and other appropriate reports is to provide the Superintendent with documentation showing the results of rate adjustments and the added cost based on the actual amount (gallons, kwh, etc) of utility consumed. The table below illustrates the necessary documentation.

DOCUMENTATION

Products/services adjustment	Projected	Actual
Rooms	$6,000	$6,375

DOCUMENTATION—Continued

Products/services adjustment	Projected	Actual
Breakfast buffet	2,000	2,625
Sandwiches	750	930
Tobacco products	400	418
Postcards	40	40
Groceries	600	800
Boat tours	300	310
Added revenue	10,090	11,498
Added utility costs	10,000	10,300
Summary:		
Actual additional revenue generated	.....	11,498
Actual additional utility charges	.....	10,300
Amount to be recouped/(deducted)	.....	(1,198)

a. Minor differences. After utility costs and rate adjustments are reconciled, any difference, plus or minus, of less than 5% of additional utility costs will be ignored.

b. Subsequent adjustments. The above documentation shows that the concessioner adjusted rates generated $1,198 more than actual utility charges. Since the difference (12%) is greater than 5% of additional utility costs, the add-on to comparable rates is to be adjusted downward by $1,198 the following year. If the difference between additional sales generated and actual utility costs were less than 5%, the difference would be ignored.

Reconciliation should be done at the end of the prime operating season or at other times agreeable to both parties but prior to the next rate increase based on comparability. This should be done well in advance for seasonable operations so that adjustments for operating utility costs over comparable utility costs can be represented in the concessioner's rate schedules provided the public and other advertising media.

If during the year the concessioner believes, based on past and current records, that the adjusted rates may result in a substantial shortage or excess of revenues, he/she should recommend changes to the Superintendent that can be taken early that would bring the recouped revenue within the range of what is required.

GROSS PROFIT MARGINS MARKON AND MARKUP

[Percentages]

Item	Markon	Markup
Convenience type store:		
Tobacco Products	26	35

GROSS PROFIT MARGINS MARKON AND MARKUP—Continued

[Percentages]

Item	Markon	Markup
Beer/Wine/Liquor	26	35
Soft Drinks	36	56
Groceries, General & Canned Goods	33	49
Fast Foods	49	96
Milk & Other Dairy Products [1]	19	23
Confectionery Products	39	64
Health & Beauty Aids	37	59
Baked Goods	29	41
Snack Foods	34	52
Periodicals	19	23
Meat & Deli	39	64
Retail operation:		
Female Apparel—General	54	117
Sportswear	54	117
Costume Jewelry	56	127
Small Leather Goods	55	122
Neckwear, Rainwear, Belts, Handkerchiefs	58	138
Mens & Boys Apparel & Accessories—General	54	117
Mens and Boys Clothing	53	113
Mens and Boys Sportswear	54	117
Infants & Childrens Clothing & Accessories	53	113
Shoes—General	52	108
Cosmetics, Drugs, Toiletries	40	67
Toys, Hobby Goods, Games	46	85
Books, Stamps, Coins [1]	39	64
Stationery, Greeting and Post Cards	50	100
Photographic Equipment, Film, Flash Bulbs, Accessories	28	39
Developed Slides	50	100
Sporting Goods	46	85
Housewares	41	69
Linens and Domestics	50	100
Hardware and Tools	43	75
Automotive Parts and Accessories	44	79
Gifts and Souvenirs	55	122
Handcrafts [2]	55	122
Artwork, Posters, Pictures	55	122

[1] Prices are usually established by the publisher and printed on the material as the retail price and should not be exceeded.

[2] Precious metals and stones, limited or one-of-a-kind items may justify a higher rate but should be done on an item-by-item basis.

NOTES: Exercise caution when verifying local market prices. Many convenience stores sell milk and bread at or below cost to build traffic in their stores. (Source CSN Industry Report).

Information was obtained from *Convenience Store News* and *Merchandising and Operating Results of 1986*, for Department Stores and Specialty Stores published by the National Retail Merchants Association.

CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS: SELECTED AREAS, SELECTED ITEMS

[December 1977=100 unless otherwise noted]

Area	Other index base	Food away from home						
		Aug. 1982	Mar. 1983	Apr. 1983	May 1983	June 1983	July 1983	Aug. 1983
U.S. city average	1967	311.8	319.7	321.3	321.9	322.5	323.0	324.3
Anchorage, Alaska	10/67	.....	296.7	.....	297.5	.....	298.9	.....
Atlanta, GA	1967	313.1	.....	321.6	.....	322.7	.....	324.2
Baltimore, Md	1967	.....	328.3	.....	336.2	.....	337.0	.....
Boston, Mass	1967	.....	277.1	.....	278.3	.....	286.7	.....
Buffalo, N.Y.	1967	296.5	.....	280.7	.....	281.1	.....	283.0
Chicago, Ill. N.W. Ind	1967	291.3	299.4	300.3	298.8	298.8	298.8	298.8
Cincinnati, Ohio-Ky. Ind.	1967	.....	303.6	.....	306.5	.....	304.3	.....
Cleveland, Ohio	1967	309.7	.....	317.0	.....	321.7	.....	335.0
Dallas-Fort Worth, Tex	1967	331.2	.....	350.8	.....	350.8	.....	357.2
Denver-Boulder, Colo	1967	.....	316.7	.....	321.0	.....	326.4	.....
Detroit, Mich	1967	281.9	285.4	285.4	283.0	282.0	282.8	283.0
Honolulu, Hawaii	1967	298.9	.....	313.8	.....	312.5	.....	312.4
Houston, Tex	1967	368.0	.....	373.2	.....	377.1	.....	376.9
Kansas City, Mo. Kans	1967	309.3	.....	313.2	.....	316.3	.....	321.0
L.A.-Long Beach, Anaheim, Cal	1967	308.2	319.1	319.2	320.1	322.7	323.3	323.9
Miami, Fla	11/77	.....	173.6	.....	174.1	.....	174.2	.....
Milwaukee, Wis	1967	.....	322.9	.....	534.2	.....	334.9	.....
Minneapolis-St. Paul, Minn-Wis	1967	339.3	.....	359.6	356.9	.....	359.7	
N.Y., N.Y.-Northeastern N.J.	1967	302.3	307.7	310.2	312.2	312.1	311.9	312.7
Northeast Pennsylvania	1967	.....	271.3	.....	273.8	.....	276.9	
Philadelphia, Pa	1967	385.9	388.8	392.5	393.0	396.9	399.1	402.7
Pittsburgh, Pa	1967	318.2	.....	328.5	.....	329.2	.....	329.6
Portland, Ore.-Wash	1967	.....	325.8	.....	325.6	.....	331.0	.....
St. Louis, Mo.-Ill	1967	.....	296.9	.....	297.9	.....	299.5	.....
San Diego, Calif	1967	.....	405.8	.....	408.9	.....	410.3	.....
San Francisco-Oakland, Cal	1967	298.4	.....	305.6	.....	306.2	.....	312.0
Seattle-Everett, Wash	1967	.....	304.8	.....	305.7	.....	311.8	.....
Washington, D.C.-Md.-VA	1967	.....	321.8	.....	324.5	.....	321.1	.....
Region:								
Northeast	.....	150.1	.....	154.1	.....	155.0	.....	156.2
North Central	.....	148.0	.....	151.8	.....	151.5	.....	152.3
South	.....	152.7	.....	158.2	.....	159.2	.....	159.3
West	.....	156.2	.....	161.9	.....	162.9	.....	164.1

NOTE.—Provided as sample only. Contact Region for current statistics.

[FR Doc. 93–29854 Filed 12–8–93; 8:45 am]

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federal register

Thursday
December 9, 1993

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation; Defective Cost or Pricing Data; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 91–100]

Federal Acquisition Regulation; Defective Cost or Pricing Data

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing revisions to Federal Acquisition Regulation to provide that postaward audits remain in draft form until the contractor and the contracting officer have the opportunity to review and comment on reports indicating defective pricing.

DATES: Comments should be submitted at the address shown below on or before February 7, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 91–100 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 91–100.

SUPPLEMENTARY INFORMATION:

A. Background

This revision originated from an industry recommendation under the Defense Management Review. Based on the implications of defective pricing, it is important that final audit reports be as accurate as possible. It is appropriate to provide contractors and contracting officers the opportunity to review findings prior to finalization of postaward audits that indicate defective pricing.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of awards made to small businesses are made on a firm fixed-price, competitive basis where no certified cost or pricing data are required and the policies regarding defective pricing do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 91–100), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15:

Government procurement.

Dated: December 3, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.807–7 is amended by redesignating paragraphs (d), (e), and (f) as (e), (f), and (g) and adding a new paragraph (d); and revising the new paragraph (e) to read as follows:

§ 15.804–7 Defective cost or pricing data.

* * * * *

(d) Postaward audit reports which indicate defective pricing shall remain in draft form until the contractor has been afforded an opportunity (normally, 30 days) to review the report, along with any relevant supporting data, and respond. The draft report, along with any contractor comments and auditor rebuttal, shall be provided to the contracting officer. The contracting officer should review this documentation, along with any relevant files, to determine if additional information is available that the auditor may not be aware of, and provide such information to the auditor (normally, within 45 days).

(e) If a final postaward audit report indicates defective pricing, the contracting officer shall determine whether the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to further support the accuracy, completeness, and currency of the data in question. After consideration of any further information submitted by the contractor, the contracting officer shall prepare a memorandum indicating (1) the determination by the contracting officer as to whether the submitted data were accurate, complete, and current as of the certified date and whether the Government relied on the data, and (2) the results of any contractual action taken. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

* * * * *

[FR Doc. 93–30004 Filed 12–8–93; 8:45 am]

BILLING CODE 6820–34–M

federal register

Thursday
December 9, 1993

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Inconsistencies—Termination for Convenience; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 91–102]

Federal Acquisition Regulation; Inconsistencies—Termination for Convenience

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing changes to the clause entitled, "Termination for Convenience of the Government (Fixed-Price)," to clarify existing language and eliminate unnecessary language. Changes are also being made to clarify that incremental payments may be involved in some instances such as a partial termination action; and to clarify the two instances when the contractor forfeits its right of appeal.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 7, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 91–102 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–102.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and the DARC have approved proposed changes to paragraphs (e) and (i) of the clause at FAR 52.249–2 to clarify current language, align internal clause references, and conform the clause language to pertinent references in the Disputes clause. Specifically, the proposed rule revises paragraph (e) by adding, in the first sentence, the words "or remaining to be paid" following the words "amount to be paid" to clarify that incremental payments may be involved in some instances such as a partial termination action.

Several changes have been proposed to paragraph (i) of the clause. In the first sentence, the words "following a claim and final decision" have been added after the words "Dispute clause." Also in the first sentence, the Councils have clarified the two instances when the contractor forfeits his right of appeal by adding the words "or request for equitable adjustment" after the words "failed to submit the termination settlement proposal" and linked these instances with the existing references in the paragraph by adding after the words "paragraph (d) or (k)" the word "respectively." The last sentence in paragraph (i) has been eliminated because the paragraphs referenced, i.e., (d), (f), and (k), adequately address what the contractor is to be paid in each case.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply clarifies or eliminates existing language. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 91–102), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 3, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.249–2 is amended by revising the date in the clause heading, and paragraphs (e) and (i) of the clause to read as follows:

52.249–2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (DATE)

* * * * *

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) of this clause, exclusive of costs shown in subparagraph (f)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

* * * * *

(i) The Contractor shall have the right of appeal, under the Disputes clause, following a claim and final decision, from any determination made by the Contracting Officer under paragraph (d), (f) or (k) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (d) or (k), respectively, and failed to request a time extension, there is no right of appeal.

* * * * *

[FR Doc. 93–30005 Filed 12–8–93; 8:45am]

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federal register

Thursday
December 9, 1993

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Petition Findings for 990 Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Petition Findings for 990 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: Under the Endangered Species Act of 1973, as amended (Act), the Fish and Wildlife Service (Service) evaluates petitions for listing animal and plant species. Within 1 year after receiving a listing petition (if substantial information is presented), the Service is required under the Act to make one of the following findings on the merits of the petition: "warranted," "not warranted," or "warranted but precluded." The Service has a separate, but related, administrative process to identify candidate species for listing under the Act. With this notice, the Service makes final findings for 990 candidate species that have been under "warranted but precluded" findings and clarifies the status of these and other petitioned candidates.

DATES: The findings made herein are effective December 9, 1993, and will be reflected in any future notices.

ADDRESSES: Interested persons or organizations should submit comments regarding particular taxa to the Regional Director of the Region specified with each taxon as having the lead responsibility. Comments of a more general nature may be submitted to—Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, D.C. 20240. Written comments and materials received in response to this notice will be available for public inspection by appointment in the Regional Offices listed below.

Information relating to particular taxa in this notice may be obtained from the Service's Endangered Species Coordinator in the lead Regional Office identified for each taxon or in States listed below:

Region 1.—California, Hawaii, Idaho, Nevada, Oregon, Washington, Commonwealth of the Northern Mariana Islands, and Pacific Territories of the United States.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503–231–6131).

Region 2.—Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505–766–3972).

Region 3.—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612–725–3276).

Region 4.—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345 (404–679–7103).

Region 5.—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413–253–8200).

Region 6.—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303–236–7398).

Region 7.—Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Street, Anchorage, Alaska 99501 (907–786–3561).

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703–358–2171) or Endangered Species Coordinator(s) in the appropriate Regional Office(s) listed above.

SUPPLEMENTARY INFORMATION:

Background

Under Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Service evaluates petitions for listing plants and animals as either endangered or threatened. The Service must first make a finding within 90 days of receipt as to whether the petition presents substantial information to indicate that the requested action may be warranted. If that finding is positive, a second finding must be made within 1 year of receipt of the petition. Based upon the merits of the information assembled during those 12 months, this latter finding must be one of the following: "warranted," "not warranted," or "warranted but precluded." (50 CFR 424.14).

Periodically, the Service publishes notices of review indicating those species currently being considered for listing and those that are no longer active candidates. Species are placed in one of three "Categories" as follows:

Category 1—Species for which the Service has sufficient information currently on file to support a proposed rule to list them as endangered or threatened. Proposals to list have not yet been issued because this action is precluded by other listing activities. Development and publication of proposed rules on Category 1 species are anticipated. Species in this category are assigned a listing priority in order to assist the Service in determining those species most in need of protection.

Category 2—Species for which sufficient information is not currently available to decide whether a proposal to list should be made or that the species should not be listed. There is sufficient information that these species are possibly under threat to their continued existence, but further field studies or other information are required before final determinations can be made. Species in this and the previous category are considered active candidates for protection under the Act by the Service.

Category 3—Species for which sufficient information is currently available to conclude that they no longer warrant consideration to be listed as endangered or threatened. A species in this category may be considered extinct (i.e., Category 3A), not an entity that meets the definition of "species" under the Act (3B), or sufficiently common and not at risk to the degree that requires protection under the Act at this time (3C). Species in this category are not considered active candidates by the Service.

In the May 12, 1993, **Federal Register** (58 FR 28034–35), the Service announced its current policy on the proper classification of candidate species that have received "warranted but precluded" petition findings. Under this policy, any candidate species that has received a "warranted but precluded" finding will be classified as a "Category 1" species and assigned a listing priority number. Species that receive a "not warranted" finding will be classified as either "Category 2" or "Category 3."

Prior to the adoption of this policy, the Service had been including some candidate species with "warranted but precluded" findings in Category 2 on the basis that further action was

precluded until sufficient information became available. In other cases, species were placed in Category 2 following a "not warranted" finding.

Policy

The Service will no longer find the listing of a petitioned species "warranted but precluded" when additional information is still required to support a proposed listing rule (i.e., for Category 2 species). Species subject to "warranted but precluded" petition findings are now only assigned to Category 1. A petitioned species placed in Category 2 because of lack of sufficient information will receive a "not warranted" finding but will continue under review as an active candidate.

Completed Review

The Service has now completed a review of all 934 Category 2 species that have previously received "warranted but precluded" findings. These species either remain in Category 2 (i.e., sufficient information is still lacking to determine whether listing is appropriate) and receive a final "not warranted" petition finding, or the species retains the "warranted but precluded" petition finding (i.e., sufficient information is now available to support a proposed listing rule) and moves to Category 1. All species assigned to Category 1 are assigned listing priority numbers. In several cases, sufficient information is now available to conclude that species do not warrant listing, and these species are assigned to Category 3.

In addition, some 56 species previously placed in Category 1 under a "warranted but precluded" petition finding have been reevaluated on the basis of new information. Final "not warranted" findings are made for all these species, and they are either assigned to Category 2 (52 species) or to Category 3 (4 species) for the reasons indicated.

All species included herein have been previously categorized and findings have been made in the public record. For plants, the Service published a notice of review on February 21, 1990 (55 FR 6184–6229), and the previous animal notice was published November 21, 1991 (56 FR 58804–58836). A more recent plant notice of review was published on September 30, 1993 (58 FR 51144–51190) that reflects the categories for the findings made here. Readers may wish to refer to the previous notices for such information as trends and historic range, which are not provided here. Species that have had findings made and published in the **Federal Register** that conform to the May 1993 policy on findings and categories are not covered in this notice.

Findings

Table I lists 45 petitioned species that had previously been assigned to Category 2 for which more recent information is now available to support a "warranted but precluded" finding and placement in Category 1.

Table II presents 80 petitioned species previously under a finding of "warranted but precluded" for which the Service is now making a final finding of "not warranted." The Service is placing these species in Category 3 as inactive candidates not under consideration for listing as endangered or threatened. Because of the number of species involved, Table II has been designed to quickly summarize for each species the information and one reason for the "not warranted" petition finding. More detailed information is available in the Service's files. The Service has employed a coded list of three reasons to explain the finding and the assignment to Category 3; each reason corresponds with the category assignments 3A, 3B, and 3C indicated above.

Table III presents 865 additonal petitioned species previously under a finding of "warranted but precluded" for which the Service is now making a final finding of "not warranted." The Service is retaining these species in Category 2 because of a lack of sufficient information. As with Table II, Table III has been designed to quickly summarize for each species the information and reasons for the "not warranted" petition finding. More detailed information is available in the Service's files. In an effort to conserve space in dealing with such a large number of species, the Service has employed a coded list of reasons to explain the finding and the assignment to Category 2.

In each of the tables below, the species are arranged by broad groups of Vertebrates, Invertebrates, or Plants; within each of the first two groups, further divisions are made as found in the list of species at 50 CFR 17.11 (e.g., Mammals, Birds). The final sequence is alphabetical by scientific name. For each species, the following is provided: (1) previous published category—usually the above 1990 or 1991 **Federal Register** notices, (2) the Regional Office of the Service responsible for the species, (3) the scientific name, (4) common name, and (5) reasons for the finding (Tables II and III only).

In previous plant notices of review, single asterisks were used to indicate taxa in categories 1 and 2 that were thought to be extinct and double asterisks for those species thought to exist only in cultivation. That practice resulted in some confusion and was modified with the latest notice (58 FR 51140). All prior category 1 species with a single asterisk were changed to category 2* for those whose continued existence is in doubt. Use of the double asterisks has been discontinued for the sake of greater simplicity. In the tables of this document, a number of plant entries reflect the earlier use of asterisks under the February 21, 1990, notice (55 FR 6184).

The basis(es) for the "not warranted" finding for each species in Tables II and III are given below:

Reasons for finding and moving species to Category 3 (Table II):

Sufficient information is now available to the Service to determine that the species does not warrant listing. This conclusion is based upon:

A. Sufficient evidence that this species has become extinct, although the time of extinction may not be known.

B. Sufficient evidence that this entity does not meet the definition of 'species' under ESA.

C. Sufficient evidence that this species is not presently at risk of extinction or endangerment, as determined from an evaluation of the five factors required under the Act.

Reasons for finding and retaining species in Category 2 (Table III):

Group I. There is a lack of sufficient information available to the Service to determine the species' status and either propose it for listing or assign it to Category 3:

D. Current information is based upon reports from only a small portion of known or expected range.

E. Current distribution or range is uncertain.

F. Population trends for a significant portion of the species' range are unknown.

G. Historic range is uncertain.

H. Current threats (i.e., 5 factors under 50 CFR 424.11) throughout a significant portion of range are unknown.

I. Ecological or other biological requirements are uncertain.

Group II. The species may be vulnerable to extinction because:

J. Closely related taxa are listed as endangered or threatened or known to be vulnerable.

K. What information is available indicates the species may require specific habitat that is vulnerable to alteration.

L. The species is presently known from only a small number of sites that could be altered rapidly, but no known threats have been identified and all present habitat appears *relatively* secure for the immediate future.

M. This species may be dependent upon another species, which is known to be at risk, for its continued existence.

N. Current management of the habitat upon which the species depends may be subject to administrative change, and no other protection appears to exist.

O. The species may be subject to excessive or unregulated take for commercial, recreational, or scientific purposes.

P. The species may be subject to extinction or endangerment from uncontrolled losses of habitat.

Q. The species may be subject to extinction or endangerment from unnatural predation, competition, or similar threats.

R. The species may be subject to extinction or endangerment from other man-caused changes to its environment.

Group III. Conflicting reports or information are available from otherwise reliable sources indicating:

S. Disagreement or uncertainty on current taxonomy.

T. Disagreement or uncertainty on current distribution.

U. Disagreement or uncertainty on current trends or threats.

Group IV. There have been no reliable reports for 2 or more decades of the species and

V. The species' existence is in doubt.

Public Information Requested

These findings are based upon the information presently (August 1993) available to and analyzed by the Service. The public is requested to provide the Service with any information that may alter any finding or category assignment, particularly data or other information that would assist in resolving the specified reason(s) of "D" through "V" above as specifically indicated in Table III for each species.

This notice is issued under the authority of the Endangered Species Act, 16 U.S.C. 1531–1544.

Dated: November 23, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

TABLE I.—FINDING OF "WARRANTED BUT PRECLUDED" AND STATUS = CATEGORY 1

Prior category	Lead region	Scientific name	Common name
		INVERTEBRATES	
		CRUSTACEANS	
2	R-2	*Stygobromus pecki (=Stygonectes p.)*	Amphipod, Peck's cave
		PLANTS	
2	R-1	*Allium dictuon*	Onion, Blue Mountain
2	R-4	*Arabis perstellata* var. *ampla*	Rock-cress, large
2	R-1	*Arctostaphylos confertiflora*	Manzanita, Santa Rosa Island
2	R-1	*Arctostaphylos glandulosa* ssp. *crassifolia*	Manzanita, costa baja (=Eastwood's)
2	R-1	*Aster jessicae*	None
2	R-1	*Astragalus columbianus*	Milk-vetch, Columbia
2	R-6	*Astragalus desereticus*	Milk-vetch, Deseret
2	R-1	*Astragalus mulfordiae*	Milk-vetch, Mulford's
2	R-1	*Berberis pinnata* ssp. *insularis*	Barberry, island
2	R-1	*Bloomeria humilis*	Goldenstar, dwarf
2	R-1	*Calochortus greenei*	Mariposa, Greene's
2	R-1	*Cardamine pattersonii*	Bitter cress, Saddle Mountain
2	R-1	*Castilleja mollis*	Paintbrush, soft-leaved
2	R-1	*Caulanthus amplexicaulis* var. *barbarae*	Jewelflower, Santa Barbara
2	R-1	*Cymopterus deserticola*	Cymopterus, desert
2	R-1	*Delphinium pavonaceum*	None
2	R-1	*Dudleya blochmaniae* ssp. *insularis*	Dudleya, Santa Rosa Island
2	R-2	*Erigeron lemmonii*	Fleabane, Lemmon
2	R-1	*Eriogonum breedlovei* var. *breedlovei*	Buckwheat, Piute
2	R-1	*Eriogonum ericifolium* var. *thornei*	Buckwheat, Thorne's
2	R-1	*Eriophyllum lanatum* var. *hallii*	Wooly-sunflower, Ft. Tejon
2	R-2	*Festuca ligulata*	Fescue, Guadalupe
2	R-1	*Fritillaria gentneri*	Mission-bells, Gentner
2	R-1	*Fritillaria striata*	Adobe-lily, Greenhorn
2	R-1	*Galium buxifolium*	Bedstraw, island
2	R-1	*Gilia maculata*	Gilia, Little San Bernardino Mountains
2	R-1	*Gilia tenuiflora* ssp. *hoffmannii*	Gilia, Hoffmann's
2	R-1	*Lavatera assurgentiflora* ssp. *assurgentiflora*	Malva rosa
2	R-1	*Lavatera assurgentiflora* ssp. *glabra*	Malva rosa, southern
2	R-1	*Layia leucopappa*	Layia, Comanche Point
2	R-2	*Lesquerella thamnophila*	Bladder-pod, Zapata
2	R-1	*Lotus argophyllus* var. *adsurgens*	Hosackia, silver, San Clemente Island
2	R-1	*Lupinus citrinus* var. *deflexus*	Lupine, Mariposa
2*	R-1	*Malacothamnus abbottii*	Bush-mallow, Abbott's
2	R-1	*Malacothamnus fasciculatus* var. *nesioticus*	Bush-mallow, Santa Cruz Island
2	R-1	*Navarretia leucocephala* ssp. *pauciflora*	Navarretia, few-flowered
2	R-1	*Orobanche parishii* ssp. *brachyloba*	Broomrape, short-lobed
2	R-1	*Pentachaeta exilis* ssp. *aeolica*	Pentachaeta, slender
2	R-1	*Phacelia insularis* var. *insularis*	Phacelia, northern island
2	R-2	*Puccinellia parishii*	Alkali grass, Parish's
2	R-1	*Sidalcea covillei*	Checkermallow, Owens Valley

TABLE I.—FINDING OF "WARRANTED BUT PRECLUDED" AND STATUS = CATEGORY 1—Continued

Prior category	Lead region	Scientific name	Common name
2	R-1	*Sidalcea hickmanii* ssp. *parishii*	Sidalcea, Parish's
2	R-1	*Thysanocarpus conchuliferus*	Fringepod, Santa Cruz Island
2	R-2	*Zanthoxylum parvum*	Tickle-tongue, Shinner's
		TOTAL ENTRIES THIS TABLE: 45.	

TABLE—II. FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 3

Prior category	Lead region	Scientific name	Common name	Final reason
		VERTEBRATES		
		BIRDS		
2	R-7	*Melospiza melodia amaka*	Sparrow, Amak song	B
		INVERTEBRATES		
		INSECTS		
2	R-1	*Ischnura gemina*	Damselfly, San Francisco forktail	C
		CRUSTACEANS		
2	R-4	*Stygobromus elatus (=Stygonectes e.)*	Amphipod, Elevated Spring	B
2	R-4	*Stygobromus montanus (=Stygonectes m.)*	Amphipod, mountain cave	B
		SPONGES		
2	R-5	*Spongilla heteroslerifa*	Sponge, Oneida	B
		PLANTS		
1	R-1	*Agrostis aristiglumis*	Bentgrass, awned	B
2	R-1	*Agrostis blasdalei* var. *marinensis*	Bentgrass, Marin	B
2	R-1	*Agrostis clivicola* var. *punta-reyesensis*	Bentgrass, Point Reyes	B
2	R-2	*Amoreuxia wrightii*	Yellowshow, Wright's	C
2	R-2	*Amorpha roemeriana*	Amorpha, Texas	C
2	R-2	*Amsonia glaberrima*	Blue-star, smooth	C
2	R-4	*Antirhea portoricensis*	Quina	C
2*	R-6	*Aquilegia micrantha* var. *mancosana*	Columbine, Mancos	B
2	R-1	*Argemone munita* ssp. *robusta*	Prickly-poppy, robust	B
2	R-7	*Artemisia aleutica*	Wormwood, Aleutian	C
2	R-6	*Aster kingii* var. *kingii*	None	C
2	R-4	*Astragalus tennesseensis*	None	C
2	R-6	*Astragalus wetherillii*	Milk-vetch, Wetherill	C
2	R-4	*Cacalia diversifolia*	None	C
2	R-4	*Caesalpinia portoricensis*	Mato (brown nicker)	B
2	R-1	*Calamagrostis tweedyi*	Reedgrass,	C
2*	R-1	*Carex aboriginum*	Sedge, Indian Valley	A
2	R-4	*Carex purpurifera*	None	C
2	R-2	*Castilleja kaibabensis*	Paintbrush, Kaibab	C
1*	R-1	*Castilleja leschkeana*	Paintbrush, Point Reyes	B
2	R-1	*Caulanthus stenocarpus*	Jewelflower, slender-pod	B
2	R-2	*Cheilanthes pringlei*	Fern, Pringle lip	C
2	R-4	*Croomia pauciflora*	Croomia,	C
2	R-2	*Echinocereus reichenbachii* var. *fitchii*	Hedgehog cactus, Fitch's	C
2	R-4	*Encyclia boothiana* var. *erythronioides*	Orchid, dollar	C
2	R-2	*Epithelantha bokei*	Button cactus, Boke's	C
2	R-2	*Erigeron pringlei*	None	C
2	R-1	*Eriogonum ampullaceum*	Buckwheat, Mono	C
2*	R-1	*Eriogonum truncatum*	Buckwheat, Contra Costa	A
2	R-1	*Fritillaria grayana*	Fritillary, Roderick's	B
2	R-3	*Gnaphalium macounii*	Cudweed, western	B
2	R-1	*Gratiola heterosepala*	Hedge-hyssop, Boggs Lake	C
2	R-6	*Haplopappus fremontii* ssp. *monocephalus*	None	C
2	R-1	*Helianthemum suffrutescens*	Rush-rose, Amador	C
2	R-6	*Heterotheca jonesii*	Golden-aster, Jones	C
2	R-3	*Heuchera missouriensis*	None	B
2	R-1	*Hibiscus californicus*	Hibiscus, California	B
2	R-4	*Leavenworthia alabamica* var. *brachystyla*	None	B
2	R-2	*Leavenworthia aurea*	Glade cress, golden	C
2	R-4	*Leavenworthia crassa* var. *crassa*	Glade cress, fleshy-fruit	C
2	R-4	*Leavenworthia exigua* var. *exigua*	None	C
2	R-4	*Lobelia appendiculata* var. *gattingeri*	None	C
2	R-1	*Lomatium laevigatum*	None	C

TABLE—II. FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 3—Continued

Prior category	Lead region	Scientific name	Common name	Final reason
2	R-2	*Lycium puberulum* var. *berberioides*	Wolfberry, silver	C
2	R-6	*Musineon lineare*	None	C
2	R-4	*Nestronia umbellula*	None	C
1*	R-4	*Orbexilum macrophyllum*	Scurf-pea, big-leaf	A
2*	R-1	*Orthocarpus pachystachyus*	Owl's-clover, Shasta	A
2	R-6	*Penstemon atwoodii*	None	C
2	R-6	*Penstemon degeneri*	Beardtongue, Degener	C
2	R-6	*Penstemon uintahensis*	Beardtongue, Uintah	C
2	R-2	*Perityle cochisensis*	Rock-daisy, Chiricahua	C
2	R-4	*Physostegia leptophylla*	None	C
2	R-1	*Plagiobothrys glaber*	Allocarya, glabrous	A
2	R-1	*Plagiobothrys hystriculus*	Allocarya, bearded	A
2	R-1	*Plagiobothrys lamprocarpus*	None	A
2	R-1	*Poa fibrata*	Bluegrass, Lassen County	B
2	R-2	*Poa involuta*	Blue grass, Big Bend	B
2	R-1	*Poa unilateralis*	Bluegrass, sea cliff	B
2	R-2	*Proatriplex pleiantha*	None	C
2	R-2	*Proboscidea sabulosa*	Unicorn plant, dune	C
2	R-5	*Prunus maritima* var. *gravesii*	Plum, beach, Grave's	B
1*	R-4	*Psoralea stipulata*	Scurf-pea	A
2	R-4	*Rhododendron prunifolium*	Azalea, plumleaf	C
2	R-4	*Rhynchospora globularis* var. *saxicola*	None	C
2	R-4	*Sedum pusillum*	None	C
2	R-6	*Selaginella utahensis*	None	C
2	R-2	*Sophora gypsophila* var. *guadalupensis*	Mescal bean, Guadalupe Mountains	C
2	R-3	*Sporobolus ozarkanus*	Grass, bald	C
2	R-4	*Sullivantia sullivantii* (formerly *S. renifolia*)	None	C
2	R-4	*Talinum calcaricum*	Fameflower, limestone	C
2	R-6	*Trisetum orthochaetum*	None	B
2	R-2	*Urtica chamaedryoides*	None	C
2	R-2	*Valeriana texana*	Valerian, Guadalupe	C
2	R-4	*Waldsteinia lobata*	None	C
		TOTAL ENTRIES THIS TABLE: 80.		

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2

Prior category	Lead region	Scientific name	Common name	Reasons
		VERTEBRATES		
		MAMMALS		
2	R-4	*Sciurus niger shermani*	Squirrel, Sherman's fox	E F H O P
2	R-1	*Sorex ornatus willetti*	Shrew, Santa Catalina	F R
		BIRDS		
2	R-4	*Anas bahamensis bahamensis*	Pintail, Lesser white-cheeked	D K N O
2	R-4	*Buteo platypterus brunnescens*	Hawk, Puerto Rican broad-winged	F H P
2	R-4	*Dendrocygna arborea*	Duck, West Indian whistling	D F K P
2	R-1	*Ducula oceanica ratakensis*	Pigeon, Radak Micronesian	E P Q R
2	R-1	*Ducula oceanica teraokai*	Pigeon, Truk Micronesian	E P Q R
2	R-4	*Fulica caribaea*	Coot, Caribbean	F J K
2	R-1	*Melospiza melodia maxillaris*	Sparrow, Suisun song	D J
2	R-1	*Oceanodroma castro cryptoleucura*	Storm-petrel, Hawaiian band-rumped	E F Q R
2	R-4	*Otus nudipes newtoni*	Owl, Virgin Island screech	E H K P
2	R-4	*Oxyura jamaicensis jamaicensis*	Duck, West Indian ruddy	F K P
2	R-5	*Thryomanes bewickii altus*	Wren, Appalachian Bewick's	E H K
2	R-1	*Zosterops conspicillata rotensis*	White-eye, Rota bridled	D F H K P Q
		AMPHIBIANS		
2	R-1	*Bufo nelsoni*	Toad, Amargosa	H I K N
		FISHES		
2	R-1	*Catostomus clarki intermedius*	Sucker, White River desert	F H I N R
2	R-1	*Catostomus clarki* ssp.	Sucker, Meadow Valley Wash desert	E F H I N R
2	R-1	*Crenichthys baileyi albivallis*	Springfish, Preston White River	F I N R
2	R-1	*Crenichthys baileyi moapa*	Springfish, Moapa White River	F I N R
2	R-1	*Gila bicolor* ssp.	Tui chub, Railroad Valley	F H I R
2	R-2	*Gila robusta*	Chub, Roundtail	E F H J K P Q R
2	R-6	*Oncorhynchus (=Salmo) clarki utah*	Trout, Bonneville cutthroat	E F H I J R

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-1	*Rhinichthys osculus moapae*	Dace, Moapa speckled	E F H I N R
2	R-1	*Rhinichthys osculus* ssp.	Dace, Meadow Valley Wash speckled	E F H I N R
2	R-1	*Rhinichthys osculus* ssp.	Dace, Oasis Valley speckled	E F H I N R
2	R-1	*Rhinichthys osculus velifer*	Dace, Pahranagat speckled	E F H I N R
		INVERTEBRATES		
		CLAMS		
2	R-2	*Pisidium sanquinichristi*	Peaclam, Sangre de Cristo	F L
		SNAILS		
2	R-1	*Fluminicola avernalis*	Pebblesnail, Moapa	E F H I K N R
2	R-1	*Fluminicola merriami*	Pebblesnail, Pahranagat	E F H I K N R
2	R-5	*Io fluvialis*	Riversnail, spiny	F H I K R
2	R-1	*Pyrgulopsis cristalis*	Springsnail, Crystal Spring	F I R
2	R-1	*Pyrgulopsis erythropoma (=Fluminicola e.)*	Pebblesnail, Ash Meadows	F I R
2	R-1	*Pyrgulopsis fairbanksensis*	Springsnail, Fairbanks	F I R
2	R-1	*Pyrgulopsis isolatus*	Springsnail, elongate-gland	F I R
2	R-1	*Pyrgulopsis micrococcus (=Fontelicella m.)*	Springsnail, Oasis Valley	F H I K N R
2	R-1	*Pyrgulopsis nanus*	Springsnail, distal-gland	F I R
2	R-1	*Pyrgulopsis pisteri*	Springsnail, median-gland Nevada	F I R
2	R-1	*Tryonia angulata*	Tryonia (snail), sportinggoods	F I R
2	R-1	*Tryonia clathrata*	Tryonia (snail), grated	F I R
2	R-1	*Tryonia elata*	Tryonia (snail), Point of Rocks	F I R
2	R-1	*Tryonia ericae*	Tryonia (snail), minute	F I R
		INSECTS		
2	R-1	*Agabus rumppi*	Beetle, Death Valley agabus	D E F H K P R
2	R-2	*Cicindela politula barbarannae*	Beetle, Barbara Ann's tiger	E F G H J P Q R
2	R-2	*Cicindela politula petrophila*	Beetle, Guadalupe Mountains tiger	E F G H J P Q R
2	R-1	*Eucosma hennei*	Moth, Henne's eucosman	H L O R
2	R-1	*Euphyes vestris harbisoni*	Skipper, dun	H J O R
2	R-1	*Lycaena hermes*	Copper (butterfly), Hermes	D J K M N P R
2	R-1	*Mitoura thornei*	Hairstreak (butterfly), Thorne's	H J L M O P R
2	R-1	*Pelocoris shoshone*	Naucorid (bug), Amargosa	E H I J K R
2	R-1	*Stenelmis calida calida*	Beetle, Devil's Hole warm spring riffle	F I R
2	R-1	*Stenelmis calida moapa*	Beetle, Moapa warm springs riffle	E F I K R
		ARACHNIDS		
2	R-1	*Calcina (=Sitalcina) minor*	Harvestman, Edgewood blind	E F G I Q R
		CRUSTACEANS		
2	R-5	*Crangonyx dearolfi*	Amphipod, Dearolf's cave	E F I K L
2	R-4	*Crangonyx hobbsi*	Amphipod, Hobb's cave	E F I K
2	R-2	*Palaemonetes antrorum*	Shrimp, Texas cave	E F G H K L P R
2	R-4	*Procambarus acherontis*	Crayfish, Palm Springs Cave	I K
2	R-5	*Stygobromus araeus (=Apocrangonyx a.)*	Amphipod, tidewater interstitial	D E F I K P R
2	R-2	*Stygobromus arizonensis (=Stygonectes a.)*	Amphipod, Arizona cave	E F G H I L
2	R-2	*Stygobromus balconis (=Stygonectes b.)*	Amphipod, Balcones cave	E F G H J K L P R
2	R-3	*Stygobromus barri (=Stygonectes b.)*	Amphipod, Barr's cave	D E F I J R
2	R-2	*Stygobromus bifurcatus (=Stygonectes b.)*	Amphipod, bifurcated cave	E F G H J K L P R
2	R-2	*Stygobromus bowmani (=Stygonectes b.)*	Amphipod, Bowman's cave	D F I K
2	R-6	*Stygobromus clantoni (=Stygonectes c.)*	Amphipod, Clanton's cave	D E F K R
2	R-5	*Stygobromus conradi (=Stygonectes c.)*	Amphipod, Burnsville Cove cave	E F I K L
2	R-5	*Stygobromus cooperi (=Stygonectes c.)*	Amphipod, Cooper's cave	E F I K L
2	R-2	*Stygobromus dejectus (=Stygonectes d.)*	Amphipod, Cascade Cave	E F G H J K L P R
2	R-2	*Stygobromus flagellatus (=Stygonectes f.)*	Amphipod, Ezell's Cave	E F G H J K L P R
2	R-1	*Stygobromus gradyi*	Amphipod, Grady's cave	E F G I Q R
2	R-2	*Stygobromus hadenoecus (=Stygonectes h.)*	Amphipod, Devil's Sinkhole	E F G H J K L P R
2	R-1	*Stygobromus harai*	Amphipod, Hara's cave	E F G I Q R
2	R-1	*Stygobromus hubbsi*	Amphipod, Malheur Cave	F H J N O
2	R-5	*Stygobromus indentatus (=Stygonectes i.)*	Amphipod, tidewater	D E K
2	R-2	*Stygobromus longipes (=Stygonectes l.)*	Amphipod, long-legged cave	E F G H J K L P R
2	R-1	*Stygobromus mackenziei*	Amphipod, MacKenzie's cave	E F G I Q R
2	R-5	*Stygobromus morrisoni (=Stygonectes m.)*	Amphipod, Morrison's cave	E F I K L
2	R-5	*Stygobromus mundus (=Stygonectes m.)*	Amphipod, Bath County cave	E F I K
2	R-4	*Stygobromus nortoni (=Apocrangonyx n.)*	Amphipod, Norton's cave	E H J K
2	R-5	*Stygobromus parvus (=Apocrangonyx p.)*	Amphipod, minute cave	E F I K L
2	R-5	*Stygobromus pizzinii (=Stygonectes p.)*	Amphipod, Pizzini's	E F I K L
2	R-3	*Stygobromus putealis*	Amphipod, Wisconsin well	D E F H I J K P R
2	R-2	*Stygobromus redelli (=Stygonectes r.)*	Amphipod, Redell's cave	E F G H J K L P R
2	R-4	*Stygobromus smithi*	Amphipod, Alabama well	E H I K P S
2	R-5	*Stygobromus spinatus (=Stygonectes s.)*	Amphipod, spring cave	E F H I K

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-5	*Stygobromus stellmacki (=Stygonectes s.)*	Amphipod, Stellmack's cave	E F I K L
2	R-3	*Stygobromus subtilis (=Apocrangonyx s.)*	Amphipod, subtle cave	D E F H I J R
2	R-1	*Stygobromus wengerorum*	Amphipod, Wengeror's cave	E F G I Q R
		SPONGES		
2	R-4	*Corvomeyenia carolinensis*	Sponge, Carolina	E F G H I K P R
2	R-4	*Dosilia palmeri*	Sponge, Oklawaha	E F I L
2	R-4	*Ephydatia subtilis*	Sponge, Kissimmee	E F I L
2	R-5	*Heteromeyenia longistylis*	Sponge, Pennsylvania	D E F G I K
		PLANTS		
2	R-1	*Acacia koaia*	Koai'e	D N P Q R S
2	R-2	*Acleisanthes crassifolia*	Trumpets, Texas	E F K N P Q
2	R-4	*Agave eggersiana*	None	H I K
2	R-2	*Agave glomeruliflora*	Agave, Chisos	E F H I L N
2	R-2	*Agave schottii* var. *treleasei*	None	D E F G H I L
2	R-4	*Agrimonia incisa*	Groovebur, incised	D E F H I K P R
2	R-1	*Agrostis microphylla* var. *hendersonii*	Bentgrass, Henderson's	F K P
2	R-6	*Agrostis rossiae*	Bent grass, Ross	I K N R
2	R-1	*Alopecurus aequalis* var. *sonomensis*	Alopecurus, Sonoma	F K P
2	R-1	*Ambrosia pumila*	Ambrosia, San Diego	E F O P R
1	R-2	*Amorpha ouachitensis*	False indigo,	D E F K N
2	R-1	*Amsinckia vernicosa* var. *furcata*	Fiddleneck, forked	F R
1	R-2	*Amsonia tharpii*	Blue-star, Tharp	E F G I J K N R
2	R-2	*Andrachne arida*	Maidenbush, Trans-Pecos	E F H I K O P
2	R-2	*Anemone edwardsiana* var. *petraea*	Anemone, Edge Falls	D E G H K L
2	R-1	*Angelica scabrida*	None	I K P
2	R-1	*Antennaria arcuata*	Pussytoes, meadow	E F R
2	R-1	*Antennaria soliceps*	None	I R
2	R-2	*Anthericum chandleri*	Lilia de los llanos	D I K
2	R-4	*Aquilegia canadensis* var. *australis*	Columbine, Canadian,	F L
2	R-2	*Aquilegia chrysantha* var. *hinckleyana*	Columbine, Hinckley's	D E F I K L O S
2	R-1	*Arabis breweri* var. *pecuniaria*	Rock-cress, San Bernardino	F
2	R-4	*Arabis georgiana*	Rock-cress, Georgia	D E H I P
2	R-1	*Arabis koehleri* var. *koehleri*	Rock-cress, Koehler's	F P R
2	R-1	*Arabis parishii*	Rock-cress, Parish's	F L
2	R-1	*Arabis suffrutescens* var. *horizontalis*	None	E F H I K O P
2	R-1	*Arctomecon merriamii*	Desert-poppy, white bear	D F H I J P R
2	R-1	*Arctostaphylos bakeri* ssp. *bakeri*	Manzanita, Baker's [1]	F K P Q R
2	R-1	*Arctostaphylos cruzensis*	Manzanita, Arroyo de la Cruz	H J K
1**	R-1	*Arctostaphylos densiflora*	Manzanita, Vine Hill	F P Q R
2	R-1	*Arctostaphylos edmundsii*	Manzanita, Little Sur	F J K
2	R-1	*Arctostaphylos glutinosa*	Manzanita, Schreiber's	F J K
1**	R-1	*Arctostaphylos hookeri* var. *franciscana*	Manzanita, San Francisco	E P Q R
2	R-1	*Arctostaphylos hookeri* var. *hearstiorum*	Manzanita, Hearst's	F J K
2	R-1	*Arctostaphylos hookeri* var. *montana*	Manzanita, Tamalpais	F R
2	R-1	*Arctostaphylos montaraensis*	Manzanita, Montara	F R
2	R-1	*Arctostaphylos montereyensis*	Manzanita, Monterrey	F J K
2	R-1	*Arctostaphylos otayensis*	Manzanita, Otay	F N R
2	R-1	*Arctostaphylos pumila*	Manzanita, sandmat	F J K
2	R-1	*Arctostaphylos silvicola*	Manzanita, silver-leaved	F K
1	R-4	*Arenaria fontinalis*	Stitchwort, water	D E F H K
2	R-1	*Arenaria kingii* ssp. *rosea*	None	E F I R
2	R-2	*Arenaria livermorensis*	Sandwort, Livermore	E F I K L O
2	R-2	*Argemone arizonica*	None	D E F I K
2	R-2	*Argythamnia aphoroides*	Mercury, wild, Hill Country	E F I K N P Q
2	R-4	*Argythamnia blodgettii*	None	F H P Q
2	R-4	*Aristida simpliciflora*	Grass, three-awned, southern	D E F H I K P R
2	R-1	*Asclepias eastwoodiana*	Milkweed, Eastwood's	E I R
1	R-4	*Asclepias viridula*	None	E K P
2	R-1	*Aster chilensis* var. *lentus*	Aster, Suisun	F K P
2	R-1	*Aster curtus*	Aster, curtus	E F H K O P Q R
2	R-1	*Aster gormanii*	Aster, Gorman	E F H P R
2	R-4	*Aster spinulosus*	None	E P
2	R-1	*Aster vialis*	Aster, wayside	E F I P R
2	R-1	*Astragalus aequalis*	None	D E F I R
2	R-1	*Astragalus amphioxys* var. *musimonum*	None	E I L R
2	R-6	*Astragalus ampullarius*	Milk-vetch, gumbo	E F H I J R
2	R-1	*Astragalus atratus* var. *inseptus*	None	E F H I N P Q R
2	R-2	*Astragalus cremnophylax* var. *myriorrhaphis*	Milk-vetch, cliff	E F H L
2	R-6	*Astragalus cronquistii*	Milk-vetch, Cronquist	E F H I J R

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-1	*Astragalus deanei*	Milk-vetch, Deane's	D E F I Q R
2	R-6	*Astragalus deterior*	Milk-vetch, cliff-palace	E F H I R
2	R-1	*Astragalus funereus*	Wooly-pod, black	E F I R
2	R-1	*Astragalus geyeri* var. *triquetrus*	None	I K P R
2	R-6	*Astragalus hamiltonii*	Milk-vetch, Hamilton	E F H I J R
2	R-2	*Astragalus lentiginosus* var. *ambiguus*	None	D E F G H I L
2	R-6	*Astragalus limnocharis* var. *limnocharis*	None	E F H I J R
2	R-6	*Astragalus limnocharis* var. *tabulaeus*	None	E F H I J R
2	R-6	*Astragalus microcymbus*	None	E F H I J R
2	R-1	*Astragalus mohavensis* var. *hemigyrus*	Milk-vetch, curve-podded Mojave	D E F I Q R
2	R-2	*Astragalus mollissimus* var. *marcidus*	Milk-vetch, withered wooly	E F I K P
2	R-1	*Astragalus monoensis* var. *monoensis*	Milk-vetch, Mono	F H O P
2	R-1	*Astragalus monoensis* var. *ravenii*	Milk-vetch, Raven's	H I L
2	R-1	*Astragalus oophorus* var. *lonchocalyx*	None	F H I Q R
2	R-6	*Astragalus proimanthus*	None	E F H I J R
1*	R-1	*Astragalus pycnostachyus* var. *lanosissimus*	Milk-vetch, Ventura Marsh	E R V
2	R-1	*Astragalus robbinsii* var. *occidentalis*	Milk-vetch, Robbins,	F Q R
2	R-6	*Astragalus sabulosus*	None	E F H I J R
2	R-6	*Astragalus schmolliae*	Milk-vetch, Schmoll	E F H I J R
2	R-1	*Astragalus sinuatus*	Milk-vetch, Whited	F K N O P R
2	R-1	*Astragalus solitarius*	Milk-vetch, weak	F Q R
2	R-1	*Astragalus sterilis*	Milk-vetch, sterile (=barren)	E F H K N O P R
2	R-1	*Astragalus traskiae*	Milk-vetch, Trask's	F J R
2	R-1	*Astragalus uncialis*	None	E F H I Q R
2	R-1	*Astragalus vexilliflexus* var. *nubilus*	None	E F H R
1	R-2	*Astragalus xiphoides*	Milk-vetch, gladiator	E F H K
2*	R-1	*Atriplex tularensis*	Saltbush, Bakersfield	G P Q R V
2	R-1	*Atriplex vallicola*	Saltbush, Lost Hills	D F Q R
1	R-4	*Aureolaria patula*	None	D E F G H P R
2	R-4	*Baptisia calycosa* var. *calycosa*	None	E H K P
2	R-4	*Baptisia calycosa* var. *villosa*	Wild indigo, hairy	E F P
2	R-4	*Baptisia simplicifolia*	None	F H K P
2	R-2	*Batesimalva violacea*	Gay-mallow, purple	E F H K L
2	R-1	*Bensoniella oregona*	Bensoniella,	D F G P
2	R-1	*Bidens conjuncta*	Ko'oko'olau	E F P Q R
2	R-1	*Blennosperma nanum* var. *robustum*	Stickyseed, Point Reyes	C F I P R
2	R-1	*Bobea timonioides*	Ahakea	D F P Q R
1	R-1	*Botrychium pumicola*	Grape fern, Crater Lake	E F H O R
1	R-4	*Brachionidium ciliolatum*	None	E H L V
2	R-2	*Brickellia brachyphylla* var. *hinckleyi*	Bricklebush, Hinckley's	E F K L Q
2	R-2	*Brickellia brachyphylla* var. *terlinguensis*	Bricklebush, Terlingua	E F K L Q
2	R-4	*Brickellia cordifolia*	Brickell-bush, Flyr's	E K P
2	R-4	*Brickellia mosieri*	None	E P
2	R-2	*Brickellia viejensis*	Brickellia, Sierra Vieja	D E F H I K L P
2	R-1	*Brodiaea coronaria* ssp. *rosea*	Brodiaea, Indian Valley	D F R
2	R-1	*Brodiaea orcuttii*	Brodiaea, Orcutt's	E H J K N P R
2	R-2	*Brongniartia minutifolia*	Brongniartia, little-leaf	D E G H I K N P
2	R-4	*Brunfelsia portoricensis*	None	H I K
2	R-4	*Buckleya distichophylla*	Piratebush	E H K P
2	R-4	*Bumelia thornei*	Buckthorn,	E F K P
2	R-4	*Cacalia rugelia*	None	E F H I R
2	R-2	*Caesalpinia brachycarpa*	Rushpea, broad-pod	F I K Q
2	R-4	*Caesalpinia culebrae*	Mato amarillo (smooth yellow nicker)	H N
2	R-4	*Calamagrostis cainii*	Reedgrass, Cain's	E F K L N P R
2	R-1	*Calamagrostis crassiglumis*	Reedgrass, Thurber's	D F H P R
2	R-5	*Calamagrostis perplexa*	Reedgrass, wood	E H L
2	R-3	*Calamagrostis porteri* ssp. *insperata*	Reedgrass, Ofer Hollow	E I P Q R
1	R-4	*Calamintha ashei*	None	H K P T
1	R-4	*Calamovilfa arcuata*	Sand grass,	E K P
2	R-4	*Calamovilfa curtissii*	Sand grass,	E K P
2	R-1	*Calochortus clavatus* ssp. *recurvifolius*	Mariposa, Arroyo de la Cruz	F K
2	R-1	*Calochortus dunnii*	Mariposa, Dunn's	F O R
2*	R-1	*Calochortus indecorus*	Mariposa,	D E F I K H O P Q R V
2	R-1	*Calochortus longebarbatus* var. *peckii*	Mariposa, long-bearded, Peck's	E H O R
1*	R-1	*Calochortus monanthus*	Mariposa, Shasta River	E F Q R V
2	R-1	*Calochortus persistens*	Mariposa, Siskiyou	F Q
2	R-1	*Calochortus striatus*	Mariposa, alkali	F K
2	R-1	*Calycadenia fremontii*	Rosinweed, Fremont's	D F R
1	R-4	*Calyptranthes luquillensis*	None	H I K
2	R-4	*Calyptranthes pedunculatis*	None	H I K

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-4	*Calyptranthes triflorum*	None	HIK
2	R-1	*Calystegia peirsonii*	Morning-glory, Peirson's	EFPR
2	R-1	*Calystegia stebbinsii*	Morning-glory, Stebbins'	DFPR
2	R-2	*Camissonia confertiflora*	None	DEGILS
2	R-2	*Camissonia exilis*	None	EFGHINQR
2	R-1	*Camissonia megalantha*	None	EHIR
2	R-2	*Camissonia specuicola* ssp. *hesperia*	None	DEFGHIL
2	R-1	*Campanula californica*	Harebell, swamp	FPR
2	R-1	*Canavalia pubescens*	Jack-bean,	DFPQR
2	R-4	*Canna pertusa*	Maraca	HIK
2	R-1	*Capparis sandwichiana*	Pua pilo (Caper, native)	DPQR
2	R-4	*Carex baltzellii*	None	EFHP
2	R-4	*Carex chapmanii*	Sedge, Chapman's	EHP
2	R-4	*Carex communis* var. *amplisquama*	None	FHP
2	R-2	*Carex fissa*	None	EFKQ
2	R-2	*Carex latebracteata*	Sedge, waterfall's	DEFKNQ
2	R-6	*Carex lenticularis* var. *dolia*	None	EFHIJR
2	R-5	*Carex oronensis*	Sedge,	DEHKPRS
2	R-4	*Carex roanensis*	None	DEGHP
1	R-4	*Castanea pumila* var. *ozarkensis*	Chinquapin, Ozark	DFHQ
2	R-1	*Castilleja ambigua* ssp. *humboldtiensis*	Owl's-clover, Humboldt Bay	FR
2	R-1	*Castilleja chlorotica*	Paintbrush, green-tinged	HIOR
2	R-2	*Castilleja ciliata*	Indian paintbrush,	EGIKP
2	R-1	*Castilleja cinerea*	Paintbrush, ash-grey	FPR
2	R-1	*Castilleja cryptantha*	None	EFHIPQR
2	R-1	*Castilleja gleasonii*	Paintbrush, Mt. Gleason	FS
2	R-1	*Castilleja lasiorhyncha*	Orthocarpus, San Bernardino Mountains	FPR
2	R-1	*Castilleja mendocinensis*	Paintbrush, Mendocino coast	FR
2	R-6	*Castilleja parvula*	Indian paintbrush, Tushar	EFHIJR
2	R-1	*Castilleja pilosa* var. *steenensis*	Paintbrush, Steen's mountain	HDR
2	R-6	*Castilleja revealii*	Indian paintbrush, Reveal	EFHIJR
1	R-1	*Castilleja uliginosa*	Paintbrush, Pitkin Marsh	FHKMPQRS
2	R-1	*Caulostramina jaegeri*	Caulostramina, Jaeger's	FK
2	R-1	*Ceanothus cuneatus* var. *rigidus*	Ceanothus, Monterey	FNJ
2	R-1	*Ceanothus gloriosus* var. *porrectus*	Ceanothus, Mt. Vision	FQ
2	R-1	*Ceanothus hearstiorum*	Ceanothus, Hearst's	FJKQ
2	R-1	*Ceanothus maritimus*	California-lilac, maritime	FKQ
2	R-1	*Ceanothus masonii*	Ceanothus, Bolinas	FR
2	R-5	*Cerastium arvense* var. *villosissimum*	Chickweed, field, long-hairy	EHKL
2	R-4	*Cereus gracilis* var. *aboriginum*	Prickly-apple, aboriginal	FKOP
2	R-4	*Cereus gracilis* var. *simpsonii*	Prickly-apple, Simpson's	FKOP
2	R-2	*Cereus greggii* var. *greggii*	Night-blooming Cereus, desert	EFHKOP
2	R-2	*Chaetopappa hersheyi*	Leastdaisy, mat	FGKN
2	R-2	*Chamaesyce chaetocalyx* var. *triligulata*	Spurge, three-tongued	EFGKNQ
2	R-4	*Chamaesyce cumulicola*	None	EIKPQ
2	R-2	*Chamaesyce golondrina*	Spurge, swallow	EFGIKLP
2	R-1	*Chamaesyce platysperma*	Spurge, flat-seeded	EFR
2	R-4	*Chamaesyce porteriana* var. *keyensis*	Spurge, Porter's, Key	FKPQS
2	R-4	*Chamaesyce porteriana* var. *porteriana*	None	EKPQS
2	R-4	*Chamaesyce porteriana* var. *scoparia*	Spurge, Porter's,	FKPQS
2	R-1	*Charpentiera densiflora*	Papala	DFPRS
2	R-2	*Chloris texensis*	Grass, Texas windmill	EFHNPR
2	R-1	*Chlorogalum grandiflorum*	Soaproot, Red Hills	FHPQR
2	R-2	*Choisya mollis*	Star leaf, Santa Cruz	DEFGHIPQR
1*	R-1	*Chorizanthe parryi* var. *fernandina*	Spineflower, San Fernando Valley	IJPV
2	R-1	*Chorizanthe rectispina*	Spineflower, one-awned	FK
2	R-4	*Cimicifuga rubifolia*	None	DHP
2	R-1	*Cirsium crassicaule*	Thistle, slough	DFR
2	R-1	*Cirsium fontinale* var. *campylon*	Thistle, Mt. Hamilton	DFR
2	R-1	*Cirsium hydrophilum* var. *vaseyi*	Thistle, Mt. Tamalpais	DFKR
2	R-1	*Cistanthe pulchella*	Pussy-paws, Mariposa	FIPQR
2	R-1	*Clarkia borealis* ssp. *arida*	Clarkia, arid northern	FKQR
2	R-1	*Clarkia rostrata*	Clarkia, beaked	FPR
2	R-1	*Claytonia lanceolata* var. *flava*	None	EFH
2	R-5	*Clematis viticaulis*	Leatherflower, Millboro	EK
2	R-6	*Cleome multicaulis*	Spiderflower, slender	EFHIJR
2	R-1	*Clermontia drepanomorpha*	Clermontia, Kohala	FLM
2	R-4	*Coelorachis tuberculosa*	None	EKP
2	R-1	*Collinsia antonina*	None	FKQ
2	R-1	*Collomia mazama*	Collomia, Crater Lake	EFHR

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-2	*Colubrina stricta*	Snakewood, Comal	D F G I K P
2	R-2	*Condalia hookeri* var. *edwardsiana*	Brasil, Edwards'	D E I P Q
2	R-4	*Conradina grandiflora*	None	E K P
2	R-4	*Conradina grandiflora*	None	E K P
2	R-4	*Cordia bellonis*	None	H I K N
2	R-4	*Cordia rupicola*	None	H I K P
1	R-4	*Cordia wagnerorum*	None	H I K
2	R-1	*Cordylanthus maritimus* ssp. *palustris*	Bird's-beak, northcoast	F H J P R
2	R-1	*Cordylanthus mollis* ssp. *hispidus*	Bird's-beak, hispid	F H J P R
2	R-1	*Cordylanthus tecopensis*	Bird's-beak, Tecopa	F K
2	R-1	*Cordylanthus tenuis* ssp. *pallescens*	Bird's-beak, pallid	F H J P R
2	R-1	*Coreopsis hamiltonii*	Coreopsis, Mt. Hamilton	F P R
2	R-4	*Coreopsis intermedia*	Tickseed, golden wave	E F H P
2	R-1	*Corydalis aquae-gelidae*	None	E F K L M P R
1	R-2	*Coryphantha albicolumnaria*	Cory cactus, white column	D E F L Q
2	R-2	*Coryphantha duncanii*	Cory cactus, Duncan's	E I K N
2	R-2	*Coryphantha hesteri*	Cory cactus, Hester's	D E K N O
2	R-2	*Coryphantha sulcata* var. *nickelsiae*	Cory cactus, Nickel's	E G I P R
2	R-1	*Coryphantha vivipara* var. *alversonii*	Foxtail cactus, Alverson's	D E H O P
2	R-4	*Croton alabamensis* var. *alabamensis*	Croton, Alabama	E F H I P
2*	R-6	*Cryptantha aperta*	Catseye, Grand Junction	E F H I R V
2	R-6	*Cryptantha compacta*	Catseye, compact	E F H I R
2	R-1	*Cryptantha crinita*	Cryptantha, silky	F R
2	R-1	*Cryptantha ganderi*	Cryptantha, Gander's	D P R
2	R-1	*Cryptantha insolita*	None	E F G H I K P Q R V
2	R-6	*Cryptantha ochroleuca*	Catseye, yellow-white	E F H I R
2	R-1	*Cryptantha roosiorum*	Catseye, bristlecone	H L
2	R-7	*Cryptantha shackletteana*	None	D E F L
1	R-4	*Cuphea aspera*	None	E K P
2	R-1	*Cupressus macrocarpa*	Cypress, Monterey	F L
1	R-2	*Cuscuta attenuata*	Dodder, slender	D E F K
2	R-4	*Cuscuta harperi*	Dodder, Harper's	E P
2*	R-6	*Cuscuta warneri*	Dodder, Warner's	E F J P Q R V
2	R-1	*Cusickiella quadricostata*	Draba, Bodie Hills	D F R
2	R-1	*Cyanea kunthiana*	None	D F P Q R
2	R-1	*Cyanea leptostegia*	Cyanea, giant koke'e	D F P Q R
2	R-1	*Cyanea marksii*	None	D F P Q R
2	R-1	*Cyanea tritomantha*	Aku'aku	E H P Q R
2	R-6	*Cymopterus acaulis* var. *higginsii*	Biscuitroot, Higgins	E F H I J R
2	R-6	*Cymopterus minimus*	Biscuitroot, Cedar Breaks	E H I J R
2	R-3	*Cyperus grayoides (=grayioides)*	Sedge, umbrella,	E F N R
2	R-2	*Cyperus onerosus*	Sedge, flat dune	E F G K N Q
2	R-1	*Cyrtandra biserrata*	None	D F P Q R
2	R-1	*Cyrtandra filipes*	None	D F P Q R
2	R-1	*Cyrtandra halawensis*	None	D F P Q R
2	R-1	*Cyrtandra oenobarba*	None	E P Q R
2	R-1	*Cyrtandra pickeringii*	None	E P Q R
2	R-1	*Cyrtandra pruinosa*	None	E P Q R
2	R-1	*Cyrtandra sandwicensis*	None	E F P Q R
2	R-2	*Dalea bartonii*	Dalea, Cox's	D E F L
2	R-2	*Dalea reverchonii*	Prairie-clover, Comanche-peak	F I K P
2	R-2	*Dalea sabinalis*	Prairie-clover, Sabinal	D H I K P
2	R-1	*Delphinium hutchinsonae*	Delphinium, Hutchinson's	F K
2	R-1	*Delphinium leucophaeum*	None	E F I K M O P Q R
2	R-4	*Dendropemon sintenisii*	Hicaquillo (mistletoe)	H I K
2	R-2	*Desmodium lindheimeri*	Tickseed, Lindheimer's	E G I P Q
2	R-1	*Dichanthelium lanuginosum* var. *thermale*	Panic grass, The Geyser's	F R
1	R-4	*Dicliptera krugii*	None	H I K
1*	R-1	*Dissanthelium californicum*	Dissanthelium, California	I Q V
2	R-1	*Ditaxis californica*	Ditaxis, California	D F P R
2	R-1	*Draba arida*	None	F H I R
2	R-1	*Draba asterophora* var. *macrocarpa*	Draba, Cup Lake	F R
2	R-1	*Draba carnosula*	Draba, Mt. Eddy	F R
2	R-1	*Draba jaegeri*	None	F I R
2	R-1	*Draba paucifructa*	None	F I R
2	R-1	*Dubautia microcephala*	None	D F P Q R
2	R-1	*Dudleya candelabrum*	Dudleya, candleholder	F H I N Q
2	R-1	*Dudleya multicaulis*	Liveforever, many-stemmed	F P R
2	R-1	*Dudleya nesiotica*	Liveforever, Santa Cruz Island	F H L
2	R-1	*Dudleya variegata*	Dudleya, variegated	F J K P R

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-2	*Echinocereus chloranthus* var. *neocapillus*	Cactus, hedgehog, golden-spined	D E F G I K O P
2	R-1	*Echinocereus engelmannii* var. *howei*	Hedgehog cactus, Howe's	F H O P R
2	R-1	*Echinocereus engelmannii* var. *munzii*	Hedgehog cactus, Munz's	F R S
2	R-2	*Echinocereus papillosus* var. *angusticeps*	Papillosus, small	D E H I K
2	R-2	*Echinomastus erectocentrus* var. *erectocentrus*	None	E F H I O P
2	R-2	*Eleocharis cylindrica*	Spike-rush, cylinder	E G K N P R
2*	R-5	*Elodea schweinitzii*	Waterweed, Schweinitz's	D E K V
2	R-4	*Elytraria caroliniensis* var. *angustifolia*	None	E F N Q
2	R-1	*Enceliopsis covillei*	Daisy, Panamint	F L
2	R-6	*Epilobium nevadense*	Willowherb, Nevada	E F H I J R
2	R-4	*Eragrostis tracyi*	Love grass, Sanibel	H K S
2	R-1	*Eriastrum brandegeae*	Eriastrum, brandegee	F Q R
2	R-1	*Ericameria fasciculata*	Goldenweed, Eastwood's	F P
2	R-6	*Erigeron cronquistii*	Daisy, Cronquist	E H I R
2	R-1	*Erigeron howellii*	Fleabane, Howell's	F H O R
2	R-6	*Erigeron kachinensis*	Daisy, Kachina	E F H I J R
1	R-2	*Erigeron kuschei*	Fleabane, Chiricahua	F I K P
2	R-1	*Erigeron latus*	Fleabane, Oregon	E F H I O R
2	R-6	*Erigeron maguirei* var. *harrisonii*	None	E F H I J R
2	R-6	*Erigeron mancus*	Daisy, depauperate	E H I R
2	R-2	*Erigeron mimegletes*	Fleabane, Sonora	F I K P
2	R-1	*Erigeron multiceps*	Daisy, Kern River	F Q R
2	R-1	*Erigeron ovinus*	None	E F I L R
2	R-3	*Erigeron pulchellus* var. *tolsteadii*	None	E F L P S
2	R-6	*Erigeron sionis*	None	E F H I J R
2	R-1	*Erigeron supplex*	Daisy, supple	F R
2	R-2	*Eriocaulon kornickianum*	Pipewort, small-headed	D E F K P Q
2	R-4	*Eriochloa michauxii* var. *simpsonii*	None	E F N Q
2	R-1	*Eriogonum alpinum*	Buckwheat, Trinity	F Q R
2	R-6	*Eriogonum ammophilum*	Wild buckwheat, sand-loving	E F H I J R
2	R-2	*Eriogonum apachense*	Wild buckwheat, Apache	D E F G H I K P Q R
2	R-6	*Eriogonum aretioides*	Wild buckwheat, Widstoe	E F H I J R
2	R-1	*Eriogonum bifurcatum*	Buckwheat, forked	E F I P Q R
2	R-1	*Eriogonum butterworthianum*	Buckwheat, Butterworth's	H J R
2	R-2	*Eriogonum capillare*	Wild buckwheat, San Carlos	D E F G H I K P Q R
2	R-1	*Eriogonum crocatum*	Buckwheat, Conejo	F H J N
2	R-6	*Eriogonum cronquistii*	Wild buckwheat, Cronquist	E F H I J R
2	R-1	*Eriogonum cusickii*	Buckwheat, Cusick's	E F R
2	R-1	*Eriogonum eremicola*	Buckwheat, Wild Rose Canyon	F K
2	R-7	*Eriogonum flavum* var. *aquilinum*	None	D E F L
2	R-1	*Eriogonum giganteum* var. *compactum*	Buckwheat, Santa Barbara Island	F H J K
2	R-1	*Eriogonum grande* var. *timorum*	Buckwheat, San Nicolas Island	F H J Q
2	R-1	*Eriogonum holmgrenii*	Buckwheat, Holmgren's	E F H I L R
2	R-1	*Eriogonum kennedyi* var. *austromontanum*	Buckwheat, southern mountain	F J
2	R-1	*Eriogonum kennedyi* var. *pinicola*	Buckwheat, Cache Peak	D Q R
2	R-6	*Eriogonum lagopus*	None	E F H I J R
1	R-4	*Eriogonum longifolium* var. *harperi*	None	E F G H K P
2	R-2	*Eriogonum mortonianum*	Wild buckwheat, Fredonia	D E F G H I K P Q R
2	R-1	*Eriogonum nudum* var. *murinum*	Buckwheat, mouse	D K N R
2	R-2	*Eriogonum ripleyi*	Wild buckwheat, Ripley	D E F G H I K P Q R
2	R-6	*Eriogonum smithii*	Wild buckwheat, Smith	E F H I J R
2	R-2	*Eriogonum suffruticosum*	Wild buckwheat, bushy	E F I P R
2	R-1	*Eriogonum temblorense*	Buckwheat, Temblor	F H K R
2	R-2	*Eriogonum thompsonae* var. *atwoodii*	Wild buckwheat, Thompson, Atwood's	D E F G H I K P Q R
2	R-1	*Eriogonum twisselmannii*	Buckwheat, Twisselmann's	D L N
2	R-1	*Eriogonum viscidulum*	None	E F I K L P R
2	R-1	*Eriophyllum mohavense*	Wooly-sunflower, Barstow	F P
2	R-1	*Eriophyllum nubigenum*	Wooly-sunflower, Yosemite	D F R
2	R-4	*Erithalis revoluta*	None	E H K
2	R-1	*Eryngium pinnatisectum*	Coyote-thistle, Tuolumne	F P R
2	R-1	*Eryngium racemosum*	Coyote-thistle, Delta	F P R
2	R-1	*Erysimum ammophilum*	Wallflower, coast	F K
2	R-1	*Erysimum franciscanum*	Wallflower, San Francisco	F R
2	R-1	*Erysimum insulare* ssp. *insulare*	Wallflower, island	F K
2	R-1	*Erythronium tuolumnense*	Fawn-lily, Tuolumne	F R
2	R-1	*Eschscholzia procera*	Poppy, Kernville	D E F H P R
2	R-4	*Eugenia margarettae*	None	E H K
2	R-4	*Eugenia underwoodii*	None	E H K
2	R-4	*Eupatorium borinquense*	None	E H K
2	R-4	*Eupatorium droserolepis*	Oreganillo	H I K

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-5	*Eupatorium leucolepis* var. *novae-angliae*	Thoroughwort, white-bracted, n.e.	E F K P
2	R-4	*Eupatorium oteroi*	None	E H K
2	R-1	*Ferocactus viridescens*	Barrel cactus, coast	H N O P R
2	R-5	*Fimbristylis perpusilla*	Fimbristylis, Harper's	D E F H K
1	R-4	*Forestiera segregata* var. *pinetorum*	None	F K N P Q
2	R-6	*Frasera coloradensis*	None	E F H I J R
2	R-1	*Frasera gypsicola*	None	E F I L
2	R-1	*Frasera pahutensis*	None	E F I Q R
2	R-1	*Frasera umpquaensis*	Green-gentian, Umpqua	E F O R
2	R-1	*Fritillaria falcata*	Fritillary, talus	E F I R
2	R-1	*Fritillaria pluriflora*	Adobe lily	H K Q R
2	R-4	*Galactia eggersii*	None	H I K
2	R-4	*Galactia pinetorum*	Milk-pea	H K P Q
2	R-1	*Galium angustifolium* ssp. *borregoense*	Bedstraw, Borrego	E F L
2	R-1	*Galium californicum* ssp. *luciense*	Bedstraw, Cone Peak	F J L
2	R-1	*Galium californicum* ssp. *primum*	Bedstraw, San Jacinto	F H R
2	R-1	*Galium californicum* ssp. *sierrae*	Bedstraw, El Dorado	F I K P R
2	R-1	*Galium catalinense* ssp. *acrispum*	Bedstraw, San Clemente island	F R
2	R-2	*Galium correllii*	Bedstraw, cliff	E F G I K L
2	R-1	*Galium grande*	Bedstraw, San Gabriel	F I R
2	R-1	*Galium hilendiae* ssp. *kingstonense*	Bedstraw, Kingston	I L R
2	R-2	*Genistidium dumosum*	Bush-pea	E F G H I K O P Q R
2	R-4	*Gentiana pennelliana*	Gentian, wiregrass	E K P
2	R-1	*Gentiana setigera*	Gentian, Mendocino	F R
2	R-4	*Geum geniculatum*	Avens, bent	F L
2	R-1	*Glossopetalon pungens* var. *glabra*	Forsellesia, smooth pungent	D E F G H I K R
2	R-4	*Glyceria nubigena*	Manna grass, Smoky Mountains	H R
2	R-3	*Gnaphalium obtusifolium* var. *saxicola*	Catfoot, rock,	E F I K L P R
2	R-2	*Graptopetalum bartramii*	None	D E F H I O
2	R-1	*Grindelia howellii*	Gumplant, Howell's	E F H I R
2	R-1	*Hackelia brevicula*	Stickseed, Poison Canyon	F H L
2	R-1	*Haplopappus liatriformis*	None	E F H N O P Q R
2	R-4	*Hartwrightia floridana*	Hartwrightia,	E K P
2	R-1	*Hazardia cana*	Hazardia, island	F H Q
1	R-4	*Hedeoma graveolens*	Pennyroyal, mock	E K P
2	R-2	*Hedeoma pilosum*	Pennyroyal, Old Blue mock	E F H K P
2	R-1	*Hedyotis elatior*	None	E F P Q R
2	R-1	*Hedyotis formosa*	None	D F P Q R
2	R-1	*Hedyotis littoralis*	None	D F P Q R
2	R-1	*Helianthella castanea*	Rock-rose, Diablo	F R
2	R-1	*Helianthemum greenei*	Rush-rose, island	F H L
2	R-4	*Helianthus carnosus*	None	E H K P
2	R-4	*Helianthus debilis* ssp. *vestitus*	Sunflower, Gulf beach	E K P Q R
2	R-1	*Helianthus niveus* ssp. *tephrodes*	Sunflower, Algodones Dunes	E R
1*	R-1	*Helianthus nuttallii* ssp. *parishii*	Sunflower, Los Angeles	E P V
2	R-2	*Helianthus praecox* ssp. *hirtus*	Sunflower, Dimmit	E G H I K
2	R-1	*Hemizonia conjugens*	Tarweed, Otay	G I J P R
2	R-1	*Hemizonia floribunda*	Tarweed, Tecate	E J P R
2	R-1	*Hemizonia minthornii*	Tarweed, Santa Susana	F H N
1*	R-1	*Hemizonia mohavensis*	Tarweed, Mojave	E R V
2	R-1	*Hesperolinon breweri*	Dwarf-flax, Brewer's	F R
2	R-1	*Hesperolinon drymarioides*	Dwarf-flax, Drymaria	F Q R
2	R-2	*Hexalectris nitida*	Coral-root, Glass Mountain	D E F K
2	R-2	*Hexalectris revoluta*	Coral-root, Chisos	E F L N
2	R-4	*Hexastylis contracta*	None	E H J P
2	R-2	*Hibiscus dasycalyx*	Rose-mallow, Neches River	E F K N P R
2	R-1	*Hibiscus kokio*	Pualoalo, koki'o 'ula'ula	D P Q R
2	R-1	*Holmgrenanthe petrophila*	Rock lady	H I O Q R
2	R-1	*Horkelia tularensis*	Horkelia, Tulare	F R
2	R-1	*Horkelia wilderae*	Horkelia, Barton Flats	F R
2	R-4	*Hymenocallis coronaria*	Spider-lily, shoals	D F H K O P S
2	R-4	*Hypericum edisonianum*	Ascyrum, Edison's	E K P
2	R-3	*Iliamna remota*	Globe-mallow, Kankakee	E F I J L T
2	R-4	*Illicium parviflorum*	None	F K R
2	R-4	*Ipomoea krugii*	Morning-glory, Krug's white	H K S
2	R-1	*Isodendrion laurifolium*	Aupaka (Isodendrion laurifolium)	F Q
2	R-2	*Isoetes lithophylla*	Quillwort, rock	E H K N P
2	R-5	*Isoetes virginica*	Quillwort,	D E H K P R
2	R-1	*Ivesia argyrocoma*	Ivesia, silver-haired	F P R
2	R-1	*Ivesia cryptocaulis*	None	I R

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-1	*Ivesia patellifera*	Cinquefoil, Kingston Mountains	F K
2	R-1	*Ivesia pickeringii*	Ivesia, Pickering	F H Q R
2	R-4	*Jacquemontia curtissii*	Jacquemontia, pineland	F K P Q
2	R-4	*Jamesianthus alabamensis*	Jamesianthus, Alabama	E H K P
2	R-1	*Juglans californica* var. *hindsii*	Walnut, Northern California black	E G H R
2	R-5	*Juncus caesariensis*	Rush, New Jersey	E F K P
2	R-4	*Justicia borinquensis*	None	H I K
2	R-4	*Justicia crassifolia*	Water-willow, thick-leaved	E P
2	R-4	*Justicia culebritae*	None	H I P S
2	R-2	*Justicia runyonii*	Water willow, Runyon's	H I K
2	R-2	*Justicia wrightii*	Water willow, Wright's	E F I K P Q
2	R-4	*Kalmia cuneata*	White-wicky	E F H K N P R
2	R-1	*Kokia kauaiensis*	Koki'o, Kaua'i	F M P Q R
2	R-1	*Lathyrus jepsonii* ssp. *jepsonii*	Tule-pea, Delta	F K R
2	R-1	*Layia discoidea*	Layia, rayless	F R
2	R-1	*Layia jonesii*	Layia, Jones	F
2	R-1	*Layia ziegleri*	Layia, Ziegler's	F P R S
2	R-4	*Leavenworthia crassa* var. *elongata*	None	E L S
1	R-4	*Leavenworthia exigua* var. *laciniata*	Glade cress,	H P
2	R-4	*Leavenworthia exigua* var. *lutea*	Leavenworthia exiqua var. *lutea*	H L S
2	R-4	*Lechea divaricata*	None	E K P
2	R-4	*Lechea lakelae*	None	E K P Q
2	R-2	*Lechea mensalis*	Pinweed, Chisos	E F G H K
2	R-1	*Legenere limosa*	Legenere	F P R
2	R-4	*Lepanthopsis melanantha*	Orchid, tiny	D F H O
2	R-1	*Lepidium arbuscula*	None	E P Q
2	R-1	*Lepidium davisii*	Pepper cress, Davis'	E F H K N O R
2	R-1	*Lepidium serra*	Anaunau	D I P Q R
2	R-6	*Lesquerella garrettii*	Bladderpod, Garrett	E F H J R
2	R-4	*Lesquerella globosa*	Bladder-pod, Short's	E H J K
2	R-6	*Lesquerella pruinosa*	None	E F H I R
2	R-1	*Lewisia maguirei*	None	E I L Q R
2	R-1	*Lewisia serrata*	Lewisia, saw-toothed	F O R
2	R-1	*Lewisia stebbinsii*	Lewisia, Stebbins	F Q R
2	R-2	*Liatris tenuis*	Gay-feather, slender	F H J N P R
2	R-1	*Lilaeopsis masonii*	Lilaeopsis, Mason's	F R
2	R-5	*Lilium grayi*	Lily, Gray's	D E F H O
2	R-4	*Lilium iridollae*	Lily, panhandle	D E J K O P R
2	R-1	*Limnanthes bakeri*	Meadowfoam, Baker's	F Q
2	R-1	*Limnanthes douglasii* var. *sulphurea*	Meadowfoam, Point Reyes	F R
2	R-1	*Limnanthes floccosa* ssp. *bellingeriana*	Meadowfoam, Bellinger's	E F R
2	R-1	*Limnanthes floccosa* ssp. *grandiflora*	Meadowfoam, large-flowered	H I K L N O P R
2	R-1	*Limnanthes gracilis* var. *parishii*	Meadowfoam, Parish's	H P R
2	R-2	*Limosella pubiflora*	Mudwort, Chiricahua	D E F G H I L P R
2	R-1	*Linanthus orcuttii*	Linanthus, Orcutt's	F P R
2	R-4	*Linum arenicola*	Flax, sand	F H I K P Q
2	R-4	*Linum carteri* var. *carteri*	None	E P Q S
2	R-4	*Linum carteri* var. *smallii*	None	E K P Q S
2	R-4	*Linum sulcatum* var. *harperi*	None	E P Q
2	R-4	*Linum westii*	Flax, West's	E K P
2	R-1	*Lipochaeta tenuis*	None	D F P Q R
2	R-4	*Litsea aestivalis*	Pondspice	D F H K N P R
2	R-1	*Lobelia dunbariae*	None	D F P Q R
2	R-1	*Lomatium congdonii*	Lomatium, Congdon's	F R
2	R-6	*Lomatium latilobum*	Desert parsley, Slickrock	E F G H I J R
2	R-1	*Lomatium suksdorfii*	Desert-parsley, Suksdorf's	E F H N Q R
2	R-1	*Lomatium tuberosum*	Desert-parsley, Hoover's	E F I N R
2	R-1	*Lotus argophyllus* var. *niveus*	Hosackia, silver, Santa Cruz Island	F H Q
2	R-1	*Lotus nuttallianus*	Hosackia, prostrate	D F H K N O P R
2	R-1	*Lupinus biddlei*	Lupine, Biddle's	E H R
2	R-1	*Lupinus citrinus*	Lupine, orange	F R
2	R-1	*Lupinus duranii*	Lupine, Mono Lake	F H N O
2	R-1	*Lupinus guadalupensis*	Lupine, Guadalupe Island	F P R
2	R-1	*Lupinus ludovicianus*	Lupine, San Luis	F N
2	R-1	*Lupinus milo-bakeri*	Lupine, Milo Baker's	E F P R
2	R-1	*Lupinus padre-crowleyi*	Lupine, DeDecker's	F R
2	R-1	*Lupinus spectabilis*	Lupine, shaggy-hair	F P R
2	R-4	*Lupinus westianus*	Lupine, Gulfcoast	E K
2	R-1	*Lysimachia kalalauensis*	None	D F P Q R
2	R-1	*Machaeranthera asteroides* var. *lagunensis*	Aster, Laguna Mountains	F H N Q R

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-2	*Machaeranthera aurea*	Machaeranthera, Houston	E F H N P R
2	R-2	*Machaeranthera gypsitherma*	None	F L
2*	R-1	*Malacothamnus mendocinensis*	Bush-mallow, Mendocino	D F K R V
2	R-1	*Malacothamnus palmeri* var. *involucratus*	Bush-mallow, Carmel Valley	F K
2	R-1	*Malacothamnus palmeri* var. *lucianus*	Bush-mallow, Arroyo Seco	F K
2	R-1	*Malacothamnus parishii*	Bush-mallow, Parish's	F P R
2	R-1	*Malacothrix saxatilis* var. *arachnoidea*	Malacothrix, Carmel Valley	F K
2	R-2	*Manfreda longiflora*	Huaco, Runyon	H I K R
2	R-4	*Mariscus urbanii*	None	H I P
2	R-4	*Marsdenia elliptica*	None	H I K
2	R-4	*Matelea alabamensis*	Anglepod,	E H I L
2	R-4	*Matelea floridana*	None	E P
2	R-2	*Matelea radiata*	Anglepod (milkvine), Falfurrias	G I P
2	R-2	*Matelea texensis*	Milkvine, Texas	E F G K P
2	R-4	*Maytenus cymosa*	None	H I K
2	R-4	*Maytenus elongata*	Cuero de sapo	H I K
2	R-4	*Melanthera parvifolia*	None	H K P Q
2	R-1	*Mentzelia mollis*	Stickleaf, smooth	E F H I K N O P Q R
2	R-1	*Mentzelia packardiae*	Stickleaf, Packard's	E F H K N O P Q R
1*	R-5	*Micranthemum micranthemoides*	Micranthemum, Nuttall's	E H V
2	R-1	*Microseris decipiens*	Microseris, Santa Cruz	F H
2	R-1	*Microseris howellii*	None	H R
1*	R-1	*Mimulus brandegei*	Monkeyflower, Santa Cruz Island	E R V
2	R-1	*Mimulus exiguus*	Monkeyflower, San Bernardino Mountains	F P R
2	R-6	*Mimulus gemmiparus*	Monkeyflower, Weber	E F H I J R
2	R-1	*Mimulus purpureus* var. *purpureus*	Monkeyflower, purple	F P R
2	R-1	*Mimulus pygmaeus*	Monkeyflower, Egg Lake	D F R
2	R-5	*Mimulus ringens* var. *colpophilus*	Monkeyflower, square-stemmed	D E H K
1*	R-1	*Mimulus traskiae*	Monkeyflower, Santa Catalina	I Q V
1*	R-1	*Mimulus whipplei*	Monkeyflower, Whipple's	E Q R V
2	R-4	*Minuartia godfreyi*	None	E F H I P
2	R-4	*Mitracarpus polycladus*	None	F I K N R
2	R-1	*Monardella crispa*	Monardella, crisp	F N O
2	R-1	*Monardella fructescens*	Monardella, San Luis Obispo	F N O
1*	R-1	*Monardella leucocephala*	Monardella, Merced	E P Q R V
2	R-1	*Monardella linoides* ssp. *oblonga*	Monardella, flax-like	F H Q
2	R-1	*Monardella linoides* ssp. *viminea*	Monardella, willowy	F P R
1*	R-1	*Monardella pringlei*	Monardella, Pringle	I P V
2	R-1	*Monardella robisonii*	Monardella, Robison's	E F R
2	R-4	*Monotropa brittonii*	None	E K P Q S
2	R-4	*Monotropsis reynoldsiae*	Pinesap, sweet	D E H P
2	R-1	*Muilla clevelandii*	Goldenstar, San Diego	H K P
2	R-4	*Myrcianthes fragrans* var. *simpsonii*	Stopper, Simpson	E F P Q
2	R-4	*Myriophyllum laxum*	None	E K
2	R-1	*Myrsine linearifolia*	None	D F P Q R
2*	R-6	*Najas caespitosa*	Naiad, Fish Lake	E F H I P Q R V
2	R-1	*Nemacladus twisselmannii*	Nemacladus, Twisselmann's	F Q R
2	R-4	*Nemastylis floridana*	Ixia, fall-flowering	E F K P
2	R-1	*Neraudia ovata*	Ma'oloa, Big Island	E F P Q
2	R-4	*Neviusia alabamensis*	None	E F H I P
2	R-2	*Nolina arenicola*	Sacahuista, sand	E F I N Q
2	R-4	*Nolina atopocarpa*	Bear-grass,	E K P
2	R-2	*Notholaena lemmonii*	Fern, cloak, Lemmon	D E F G H I K
2	R-4	*Nuphar luteum* ssp. *ulvaceum*	None	E F K
2	R-2	*Oenothera organensis*	Evening-primrose, Organ Mountain	E F L
2	R-4	*Oenothera pilosella* ssp. *sessilis*	Oenathera pilosella ssp. *sessilis*	D E H K P S T
2	R-4	*Operculina triquetra*	None	H I K
2	R-2	*Opuntia arenaria*	Prickly pear, sand	F I O P
2	R-1	*Opuntia basilaris* var. *brachyclada*	Beavertail cactus, short-jointed	F H N O P R
2	R-2	*Opuntia engelmannii* var. *flexospina*	None	H I K
2	R-2	*Opuntia imbricata* var. *argentea*	Cholla, silver	D E F G I N O
2	R-1	*Opuntia munzii*	Cholla, Munz	F R S
2	R-1	*Opuntia parryi* var. *serpentina*	Cholla, snake	H J P S
2	R-4	*Opuntia spinosissima*	None	E O Q S
2	R-1	*Orobanche valida* ssp. *valida*	Broomrape, Rock Creek	F H R
2	R-1	*Oryctes nevadensis*	Oryctes, Nevada	F R
2	R-2	*Ostrya chisosensis*	Hop hornbeam, Big Bend	D E F K L N
2	R-5	*Panicum hirstii*	Panic grass, Hirst's	E K P
2	R-1	*Panicum niihauense*	Panic grass, Niihau	E F P Q R
2	R-4	*Panicum nudicaule*	None	E F H I K P R S

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-4	*Panicum pinetorum*	None	EPS
2	R-4	*Panicum stevensianum*	None	HIK
2	R-2	*Paronychia maccartii*	Whitlow-wort, McCart's	EGHIK
2	R-2	*Paronychia wilkinsonii*	Whitlow-wort, Wilkinson's	EFGIKNP
2	R-6	*Parthenium tetraneuris*	Feverfew, Arkansas River	EFHIJR
2	R-2	*Pediocactus papyracanthus*	Cactus, paper-spined	EFOQ
2	R-6	*Pediomelum pariensis*	None	EFHIJR
2	R-2	*Penstemon alamosensis*	Beardtongue, Alamo	EFOQ
2	R-1	*Penstemon arenarius*	None	FIOR
2	R-1	*Penstemon barrettiae*	None	FGKNOPQR
2	R-1	*Penstemon bicolor* ssp. *bicolor*	None	FIOR
2	R-1	*Penstemon bicolor* ssp. *roseus*	None	FIORS
2	R-6	*Penstemon compactus*	Beardtongue, cache	EFHIJR
2	R-6	*Penstemon concinnus*	Beardtongue, Tunnel Springs	EFHIJR
2	R-1	*Penstemon glaucinus*	None	HKLOR
2	R-1	*Penstemon lemhiensis*	Beardtongue, Lemhi	INR
2	R-1	*Penstemon pahutensis*	None	FHILQR
2	R-6	*Penstemon parvus*	Beardtongue, small	EFHIJR
2	R-1	*Penstemon peckii*	None	FHIKNOPR
2	R-1	*Penstemon personatus*	Beardtongue, closed-lip	FHK
2	R-1	*Penstemon pudicus*	None	EFIQR
2	R-6	*Penstemon retrorsus*	None	EFHIJR
2	R-1	*Penstemon stephensii*	Beardtongue, Stephens'	EFHR
2	R-6	*Penstemon wardii*	Beardtongue, Ward	EFHIJR
1*	R-1	*Peperomia degeneri*	None	ENPQRV
2	R-1	*Peperomia subpetiolata*	None	DFPQR
2	R-1	*Perideridia erythrorhiza*	Yampah, red-root	FHOPR
2	R-1	*Perideridia gairdneri* ssp. *gairdneri*	Yampah, Gairdner's	DFHR
2	R-2	*Perityle bisetosa* var. *bisetosa*	Rock-daisy, two-bristle	EFLN
2	R-2	*Perityle bisetosa* var. *scalaris*	Rock-daisy, stairstep two-bristle	EFLN
2	R-2	*Perityle cernua*	Rock-daisy, nodding	EFHL
2	R-1	*Perityle inyoensis*	Laphamia, Inyo	FK
2	R-2	*Perityle saxicola*	Rock-daisy, Fish Creek	DEFHKPR
2	R-1	*Perityle villosa*	Laphamia, Hanaupah	FHL
2	R-2	*Perityle vitreomontana*	Rock-daisy, Glass Mountain	EFHKL
2	R-2	*Perityle warnockii*	Rock-daisy, river	EFGHKOP
2	R-1	*Petalonyx thurberi* ssp. *gilmanii*	Sandpaperplant, Death Valley	FK
2*	R-1	*Phacelia amabilis*	Phacelia, Saline Valley	ELV
2	R-1	*Phacelia beatleyae*	Phacelia, Beatley	FILR
1*	R-1	*Phacelia cinerea*	Phacelia, ashy	ERV
2	R-1	*Phacelia cookei*	Phacelia, Cooke's	FKR
2	R-1	*Phacelia dalesiana*	Phacelia, Trinity	FR
2	R-1	*Phacelia greenei*	Phacelia, Scott Valley	FKR
2	R-1	*Phacelia lenta*	Phacelia, sticky	FHILNPR
2	R-1	*Phacelia novenmillensis*	Phacelia, Nine Mile Canyon	HOR
2	R-2	*Phacelia pallida*	Phacelia, pale	DEFHKL
2	R-1	*Phacelia phacelioides*	Phacelia, Mt. Diablo	FR
2	R-2	*Phacelia welshii*	Phacelia, Welsh	DFHIK
2	R-2	*Philadelphus ernestii*	Mock orange, canyon	FGHKNP
2	R-1	*Pholisma sonorae*	Sandfood	EFR
2	R-2	*Phyllanthus ericoides*	Leaf-flower, heather	EFGL
2	R-4	*Phyllanthus pentaphyllus* ssp. *floridanus*	None	EFKQ
2	R-6	*Physaria bellii*	None	EFHIJR
2	R-1	*Physaria didymocarpa* var. *lyrata*	None	EFHINOPQ
2	R-2	*Physostegia correllii*	False dragon-head, Correll's	DEFKNP
2	R-4	*Pilea leptophylla*	None	IK
2	R-4	*Pilea multicaulis*	None	EHKN
2	R-4	*Pilea richardii*	None	EHKN
2	R-1	*Pinus torreyana* ssp. *insularis*	Pine, Torrey, island	FNOQ
2	R-1	*Pinus torreyana* ssp. *torreyana*	Pine, Torrey, Del Mar	GPR
2	R-4	*Pityopsis flexuosa*	None	HKP
2*	R-1	*Plagiobothrys diffusus*	Popcornflower, San Francisco	GIRV
2*	R-1	*Plagiobothrys figuratus* var. *corallicarpus/ined*	None	EFJL
2	R-1	*Platydesma remyi*	Pilokea, Remy	DFPQR
2	R-1	*Pleuropogon hooverianus*	Semaphore grass, northcoast	FKPR
2	R-3	*Poa paludigena*	Blue grass, bog	EFKR
2	R-1	*Pogogyne clareana*	Pogogyne, Santa Lucia	FL
2*	R-3	*Polemonium occidentale* var. *lacustre*	Jacob's ladder,	EFKLNRS
2	R-2	*Polemonium pauciflorum* ssp. *hinckleyi*	Jacob's ladder, Hinckley's	DEFGHIKR
2	R-4	*Polygala boykinii* var. *sparsifolia*	None	EFPQS

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-2	*Polygala rimulicola* var. *mescalerorum*	Milkwort, Mescalero	F H L
1	R-4	*Polygonella macrophylla*	Jointweed, large-leaved	E H K
2	R-1	*Polygonum marinense*	Knotweed, Marin	F P R
2	R-6	*Potentilla effusa* var. *rupincola*	Cinquefoil, Front Range	E F H I R
1*	R-1	*Potentilla multijuga*	Cinquefoil, Ballona	I P R V
2	R-5	*Prenanthes boottii*	Rattlesnake root, Boott's	E F R
2	R-1	*Primula capillaris*	None	F H I O Q R
2	R-1	*Primula nevadensis*	Primrose, Nevada	F H I O Q R
1	R-4	*Psidium sintenisii*	Hoja menuda	H I K
2	R-4	*Psiguria cookiana*	Algodoncillo	H I K
2	R-2	*Psorothamnus thompsonae* var. *whitingii*	None	D E F G H I Q R
2	R-6	*Ptilagrostis mongholica* ssp. *porteri*	Needle grass, Porter's	E F H I J R
2	R-1	*Pyrrocoma uniflora* var. *gossypina*	Pyrrocoma, Bear Valley	F R
2	R-2	*Quercus graciliformis*	Oak, slender	D E F I L N Q
2	R-4	*Quercus shumardii* var. *acerifolia*	Oak, maple-leaf	E H L P S
2	R-2	*Quercus tardifolia*	Oak, Chisos Mountains	D E F H L N Q
2	R-4	*Randia portoricensis*	None	E H
2	R-4	*Rhexia parviflora*	Meadowbeauty,	E H K P
2	R-4	*Rhexia salicifolia*	Meadowbeauty, panhandle	E H P
2	R-1	*Rhynchospora californica*	Beaked-rush, California	F H P R
2	R-4	*Rhynchospora crinipes*	Beaked-rush, hairy-peduncled	E H I K P
2	R-4	*Rhynchospora culixa*	None	E K P
2	R-4	*Rhynchospora punctata*	None	E K P V
2	R-1	*Ribes canthariforme*	Currant, Moreno	F P R
2	R-6	*Rorippa calycina*	None	E F H I J R
2*	R-6	*Rorippa coloradensis*	Water cress, San Luis	E F H I P Q R V
2	R-1	*Rorippa columbiae*	Yellow-cress, Columbia	E F H I K R
2	R-2	*Rosa stellata* ssp. *abyssa* (was var. nov./ined.)	Rose, Grand Canyon	D E F G H I L
2	R-4	*Rudbeckia heliopsidis*	None	D E F H K N P R
2	R-4	*Salix floridana*	Willow, Florida	F K
2	R-2	*Salvia penstemonoides*	Sage, big red	D F K N P
2	R-1	*Sanicula saxatilis*	Sanicle, rock (Sanicula saxatilis)	F R
2	R-1	*Sanicula tracyi*	Sanicle, Tracy's	D F R
2	R-4	*Sarracenia rubra* ssp. *wherryi*	Pitcher-plant,	F J K O P R
2	R-5	*Saxifraga caroliniana*	Saxifrage, Gray's	E F H P
2	R-1	*Saxifraga hitchcockii*	Sanicle, rock (=Saddle Mtn. saxifrage)	E F H N O P Q R
2	R-1	*Schiedea hookeri*	Ma'oli'oli	E F Q R
2	R-1	*Schiedea membranacea*	None	E F Q R
2	R-1	*Schiedea menziesii*	None	D F P Q R
2	R-1	*Schiedea salicaria*	Ma'oli'oli	D F P Q R
1	R-4	*Schizachyrium niveum*	None	E K P
2	R-4	*Schrankia portoricensis*	Zarzarilla	H K
2	R-4	*Scirpus flaccidifolius*	Bulrush, reclining	E F H N P R S
2	R-5	*Scirpus longii*	Bulrush, Long's	E F H K
2	R-1	*Scrophularia atrata*	Figwort, black-flowered	F K
2	R-4	*Scutellaria ocmulgee*	Skullcap,	E K
2	R-5	*Scutellaria ovata* ssp. *pseudoarguta*	Skullcap, heart-leaved,	E F H I K
2	R-4	*Scutellaria thieretii*	Skullcap, Thieret's	D E F H I K P S
2	R-1	*Sedum moranii*	Stonecrop, Reid's	E F H O
2	R-4	*Sedum nevii*	Stonecrop, Nevius'	D F H P
2	R-1	*Sedum oblanceolatum*	Stonecrop, Applegate	E H O
2	R-1	*Sedum radiatum* ssp. *depauperatum*	Stonecrop, star-fruited, small	E F H O
2	R-1	*Senecio bernardinus*	Butterweed, San Bernardino	F P R
2	R-1	*Senecio ganderi*	Butterweed, Gander	G R
2	R-1	*Senecio hesperius*	None	F H O R
2	R-1	*Senecio layneae*	Butterweed, Layne's	F I K P R
2	R-4	*Senecio millefolium*	Ragwort, divided-leaf	E H P
2	R-2	*Senecio quaerens*	None	E O P
2	R-2	*Sesuvium trianthemoides*	Sea-purslane, roughseed	D E H I K
2	R-4	*Shortia galacifolia*	Oconee-bells	E F G H P
2	R-1	*Sidalcea hickmanii* ssp. *anomala*	Sidalcea, Cuesta Pass	F K
2	R-1	*Sidalcea hickmanii* ssp. *viridis*	Checkermallow, Marin	F R
2	R-1	*Sidalcea robusta*	Sidalcea, Butte County	F R
2	R-1	*Silene clokeyi*	None	D I R
2	R-1	*Silene douglasii* var. *oraria*	Catchfly, cascade head	E F H N O P Q R
2	R-1	*Silene marmorensis*	Catchfly, Marble Mountain	F R
2	R-2	*Silene rectiramea*	Catchfly, Grand Canyon	D E F G H I L
2	R-1	*Silene seelyi*	None	E F H N O P R
2	R-1	*Silene spaldingii*	Silene, Spalding's	E F H N O P Q R
2	R-4	*Silphium brachiatum*	Rosinweed,	E F H I P

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
2	R-4	*Sium floridanum*	Water-parsnip, Florida	E F N V
2	R-7	*Smelowskia pyriformis*	None	E H L N
1*	R-4	*Solanum carolinense* var. *hirsutum*	Horse-nettle,	E G J S T V
2	R-4	*Solanum mucronatum*	None	E K R
2	R-1	*Solanum tenuilobatum*	Nightshade, narrow-leaved	F S
2*	R-4	*Solidago porteri*	Goldenrod, Porter's	E R V
2	R-4	*Solidago pulchra*	Goldenrod, Carolina	F K N P Q R
2	R-4	*Solidago verna*	Goldenrod, spring-flowering	E F H K N P Q R
2	R-1	*Sphaeralcea caespitosa*	Globe-mallow, Jones'	E F I R
2	R-1	*Sphaeralcea rusbyi* ssp. *eremicola*	Desert-mallow, Rusby's	F K
2	R-6	*Sphaeromeria ruthiae*	Tansy, Zion	E F H I J R
2	R-6	*Sphaeromeria simplex*	False sagebrush, Laramie	E F H I J R
2	R-4	*Spigelia loganioides*	Pinkroot,	E K P
2	R-4	*Spiranthes lanceolata* var. *paludicola*	Ladies'-tresses,	F H L
2	R-4	*Spiranthes polyantha*	None	D F H O
2	R-4	*Sporobolus teretifolius*	Dropseed, wireleaf	E F H K N P R S
2	R-4	*Stachys hyssopifolia* var. *lythroides*	Hedge-nettle, Tallahassee	E H P
1*	R-1	*Stenogyne haliakalae*	Stenogyne, haleakala	F K L N P Q R V
2	R-1	*Stenogyne oxygona*	None	E G P Q R
2	R-4	*Stillingia sylvatica* ssp. *tenuis*	None	E P
2	R-1	*Streptanthus batrachopus*	Jewelflower, Tamalpais	F H P R
2	R-2	*Streptanthus bracteatus*	Twistflower, bracted	E F I K N O P
2	R-1	*Streptanthus callistus*	Jewelflower, Mt. Hamilton	F R
2	R-1	*Streptanthus cordatus* var. *piutensis*	Jewelflower, Piute Mountains	F P Q R
2	R-2	*Streptanthus cutleri*	Twistflower, Cutler's	D E F I K N O P Q
2	R-1	*Streptanthus glandulosus* var. *hoffmanii*	Jewelflower, secund	E H Q R
2	R-1	*Streptanthus hispidus*	Jewelflower, Mt. Diablo	F R
2	R-2	*Streptanthus lemmonii*	Jewelflower, Lemmon's	D E F G H I S
2	R-1	*Streptanthus morrisonii* ssp. *morrisonii*	Jewelflower, Morrison's	F K R
2	R-1	*Streptanthus oliganthus*	Jewelflower, Masonic Mountain	E F I P Q R
2	R-2	*Streptanthus sparsiflorus*	Jewelflower, few-flowered	D E F J K
2	R-2	*Streptanthus squamiformis*	Jewelflower,	D E F K O Q
2	R-2	*Styrax youngae*	Snowbell, Young's	E G I J P
2	R-2	*Suaeda duripes*	Seepweed, hardtoe	D F G K P R
2	R-1	*Sullivantia oregana*	None	F H K O R
2	R-2	*Symphoricarpos guadalupensis*	Snowberry, McKittrick	E G I K N P
2	R-1	*Tauschia hooveri*	Tauschia, Hoover's	F P R
2	R-1	*Tauschia howellii*	Tauschia, Howell's	D F R
1	R-4	*Taxus floridana*	Yew, Florida	F K N O
2	R-4	*Tephrosia mohrii*	Hoary-pea, pineland	E F H K R
2	R-1	*Tetramolopium humile* var. *sublaeve*	None	D F P Q R
2	R-2	*Thelocactus bicolor* var. *flavidispinus*	None	D E H I K
2	R-1	*Thelypodium eucosmum*	None	E H O R
2	R-1	*Thelypodium repandum*	Thelypody, Jaeger's	F H I L N Q R
2	R-2	*Thelypodium tenue*	Thelypody, Fresno Creek	D E F I K P
2	R-1	*Thermopsis macrophylla* var. *agnina*	False-lupine, Santa Barbara	F K
1*	R-3	*Thismia americana*	None	E F G H I R V
2	R-4	*Tillandsia lineatispica*	Pinon	E P S
2	R-1	*Tofieldia glutinosa* ssp. *absona*	None	E F H K L O R
1*	R-4	*Tomanthera caddoensis*	False-foxglove, Caddo purple	E G V
2	R-1	*Townsendia jonesii* var. *tumulosa*	None	F I K R
2	R-4	*Tragia saxicola*	None	H K P Q
2*	R-1	*Trifolium amoenum*	Clover, showy Indian	D E I P R V
2	R-1	*Trifolium bolanderi*	Clover, parasol	F P R
2	R-1	*Trifolium owyheense*	Clover, Owyhee	E I K
2	R-4	*Trillium pusillum* var. *ozarkanum*	Trillium, least, Ozark	E F H I J K O P
2	R-4	*Trillium pusillum* var. *pusillum*	None	E F H I J K O P
2	R-2	*Trillium pusillum* var. *texanum*	Trillium, Texas	D E F J K O P R
2	R-5	*Trillium pusillum* var. *virginianum*	Trillium, least, Virginia	E F H P
2	R-4	*Triphora craigheadii*	Nodding-caps, Craighead's	E K P S
2*	R-4	*Triphora latifolia*	Nodding-caps,	E K P S V
2	R-1	*Triphysaria floribunda*	Owl's-clover, San Francisco	F Q
2	R-4	*Tripsacum floridanum*	Gama grass,	F Q
2	R-1	*Triteleia clementina*	Brodiaea, San Clemente Island	F J R
2*	R-1	*Tropidocarpum capparideum*	Tropidocarpum, caper-fruited	E I K P Q R V
2	R-2	*Valerianella texana*	Cornsalad, Edwards' Plateau	F K N Q
2	R-2	*Vauquelinia californica* ssp. *pauciflora*	Rosewood, limestone	F H I Q R
2	R-4	*Verbena maritima*	None	F K P Q
1	R-4	*Verbena tampensis*	Vervain,	F P
1	R-4	*Verbesina chapmannii*	Crownbeard, Chapman's	E K P

TABLE III.—FINDING OF "NOT WARRANTED" AND STATUS = CATEGORY 2—Continued

Prior category	Lead region	Scientific name	Common name	Reasons
1	R-4	*Verbesina heterophylla*	None	F K P
2	R-4	*Vernonia borinquensis*	None	E H K P
2	R-4	*Viburnum bracteatum*	Arrowwood,	E H L
1	R-4	*Vicia ocalensis*	Vetch, Ocala	E L
2	R-1	*Viola kauaiensis* var. *wahiawaensis*	None	F Q
2	R-1	*Viola oahuensis*	None	F Q
2	R-1	*Wikstroemia skottsbergiana*	None	D F P Q R
2	R-1	*Wikstroemia villosa*	None	E P Q R
2	R-1	*Wyethia reticulata*	Mule-ears, El Dorado	D F R
2	R-1	*Xylorhiza orcuttii*	Aster, Borrego (=Orcutt's aster)	H R
2	R-4	*Xyris drummondii*	Yellow-eyed grass, Drummond's	D E F H K P R
2	R-4	*Xyris isoetifolia*	None	E F K N
2	R-4	*Xyris longisepala*	Xyris, karst pond (=Yellow-eyed-grass, Kral's)	E F H I K P
2	R-4	*Xyris scabrifolia*	None	D E F H K P R
2	R-4	*Zizia latifolia*	None	E F N S
		TOTAL ENTRIES THIS TABLE: 865.		

[1] Baker's manzanita was incorrectly reported as Category 3C at 58 FR 51149; species' assignment should remain in Category 2.

[FR Doc. 93–30141 Filed 12–8–93; 8:45 am]
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federal register

Thursday
December 9, 1993

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 37 rescission proposals and eight deferrals contained in two special messages for FY 1994. These messages were transmitted to Congress on October 13, and November 1, 1993.

Rescissions (Attachments A and C)

As of November 1, 1993, 37 rescission proposals totaling $1,946.1 million had been transmitted to the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of November 1, 1993, $1,130.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

58 FR 54256, Wednesday, October 20, 1993

Leon E. Panetta,

Director.

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	1,946.1
Rejected by the Congress.....	---
Currently before the Congress.....	1,946.1

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,197.2
Routine Executive releases through November 1, 1993	-66.6
Overturned by the Congress.....	---
Currently before the Congress.....	1,130.6

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of November 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1	40,000		11-1-93				
Economic support fund	R94-2	90,000		11-1-93				
Agency for International Development								
Development assistance fund	R94-3	160,000		11-1-93				
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4	16,233		11-1-93				
Buildings and facilities	R94-5	8,460		11-1-93				
Cooperative State Research Service								
Cooperative State Research Service	R94-6	30,002		11-1-93				
Buildings and facilities	R94-7	34,000		11-1-93				
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8	12,167		11-1-93				
Soil Conservation Service								
Conservation operations	R94-9	12,167		11-1-93				
Farmers Home Administration								
Salaries and expenses	R94-10	12,167		11-1-93				
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11	6,445		11-1-93				
Food and Nutrition Service								
Commodity supplemental food program	R94-12	12,600		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of November 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13	6,000		11-1-93				
Construction	R94-14	4,000		11-1-93				
International Trade Administration								
Operations and administration	R94-15	2,000		11-1-93				
DEPARTMENT OF DEFENSE								
Military Construction								
Military construction, Army	R94-16	116,134		11-1-93				
Military construction, Air Force	R94-17	85,094		11-1-93				
Military construction, Army Reserve	R94-18	19,807		11-1-93				
Military construction, Naval Reserve	R94-19	4,438		11-1-93				
Military construction, Air Force Reserve	R94-20	18,759		11-1-93				
Military construction, Army National Guard	R94-21	251,854		11-1-93				
Military construction, Air National Guard	R94-22	105,138		11-1-93				
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23	24,970		11-1-93				
Construction, general	R94-24	97,319		11-1-93				
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities, and Uranium supply and enrichment activities	R94-25	139,300		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of November 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing.....	R94-26	180,000		11-1-93				
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction...	R94-27	16,000		11-1-93				
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses.....	R94-28	600		11-1-93				
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations.....	R94-29	2,750		11-1-93				
Facilities and equipment.....	R94-30	40,257		11-1-93				
Federal Transit Administration								
Discretionary grants.....	R94-31	52,037		11-1-93				
Federal Highway Administration								
Highway demonstration projects.....	R94-32	187,827		11-1-93				
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund.....	R94-33	126,022		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of November 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34	13,100		11-1-93				
OTHER INDEPENDENT AGENCIES								
State Justice Institute								
Salaries and expenses	R94-35	6,775		11-1-93				
United States Information Agency								
Salaries and expenses	R94-36	3,000		11-1-93				
North/South Center	R94-37	8,700		11-1-93				
TOTAL RESCISSIONS		**1,946,122**	**0**		**0**		**0**	

[FR Doc. 93–29998 Filed 12–8–93; 8:45 am]
BILLING CODE 3110–01–M

ATTACHMENT D
Status of FY 1994 Deferrals - As of November 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93	63,357				330,818
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93	3,216				23,884
TOTAL, DEFERRALS		**1,197,175**	**0**		**66,573**	**0**		**0**	**1,130,602**

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Part VII

Department of Transportation

Federal Transit Administration

49 CFR Part 659
Rail Fixed Guideway Systems; State Safety Oversight; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. 92–D]

RIN 2132–AA39

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 28 of the Federal Transit Act, as amended (FT Act) directs the Federal Transit Administration (FTA) to issue a rule requiring States to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration. This Notice of Proposed Rulemaking (NPRM) accordingly proposes the FTA's State safety oversight program, which should improve the safety of rail fixed guideway systems.

DATES: Comments on this proposed rule must be submitted by February 7, 1994.

ADDRESSES: Comments on the NPRM should be sent, in duplicate, to Docket No. 92–D, Docket Clerk, room 9316, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590. Those wishing the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments. All comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Franz Gimmler, Deputy Associate Administrator for Safety, or Roy Field, Transit Safety Specialist, both of the Office of Safety and Security, Federal Transit Administration, (202) 366–2896 (telephone) or (202) 366–3765 (fax). For legal issues: Nancy Zaczek, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

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I. Background

The Intermodal Surface Transportation Efficiency Act of 1991 (Pub.L. 102–240), enacted into law on December 18, 1991, added section 28 to the FT Act, which requires the Federal Transit Administration to issue regulations creating a State oversight program. In this connection, the agency issued an Advance Notice of Proposed Rulemaking (ANPRM), published in the **Federal Register** on June 25, 1992, at 57 FR 28572, soliciting public comment on a range of issues we believe needed to be addressed in drafting this Notice of Proposed Rulemaking (NPRM).

A. Section 28

In general, section 28 applies only to those States in which a rail fixed guideway system operates that is not regulated by the Federal Railroad Administration (FRA), and requires any such State to designate a State oversight agency to be responsible for overseeing the rail fixed guideway system's safety practices. FTA is required to issue a rule implementing the program, and may withhold Federal funds if a State fails to implement the rule.

More specifically, the statute describes the responsibilities of the State, the agency the State designates to provide oversight, and the type of activities the agency is expected to carry out. In most instances, this entity will be an agency of the State because most rail fixed guideway systems operate in only one State. Where a rail fixed guideway system operates in more than one State, however, the statute permits the affected States to designate any entity, other than the transit agency itself, to oversee that rail fixed guideway system.

Whether the oversight agency is a State agency or some other entity, it must require each affected transit agency to create a system safety program plan, which the oversight agency reviews and approves. The oversight agency also must investigate accidents and hazardous conditions. Once a hazardous condition has been discovered, the oversight agency must require the transit agency to correct or eliminate it.

If a State has not met these requirements by September 30, 1994, or has not made adequate efforts to comply with them, the Secretary may withhold up to five percent of the fiscal year 1995 (or subsequent year) section 9 apportionment attributable to the State or an affected urbanized area in the State.

B. The ANPRM

On June 25, 1992, FTA published an ANPRM in the **Federal Register** at 57 FR 28572 specifically seeking comment on particular issues arising under section 28.

The agency held three hearings on the ANPRM: In Los Angeles, California; in Portland, Oregon; and in Washington, DC. Testimony from those hearings is reflected in the *Discussion of Comments to the ANPRM and Key NPRM Provisions* section of this NPRM. Thirty-five entities either submitted comments to the docket or testified at one of the three hearings, including fifteen transit authorities, three utility commissions, eight States, one engineering firm, two transit associations, one labor union, one Federal agency, one transit supplier, two representatives from the people mover industry, and one transportation consultant.

II. Summary of the NPRM

Because of the complexity of this rulemaking, the FTA provides the following brief overview of the NPRM, which also includes diagrams (Exhibits 1 and 2). Exhibit 1 depicts the development of the transit agency's system safety program plan and Exhibit 2 presents a synopsis of the respective responsibilities of the State, the oversight agency, and the transit agency.

The NPRM specifies the respective roles of the State, the oversight agency, and the transit agency in implementing the requirements of section 28 of the FT Act. The State designates an oversight agency to oversee the safety of the rail fixed guideway system within its jurisdiction. The oversight agency develops and adopts a system safety program standard consistent with a publicly available system safety program guideline.

A transit agency then develops a system safety program plan consistent with the oversight agency's system safety program standard, and performs safety audits to assess its implementation. The results of those safety audits are compiled and submitted in a report to the oversight agency twice a year.

Every two years the oversight agency conducts a formal safety review of the transit agency. Moreover, the oversight

agency investigates accidents and unacceptable hazardous conditions, which the transit agency must formally bring to its attention. The transit agency must correct unacceptable hazardous conditions according to a corrective action plan approved by the oversight agency.

Both the oversight agency and the transit agency are required to use an individual trained and certified in the safety of rail fixed guideway systems to carry out the requirements of this NPRM. The NPRM refers to that person as a certified transit safety professional.

EXHIBIT 1

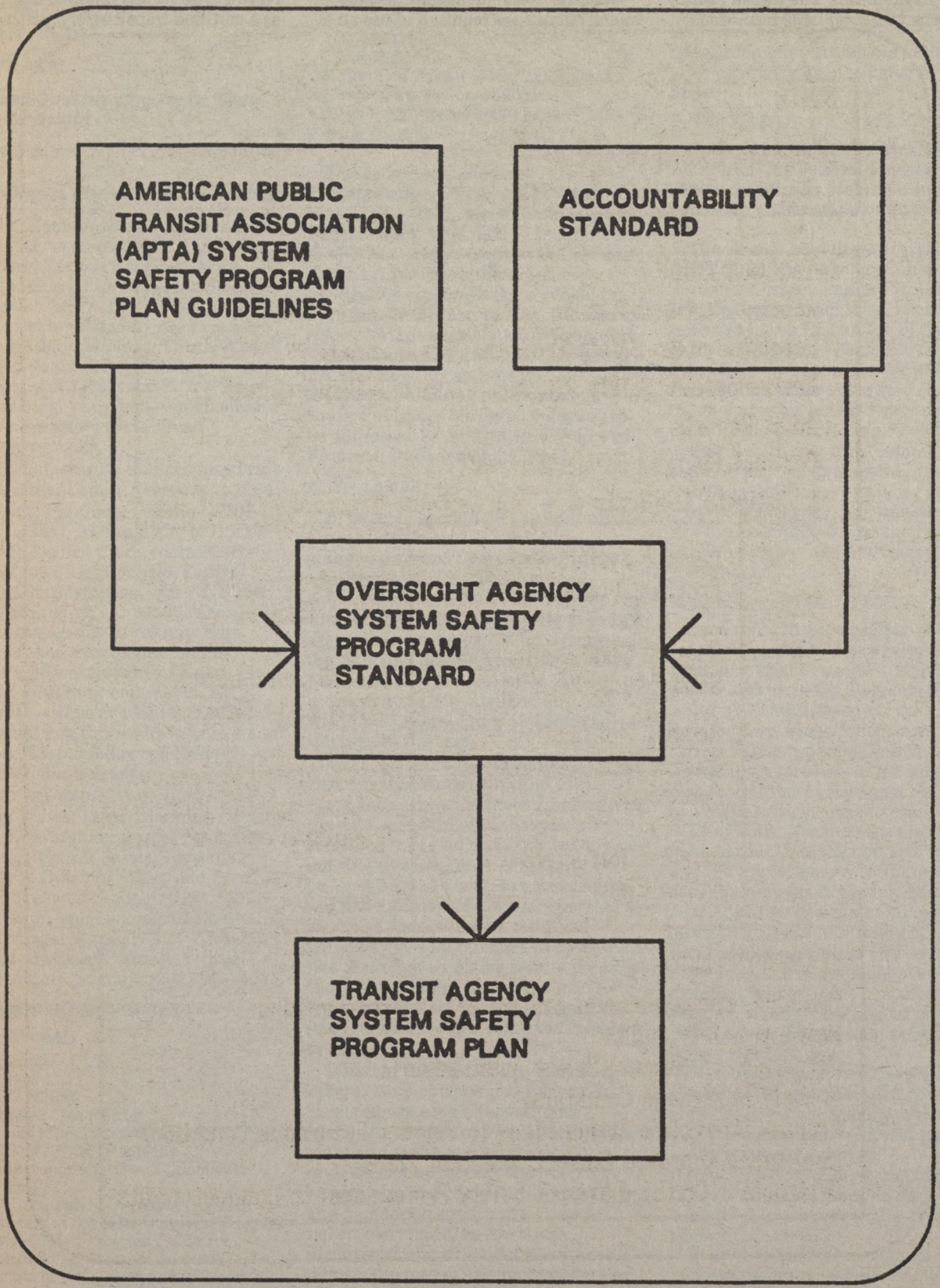
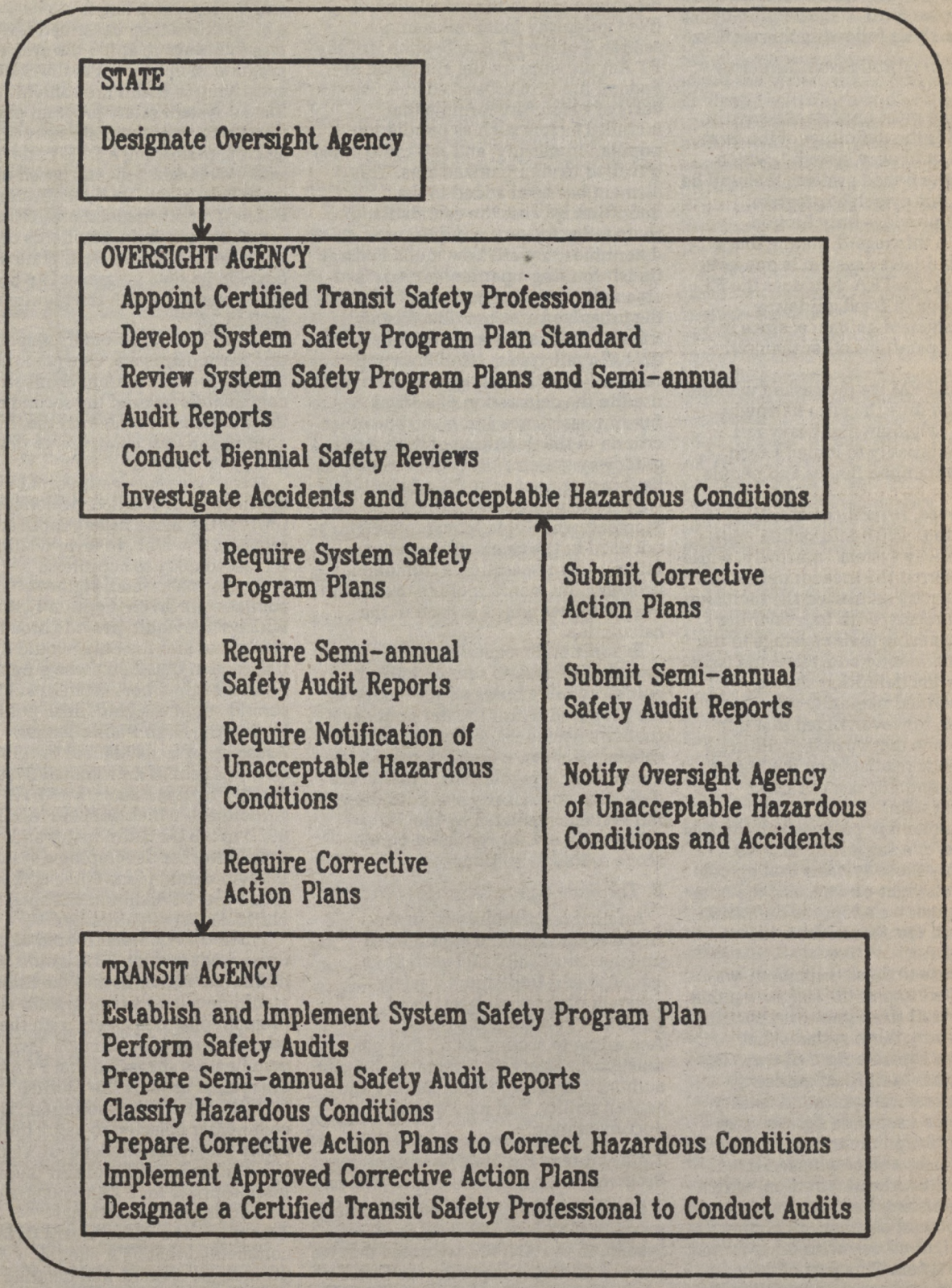

AMERICAN PUBLIC TRANSIT ASSOCIATION (APTA) SYSTEM SAFETY PROGRAM PLAN GUIDELINES
ACCOUNTABILITY STANDARD
OVERSIGHT AGENCY SYSTEM SAFETY PROGRAM STANDARD
TRANSIT AGENCY SYSTEM SAFETY PROGRAM PLAN

EXHIBIT 2


STATE
Designate Oversight Agency
OVERSIGHT AGENCY
Appoint Certified Transit Safety Professional
Develop System Safety Program Plan Standard
Review System Safety Program Plans and Semi-annual Audit Reports
Conduct Biennial Safety Reviews
Investigate Accidents and Unacceptable Hazardous Conditions
Require System Safety Program Plans
Require Semi-annual Safety Audit Reports
Require Notification of Unacceptable Hazardous Conditions
Require Corrective Action Plans
Submit Corrective Action Plans
Submit Semi-annual Safety Audit Reports
Notify Oversight Agency of Unacceptable Hazardous Conditions and Accidents
TRANSIT AGENCY
Establish and Implement System Safety Program Plan
Perform Safety Audits
Prepare Semi-annual Safety Audit Reports
Classify Hazardous Conditions
Prepare Corrective Action Plans to Correct Hazardous Conditions
Implement Approved Corrective Action Plans
Designate a Certified Transit Safety Professional to Conduct Audits

III. Discussion of Comments to the ANPRM and Key NPRM Provisions

Below we discuss the key provisions of the NPRM in light of comments on the ANPRM. Issues not discussed in this section are set forth in the Section-by-Section Analysis following this section.

A. Definition of Rail Fixed Guideway System

One of the most important issues in the NPRM is the definition of the term "rail fixed guideway system", which identifies the transit systems that will be subject to this oversight program. Section 28 provides only limited guidance in this regard, stating that a rail fixed guideway system is one not regulated by the FRA. Nor does the FT Act definition of fixed guideway provide sufficient guidance, since it applies to operations other than rail systems.

In the ANPRM we thus asked whether we should define the term narrowly, including only light and heavy rail systems, or broadly to include such systems as inclined planes and people movers.

In response, several commenters indicated that we should define "rail fixed guideway system" narrowly, while others preferred the broader definition. Six commenters addressed the inclusion of people movers, with four favoring and two opposing their coverage in the rule. No commenter addressed the issue of whether the definition should include inclined planes. One commenter, however, noted that the inclined plane that operates within its jurisdiction is regulated by the State as an elevator and not as a rail fixed guideway system.

Two commenters proposed alternative definitions, one suggesting that we include only those systems that operate on a separate right-of-way, and the other suggesting that we adopt the definition contained in the Americans with Disabilities Act.

In response to these comments, we have adopted in part the suggestion that we define "rail fixed guideway system" to include only those systems that operate on a separate right-of-way. The NPRM defines "rail fixed guideway system" as any transportation facility that occupies a separate right-of-way exclusively for public transportation service, or uses a steel-wheeled fixed catenary (an overhead wire from which a transit vehicle collects propulsion and auxiliary power) or other rail system sharing a right-of-way with other forms of transportation. This part of the definition would cover essentially all rail fixed guideway systems: light and heavy rail, cable cars, monorails, people movers, and inclined planes.

We have added another element to the definition, however, which limits its application to those systems used by an urbanized area in the calculation of fixed guideway route miles under section 9 of the FT Act. Section 9 of the FT Act provides for the allocation of Federal funds to urbanized areas on the basis of a statutory formula that includes factors such as population, population density, and rail route miles travelled in an urbanized area. This element has been added to the definition because the calculation of route miles for section 9 purposes determines, in part, how much Federal transit funding a particular urbanized area will receive, regardless of whether the urbanized area provides Federal transit funds to those systems. In short, even if a rail system itself does not receive Federal funding, if its mileage is used in the calculation of section 9 funding assistance and meets the other criteria in the definition of "rail fixed guideway system," it would be covered by this proposed rule. This definition would exclude, for example, the Morgantown People Mover, which is not used in the calculation of route miles under the section 9 formula program, but would include the Detroit People Mover which is used in the calculation.

In addition to excluding those systems not used to calculate fixed guideway route miles under section 9, the proposed definition does not cover rubber-wheeled trolley buses that use a catenary system, which are subject to motor vehicle regulations. Finally, the definition specifically excludes those rail systems regulated by the FRA.

We again ask for comment on the scope of this definition.

B. The State Safety Oversight Program

Another issue addressed in the ANPRM concerns the requirement under section 28(b) that each State establish and implement a safety program plan for each rail fixed guideway system in the State. According to section 28(b), that plan must cover safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation.

1. Structure of the State Oversight Program

Because the State must create a safety program plan for a rail fixed guideway system, in the ANPRM we noted that we were considering requiring the States to adopt a system safety program plan concept created by the Department of Defense. In Military Standard 882B (MIL–STD 882B), the Defense Department developed an aggressive approach to safety in which the managers of a project or system emphasize safety issues at every stage of a project. We then described three possible ways to apply the system safety program plan concept at the State level: specifying in detail the content of a State's system safety program plan and the structure of the State's oversight agency; permitting a State to develop a safety oversight program based on broad guidelines provided by the American Public Transit Association (APTA); or imposing minimum standards or guidelines, allowing each State to develop its own system safety program plan consistent with the requirements of section 28.

Twenty-six commenters responded to this particular issue. One commenter favored the first option, eighteen commenters favored the second option, three commenters favored the third option, and four commenters posed their own options.

A transit supplier supported the application of detailed guidelines to prevent the inconsistent application of section 28, which, in turn, would cause increased costs to suppliers.

On the other hand, eighteen commenters favored option two, under which FTA would provide broad guidelines and the State would develop its program based on those guidelines. Fifteen commenters stated that FTA should adopt the guidelines published by the American Public Transit Association in its Manual for the Development of Rail Transit System Safety Program Plans (the APTA guidelines), which adapted MIL-STD 882B to the transit industry and contain procedures for developing a system safety program plan. Three commenters stated that FTA should not specify any particular set of guidelines.

Three commenters favored option three, under which FTA would impose minimum standards and the State would develop its own system safety program plan consistent with the requirements of section 28. Two of those commenters suggested that FTA adopt the system used by the Florida Department of Transportation. The other commenter objected to using the system safety program plan concept, stating that it is a management tool and therefore inappropriate for FTA to mandate.

In addition, the National Transportation Safety Board (NTSB) commented that FTA should promulgate specific and detailed guidelines to be used by a State in exercising its oversight responsibilities.

According to the NTSB, these detailed guidelines should focus on safety deficiencies and require the State to: (1) Review maintenance and inspection records; (2) investigate accidents; (3) audit the rail fixed guideway system's system safety program plan; (4) review the resources and activities of the rail fixed guideway system's safety department; (5) review training programs; (6) monitor accident data; and (7) conduct unannounced on-site and periodic inspection of equipment and infrastructure. Finally, NTSB stated that the size, complexity and age of a rail fixed guideway system should determine which of the areas noted above should receive greater emphasis.

2. System Safety Program Guideline

In response to these comments, the NPRM would require a State oversight agency to follow the APTA guidelines, with some additions to reflect statutory requirements, and to prepare a system safety program standard based on those guidelines, which are incorporated by reference in the NPRM. We considered permitting the use of either the APTA guidelines or MIL-STD 882B by the oversight agency to develop its system safety program standard but decided against using the military standard in the NPRM because the APTA guidelines were based upon that standard, were developed specifically for the transit industry, and are used widely throughout the transit industry.

The guidelines are in APTA's Manual for the Development of Rail Transit System Safety Program Plans, which specifies procedures for developing a system safety program plan. The guidelines also contain a sample format for a system safety program plan, generally discuss the principle of system safety, and specifically address certain issues critical to the safe operation of a rail fixed guideway system. These critical issues, outlined in a twenty-three item checklist, were designed to assist a transit agency evaluate the effectiveness of its system safety program plan.

3. System Safety Program Standard

The NPRM proposes that the oversight agency develop its own system safety program standard based on the APTA guidelines, but does not limit the oversight agency to only those guidelines. Rather, the rule proposes to require the oversight agency to develop its own system safety program standard based upon and consistent with the APTA guidelines, thereby permitting each oversight agency to decide to what extent, if any, its standard might exceed the APTA guidelines. In the case of a State such as Florida, which by law is required to use MIL-STD 882B, so long as its program complies with the APTA guidelines it would meet the requirements of this rule.

In those cases where a State chooses to supplement the APTA guidelines, however, we encourage a State not to impose railroad regulations on the transit systems covered by this proposed rule. Transit systems differ in design and operation from railroads, and practices of one do not readily relate to the other.

In the NPRM we are adding an accountability factor not discussed in the ANPRM. The NPRM proposes that, in addition to the standard based on the APTA guidelines, the oversight agency must adopt an accountability factor in which the transit agency identifies tasks essential to the safe operation of the rail fixed guideway system and the specific transit agency officials responsible for performing those tasks. We propose this requirement because the statute specifically requires the State to develop a safety program which "establishes, at a minimum, safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for such systems * * *." The proposed accountability factor would address those goals.

The accountability factor is based on the list of certifiable items commonly used in designing, constructing, and testing transit systems, and expands on a concept, in section 207 of MIL–STD 882B dealing with the "identification of safety critical equipment and procedures." This accountability factor should become an important tool for managing a rail fixed guideway system, serving as a basic checklist for the transit agency to use in auditing its implementation of the system safety program plan. Failure of a person to perform a specific task should easily be traced, enabling management to focus on preventing and correcting problems.

We considered requiring the transit agency official responsible for performing a certain task identified in the accountability factor to certify in writing daily that the task has been completed, but did not include this in the NPRM. Such a certification presumably would ensure that the task had been completed by assigning responsibility for its completion. Arguably, such a certification would assist the transit agency in performing safety audits. We particularly seek comment on whether such a concept should be included in the final rule.

4. Content of the System Safety Program Plan

The NPRM would require a transit agency to develop a system safety program plan consistent with the system safety program standard developed by the State oversight agency. The ANPRM asked a number of specific questions about the system safety program plan's content, including whether the plan should address a range of other matters, such as emergency preparedness, security, or matters covered by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA).

Eight commenters responded to this issue. Six opposed requiring States to include these matters in their system safety program standard, one favored including them and one favored including emergency preparedness guidelines but was against including employee and environmental safety requirements. In the NPRM, because the APTA guidelines include provisions concerning OSHA and EPA requirements and emergency preparedness, these areas will be addressed in system safety program plans.

The NPRM does not detail specific requirements to be contained in the transit agency's system safety program plan. Rather, the oversight agency's standard, including the accountability factor, should provide adequate guidance for a transit system to translate the system safety concept into a concrete action plan addressing day-to-day operations. It is essential, however, that the plan be updated at least every two years to reflect accurately the current operations of the transit agency.

While the NPRM does not specify the content of the system safety program plan, we believe it should be written and presented to encourage its use as a reference document. In this regard, the plan should: (1) Be endorsed by top management; (2) establish the safety goals and objectives of the transit agency; (3) identify safety issues; (4) require cooperation within the transit agency to address the identified safety issues; (5) recognize that achieving the safety goals and objectives may require the involvement of entities other than the transit agency and must reference any safety-related agreements with other organizations and designate their respective responsibilities; and (6) provide a schedule for the implementation and the revision of the system safety program plan. We seek comment on whether we should

mandate the inclusion of these areas in the final rule.

The system safety process generally is recognized to cover the operation of a transit system and its planning, design, and construction. Section 28, however, may be read to apply only to the operation of rail fixed guideway systems, which would lead to the conclusion that the NPRM covers only those rail fixed guideway systems already in existence, or other systems only when they actually commence operations. On the other hand, if we were to interpret section 28 to apply during the planning, design, and construction phases of a system, we would then have to decide when the State would be required to comply with this proposed rule. This would be especially difficult for those States where systems are in the planning stage, which can be a lengthy process, and it would be difficult to specify at what point the oversight agency would have to be established. We seek comment on whether the rule should cover the planning and construction phases of systems.

There is one other safety plan issue. In light of the recent terrorist bombing in New York City that affected a transit station located in the World Trade Center, we specifically seek comment on whether the system safety program standard developed by the oversight agency should include security measures and, if so, what those measures should be. For example, should the oversight agency be responsible for requiring the transit agency to adopt security measures?

C. Safety Audits

In developing this NPRM, we realized that the system safety program plan is just that—a plan. We decided that a proactive approach to safety needs more than a plan. It needs a commitment to safety and a concrete way to implement that commitment. The NPRM therefore includes a safety auditing process. (This safety audit, however, is to be distinguished from the single audit requirement established by the Office of Management and Budget Circular A–128 "Audits of State and Local Governments," dated May 16, 1985.)

A safety audit, defined in § 659.3 of the NPRM, requires the transit agency to examine how it is implementing its system safety program plan. On an ongoing basis, the transit agency should, using the system safety program plan, determine whether certain safety critical tasks have been performed and whether certain transit agency professionals have performed those tasks. Every six months the transit agency must compile the safety audits into a report to the oversight agency. The oversight agency would review those reports as part of its monitoring function under this proposed rule.

D. Biennial Safety Reviews

The proposed rule also contains another new concept, the biennial safety review, developed partly to satisfy the monitoring function required of the oversight agency in section 28 and partly in response to a comment from the NTSB. While the oversight agency continually monitors the transit agency by reviewing the semi-annual safety audit reports and by investigating accidents and hazardous conditions, the oversight agency needs a more formal monitoring function to assess accurately the transit agency's compliance with its own system safety program plan. In its comment submitted to the ANPRM, the NTSB recommended that the oversight agency should, among other things, audit the rail fixed guideway system's system safety program plan and review other transit activities and records such as training programs and accident data.

We therefore propose in the NPRM a biennial safety review, under which the oversight agency formally monitors the transit agency's implementation of its system safety program plan. We define biennial safety review as a formal on-site examination performed by the oversight agency to determine whether the transit agency is following its own system safety procedures. By not specifying the kinds of activities that constitute a biennial safety review, the NPRM would permit the oversight agency to structure its own review process.

Although we do not specify any particular procedures for the oversight agency to follow in performing biennial safety reviews, the oversight agency should use the review to determine whether the system safety program plan process is being followed by the transit agency, hazardous conditions are being identified in a timely manner to reduce incidents, and the transit agency's internal safety audit process is effective.

E. State Oversight Role in Investigations

Section 28(b) requires the State oversight agency to investigate accidents and hazardous conditions. In this regard, the ANPRM asked several questions and elicited many comments concerning four specific issues: How the terms accident and hazardous condition should be defined; what the oversight agency's role should be in investigating accidents and hazardous conditions; and whether it would be appropriate to allow an oversight agency to hire a contractor to perform an investigation.

1. Accident

The ANPRM asked whether the term "accident" should be defined in the rule or whether flexibility should be provided to the States to determine what constitutes an accident. While one commenter specifically stated that the term should be defined by the State in conjunction with the transit industry, the remaining commenters proposed specific definitions, some urging us to adopt NTSB's definition and others urging us to adopt FRA's.

The NPRM proposes to define the word specifically as an occurrence causing death directly related to an event; injury if the person is hospitalized within twenty-four hours of the event; property damage above a specified dollar threshold due to a fire, collision, or derailment; or emergency evacuation.

In accidents resulting in property damage, the ANPRM asked whether the rule should adopt dollar thresholds. Three commenters responded, two suggesting thresholds quickly become obsolete and are subjective, with the other favoring the use of dollar thresholds. We have decided that property damage thresholds are appropriate; in fact, the FTA includes such thresholds in its NPRMs on drug and alcohol testing, both published in the **Federal Register** on December 15, 1992, at 57 FR 59660 and 57 FR 59646, respectively. In this NPRM, however, the definition triggers a specific investigation by the oversight agency, which is necessary only in serious incidents because the oversight agency will be reviewing all aspects of the transit system's safety operations through its other oversight activities required under this rule. In contrast, the FTA's drug and alcohol NPRMs define accident to include a broader range of incidents because of the direct safety implications of impaired safety-sensitive employees and because of specific statutory language. We thus seek comment about how much property damage should trigger a State oversight agency investigation, but generally believe that the dollar figure should be $25,000.

2. Hazardous Condition

Because section 28 requires the oversight agency to investigate a hazardous condition and to require the transit agency to correct or eliminate it, we asked how the term "hazardous condition" should be defined. Five commenters responded to this issue: three stating that "hazardous condition"

should be defined at the State or transit agency level, one commenter arguing that it should be defined according to its severity as determined by using the Hazard Risk Assessment Matrix of MIL–STD 882B, with the remaining stating that it should be defined as a condition which may cause injury or property damage.

Adopting a broad definition of hazardous condition would require the oversight agency to investigate many conditions, a requirement that could be quite burdensome, particularly since the oversight agency will be exercising a broad oversight mandate and will know how the transit agency is correcting hazards.

The NPRM, therefore, proposes to distinguish between degrees of seriousness with two definitions, "hazardous condition" and "unacceptable hazardous condition." The NPRM would broadly define "hazardous condition" as any condition which may cause injury or property damage, which would in each case have to be corrected or eliminated by the transit agency. In addition, the NPRM would define "unacceptable hazardous condition" as one determined to be unacceptable using the Hazard Resolution Matrix contained in the APTA guidelines, which categorizes hazardous conditions based on severity and probability of occurrence. These conditions would in each case trigger an investigation by the oversight agency, and would of course have to be corrected.

3. Oversight Agency's Investigatory Role

Ten commenters responded generally to this issue: five States currently authorized to investigate accidents; one State not authorized to investigate accidents; the NTSB; and three other entities.

The most important issue addressed by the commenters was whether the State oversight agency should conduct its own independent investigation of accidents or merely adopt the findings of the transit agency. Three commenters, including the NTSB, stressed that the State should conduct its own independent investigation of accidents.

In the NPRM we do not propose to specify the investigatory powers or procedures the State oversight agency should possess in carrying out the provisions of the rule. Rather, the State oversight agency should determine for itself the powers it feels necessary to fulfill its responsibilities under this proposed rule. We do however, seek comment on whether we should prescribe minimum standards for investigating accidents and unacceptable hazardous conditions.

Also, we want to discuss an issue raised by two commenters concerning the investigatory reports drafted either by the State oversight agency or at its request. They suggested that we adopt a provision not allowing those reports to be subject to discovery in a legal proceeding. Such a provision generally would preclude the use of those reports for public purposes. Our preliminary view is that the statute provides FTA no authority to prohibit public dialogue and accordingly think that this is a local issue. We seek comment in this area. Should we adopt a provision barring the use of those reports for any purpose, or as evidence in a trial, or should we remain silent on this issue?

4. Use of Contractors to Conduct Investigations

We asked in the ANPRM whether States should be allowed to use contractors to investigate accidents and hazardous conditions. One commenter responded to this issue, stating that the State oversight agency should have the option to decide whether to use a contractor. We agree. Under the NPRM a State agency or transit system is free to use contractors for any purpose required under this proposed rule.

F. Certified Transit Safety Professional

The comments on the ANPRM and during the public hearings indicate concern about the expertise necessary to implement this oversight program. Many in the transit industry have maintained that the rule's requirements cannot be implemented without the involvement of safety professionals. We agree. Significant safety expertise is required to develop a system safety program standard, to monitor its implementation at a transit system, to perform accident investigations, to compile and to review safety audit reports, and to perform safety reviews. The NPRM accordingly proposes that both the oversight agency and the transit agency use the services of a certified transit safety professional, either from within their own organizations or under contract, to comply with the requirements of the rule. Neither organization may use the same certified transit safety professional to carry out this proposed rule.

A certified transit safety professional is one who has successfully completed the education, experience, and exam requirements for certification established by the Board of Certified Safety Professionals, or who is a registered professional engineer in system safety. These two options essentially are equivalent, since both require safety engineering degrees from accredited universities (or the equivalent in professional safety experience), a minimum of four years of safety professional experience (in addition to the engineering degree or equivalent professional safety experience), and a high level of performance on at least one general safety examination. Anyone who successfully has completed these requirements should be considered competent in safety. We seek comment, however, on whether there is any educational institution or other organization capable of providing training comparable to one of these two options. We further seek comment on whether we should require a certified transit safety professional to have a minimum number of years of experience in transit safety. In addition, we seek comment on the specific expertise required of the safety personnel who will be assisting the certified transit safety professionals in implementing the requirements of section 28 at oversight agencies and transit authorities.

This NPRM does not detail the day-to-day duties of certified transit safety professionals, but rather leaves that specification to the oversight agency and transit agency. FTA, however, believes that certified transit safety professionals should be responsible for: (1) developing a system safety program standard for the oversight agency that, at a minimum, complies with the APTA guidelines and includes an accountability factor; (2) examining the transit agency's system safety program plan to determine whether it conforms to the system safety program standard established by the oversight agency; (3) reviewing the semi-annual safety audit reports submitted by the transit agency; (4) conducting the biennial safety review of the rail fixed guideway system; (5) investigating accidents and unacceptable hazardous conditions; (6) reviewing corrective action plans; and (7) certifying to the FTA that the rule has been implemented. We seek comment on whether we should mandate the inclusion of any or all of these items in the final rule.

IV. Section-by-Section Analysis

Subpart A—General Provisions

A. Purpose. (§ 659.1).

This part explains that FTA is issuing this NPRM in accordance with section 3029 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub.L. 102–240). Section 3029 added section 28 to the FT Act, which requires FTA to issue a rule creating a State

oversight program in which a State agency, or some other entity designated by the State, oversees the safety of certain rail fixed guideway systems. This proposed rule establishes the framework of that program and requires the oversight agency to report certain findings to the FTA.

B. Scope. (§ 659.3).

This section explains that the rule applies only to States with rail fixed guideway systems not regulated by the FRA. To determine whether a particular State is covered by this proposed rule, the State must determine whether the system in question falls within the definition of rail fixed guideway system. If so, and the rail fixed guideway system is not regulated by the FRA, the State must follow the requirements of this proposed rule. For further information on the definition of rail fixed guideway system see section 659.5 of this part.

C. Definitions. (§ 659.5).

1. *Accident.* We propose to define accident as an event involving the operation of the rail fixed guideway system resulting in death, or injury requiring hospitalization within twenty-four hours of the event. An accident also occurs if a collision, derailment, or fire results in more than $25,000 in property damage, or if the system is evacuated in an emergency.

2. *Accountability factor.* The accountability factor means a document written by the transit agency in which it identifies the tasks essential to the safe operation of the rail fixed guideway system and lists the senior line officials accountable for the performance of each of those tasks.

3. *Biennial safety review.* The biennial safety review means the comprehensive and formal process used by the oversight agency to determine the transit agency's compliance with its system safety program plan.

4. *Certified transit safety professional.* A certified transit safety professional means a person who either has successfully completed the requirements for certification established by the Board of Certified Safety Professionals or is a registered professional safety engineer in system safety.

5. *FTA.* FTA means the Federal Transit Administration.

6. *Hazardous condition.* Hazardous condition means a condition which may endanger human life or property.

7. *Investigation.* Investigation means the procedure used by the oversight agency to determine the probable cause of an accident or unacceptable hazardous condition. Each oversight agency adopts its own investigatory procedures.

8. *Oversight agency.* Oversight agency means an agency designated by a State, or, in certain cases, the entity designated by affected States, to establish an oversight program complying with the proposed rule.

9. *Rail fixed guideway system.* Rail fixed guideway system means any public transportation facility not regulated by the FRA that is used in the calculation of fixed guideway route miles under section 9 of the FT Act. It must either occupy a separate right-of-way used exclusively for public transportation or use a steel-wheeled catenary or other rail system sharing a right-of-way with other forms of transportation.

10. *Safety audit.* Safety audit means an examination or process conducted by the transit agency to determine whether it is following the procedures contained in its system safety program plan. A safety audit is not a periodic endeavor but rather is an on-going process.

11. *System safety program guidelines.* The system safety program guidelines mean the guidelines published by the American Public Transit Association in its Manual for the Development of Rail Transit System Safety Program Plans.

12. *System safety program plan.* The system safety program plan is a document written by the transit agency detailing the safety policies, objectives, responsibilities, and procedures of the transit agency. At a minimum, it must be written to conform to the oversight agency's system safety program standard.

13. *System safety program standard.* The system safety program standard means the standard developed and adopted by the State oversight agency. It must comply with APTA's Manual for the Development of Rail Transit System Safety Program Plans, although it may contain additional or more stringent requirements.

14. *Transit agency.* Transit agency means an entity operating a rail fixed guideway system.

15. *Unacceptable hazardous condition.* An unacceptable hazardous condition is a particular kind of hazardous condition determined by using the Hazard Resolution Matrix contained in the APTA guidelines.

D. Withholding of Funds for Non-compliance. (§ 659.7)

This section is taken directly from section 28 which provides FTA authority to withhold Federal funding from a State or an urbanized area in the State. In particular, the FTA is authorized to withhold up to five percent of an affected urbanized area's apportionment if the State, in the opinion of the FTA, is not in compliance or making adequate efforts to comply with this proposed rule.

The sanctions for non-compliance do not begin until October 1, 1994. Furthermore, this section gives the FTA Administrator the discretion to determine whether a State is making adequate efforts to comply with this proposed rule.

In the event of non-compliance with this proposed rule, the Administrator may withhold funds until the State comes into compliance.

Subpart B—The Role of the State

A. Designate Oversight Agency. (§ 659.21)

In this section we describe the State's role under the proposed rule. Basically, the State selects the agency that will oversee the rail fixed guideway system. When one or more rail fixed guideway systems operate within one State, that State designates a single agency of the State to create an oversight program complying with the NPRM. When the rail fixed guideway system operates in at least two States, however, the affected States are permitted to designate an entity, other than the rail fixed guideway system itself, to establish an oversight program. In the latter case, States are not obligated to designate an agency of either State, but may instead designate another entity, such as a commission or a board.

We encourage a State to designate a separate entity for the multi-jurisdictional system and come to an agreement with the other affected States in selecting one oversight agency to oversee the multi-jurisdictional system.

Subpart C—The Oversight Agency's Role

A. Appoint a Certified Transit Safety Professional. (§ 659.31)

Under the NPRM, the oversight agency is required to appoint a certified transit safety professional to perform the duties required of the oversight agency. The certified transit safety professional may be an employee of the State or of the oversight agency, or may be an independent contractor.

Because the oversight agency may want to have its own employees certified as a transit safety professional, we have established, in subsection b, a grace period of three years from the effective date of the final rule for the oversight agency to appoint a certified transit safety professional.

B. Adopt System Safety Program Standard. (§ 659.33)

The oversight agency, acting on behalf of the State, must adopt and develop a system safety program standard which complies with the APTA guidelines dated August 20, 1991. Should those guidelines be subsequently modified, the FTA would review those modifications to determine whether to adopt them. In essence, FTA is adopting the 1991 edition of the APTA guidelines; we do not automatically adopt subsequent revisions in this rulemaking.

The transit agency uses the system safety program standard adopted by the oversight agency when it develops its own system safety program plan. By adopting a standard, the oversight agency provides a minimum level of safety, while allowing the transit agency to develop its own system safety program plan.

C. Require System Safety Program Plans. (§ 659.35)

The oversight agency must require the transit agency to adopt and implement a system safety program plan conforming to the oversight agency's system safety program standard and containing the accountability factor.

D. Review System Safety Program Plan and Semi-annual Safety Audit Reports. (§ 659.37)

In general, this section requires the oversight agency to monitor the transit agency's system safety practices by reviewing and approving the system safety program plan and reviewing the semi-annual safety audit reports. This section ensures that the oversight agency periodically reviews the transit agency's system safety program plan by establishing a schedule of review.

The oversight agency must review and approve, in writing, the transit agency's first system safety program plan required under this proposed rule before October 1, 1994. Every two years after that date the oversight agency must repeat this process.

E. Conduct Biennial Safety Reviews. (§ 659.39)

In addition to monitoring the transit agency by reviewing its system safety program plan and semi-annual audit reports, the oversight agency also monitors the transit agency by conducting biennial safety reviews. The biennial safety review is conducted on-site and we encourage the review to be conducted by the certified transit safety professional.

F. Conduct Investigations. (§ 659.41)

This section addresses the role of the oversight agency in investigating accidents and hazardous conditions. If an accident has occurred, the oversight agency must investigate it unless that particular accident is being investigated by the NTSB. If the NTSB is conducting an investigation, the oversight agency may choose not to investigate and may adopt NTSB's findings. But even if it elects to conduct its own investigation, the State oversight agency should review the findings of the NTSB.

The oversight agency is not required to investigate all hazardous conditions, but only unacceptable hazardous conditions. An unacceptable hazardous condition is determined by the transit agency using the Hazard Resolution Matrix contained in the APTA guidelines. We note here that an oversight agency may also investigate hazardous conditions as well, under its own independent authority.

Under this section, an oversight agency establishes its own procedures for conducting investigations, deciding for itself the kind of investigation to conduct. For example, an agency may choose to use its own personnel to conduct the investigation or it may choose to use a procedure similar to that used by the NTSB where the oversight agency would use transit agency personnel to conduct the actual investigation at the direction of the oversight agency. We encourage the States to examine the investigatory procedures used by the NTSB as well as by those States which currently have investigatory authority.

G. Require Corrective Actions. (§ 659.43)

This section requires hazardous conditions to be corrected or eliminated by the transit agency. The transit agency need not inform the oversight agency that it has discovered a hazardous condition, nor seek the oversight agency's permission to correct or eliminate it.

On the other hand, the transit agency must notify the oversight agency that it has discovered an unacceptable hazardous condition within the time frame specified by the oversight agency. The transit agency must then take whatever actions are necessary to address the problem and then submit a corrective action plan to the oversight agency specifying how it has or will have corrected or eliminated the unacceptable hazardous condition. The oversight agency must review and approve this corrective action plan.

This section also requires that hazardous conditions which have caused an accident must also be corrected according to a corrective action plan.

H. Report to the Federal Transit Administration. (§ 659.45)

This section requires the oversight agency to submit annual summaries and copies of certain reports to the FTA. The oversight agency must annually summarize its oversight activities, including any investigation it undertakes or biennial safety review it conducts and including the status of corrective action plans. In addition, the oversight agency must, if FTA requests, submit copies of reports of accidents and unacceptable hazardous conditions. Corrective action plans must be submitted to the FTA, upon request, as well.

I. Certify Compliance. (§ 659.47)

The oversight agency must annually certify to the FTA that it is in compliance with this proposed rule.

Subpart D—The Oversight Agency's Relationship With the Transit Agency

A. Transit Agency Responsibilities. (§ 659.51)

For an oversight program to be successful, the oversight agency and the transit agency must form a good working relationship in which both parties perform certain roles. This section defines the role of the transit agency in this oversight program.

Because section 28 authorizes FTA to create only a State oversight program, we have defined the role of the transit agency indirectly by proposing a two-tiered program. Under this program, the oversight agency must perform certain tasks and, in turn, require the transit agency to perform other complementary tasks.

This section accordingly is divided into three subsections: Subsection (a), which specifies those activities that the transit agency must perform; subsection (b), which specifies those occurrences that the transit agency must report to the oversight agency; and subsection (c), which requires the transit agency to submit certain reports to the oversight agency.

Subsection (a) contains the essence of the relationship between the transit agency and the oversight agency and specifies those activities that the transit agency must perform for this oversight scheme to work.

The most important function the transit agency performs is developing a system safety program plan. Based on the comments we have received, most transit agencies have already developed

and implemented a system safety program plan unique to their systems. Under the NPRM, however, the transit agency's system safety program plan must conform to its oversight agency's system safety program standard. Hence, the transit agency continues to be the entity ultimately responsible for developing its own unique system safety program plan, while the oversight agency is responsible for developing the standards it determines to be appropriate, thus ensuring the safety of the systems within its jurisdiction. Subsection (a) also requires the oversight agency to ensure that the system safety program plan is updated when needed.

Another critical function the transit agency performs is to audit its implementation of its system safety program plan. The audit should be performed by the certified transit safety professional according to the procedures developed or adopted by the oversight agency.

The transit agency also is responsible for classifying hazardous conditions according to their severity. Because the transit agency and the oversight agency must agree on this fundamental issue, this provision of the NPRM requires hazardous conditions to be classified according to the Hazard Resolution Matrix contained in APTA's guidelines. Once hazardous conditions are classified, the oversight agency knows which hazardous conditions it must investigate under this proposed rule and section 28.

After classifying hazardous conditions, the transit agency must correct or eliminate them within the time period specified by the oversight agency. If a condition is an unacceptable hazardous condition, the transit agency must correct or eliminate it as soon as practicable. Then, the transit agency must prepare a corrective action plan for the oversight agency's approval. Approval of the corrective action plan by the oversight agency ensures that it is performing its role under section 28 and ensures the safety of the rail fixed guideway system.

The transit agency must designate a certified transit safety professional to perform its role under this proposed rule, just as the oversight agency appoints one to perform its role. Both the oversight agency and the transit agency appoint a certified transit safety professional to ensure that both entities use a certified person to perform the functions of implementing this oversight program and ensuring the safety of rail fixed guideway systems. Moreover, communication between the two agencies is enhanced when the contact persons have received the same training and understand the concept of system safety.

Although the NPRM proposes only that the transit agency's certified transit safety professional perform the safety audits and prepare the semi-annual safety audit reports, we encourage them to play a much greater role in the system safety program plan process.

Subsection (b) lists those occurrences that the transit agency must report to the oversight agency. This list represents those occurrences that we believe the oversight agency must know about to be able to perform its role under section 28. Subsection (b), however, gives the oversight agency the authority to determine when it would like to be told about certain events. For example, the oversight agency may wish to be notified within a few hours of a fatal accident. On the other hand, it may set different notification time periods for other occurrences such as the discovery of an unacceptable hazardous condition.

Subsection (c) of this section requires the transit agency to submit copies of its semi-annual safety audit reports to the oversight agency. This requirement ensures that the transit agency is implementing its system safety program plan.

Subpart E—Certifying Compliance

A. Contents of the Certification. (§ 659.61)

In this section, the oversight agency is required to annually certify before October 1 of each year, that it is in compliance with this part. It is important to note that for the oversight agency to be in compliance with this part it must also ensure that the transit agency is performing its role under this proposed rule.

V. Regulatory Process Matters

A. Executive Order 12866

The FTA has evaluated the costs and benefits to the States of creating an oversight program to oversee the safety of rail fixed guideway systems and has determined that this proposed rule is not a major rule under Executive order 12866 because the costs of creating the oversight program is not likely to exceed $100 million in any one year.

B. Departmental Significance

This proposed rule is a "significant regulation" under the Department's Regulatory Policies and Procedures, because it changes an important Departmental policy. That policy change requires the States to oversee the safety of rail fixed guideway systems, something the Federal government has never before required.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), the Federal Transit Administration has evaluated the effects of this proposed rule on small entities. Based on this evaluation, the agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because the affected transit agencies likely, in most if not all, cases will be large. We seek comment on whether any small entity will be significantly affected economically.

D. Paperwork Reduction Act

This proposed rule includes information collection requirements subject to the Paperwork Reduction Act. A request for Paperwork Reduction Act approval will be submitted to the Office of Management and Budget in conjunction with this proposed rule. Information collection requirements are not effective until the Paperwork Act clearance has been received.

E. Executive Order 12612

We have reviewed this proposed rule under the requirements of Executive order 12612 on Federalism. Although the Federal Transit Administration has determined that this proposed rule has significant Federalism implications to warrant a Federalism assessment, this rulemaking is mandated by the FT Act, which requires a State to create an oversight agency to oversee the safety of rail fixed guideway systems.

In considering the Federalism implications of the proposed rule, FTA has focused on several key provisions of Executive order 12612.

Necessity for action. This proposed rule is mandated by law, which requires that rail fixed guideway systems be subject to State oversight. Approximately twenty-one States have current rail fixed guideway systems operating within their jurisdictions. Of those, only four States have established a State oversight program, which means that seventeen States have no formal oversight program at the State level. Since literally millions of people ride public transportation daily, Congress has determined that there should be an entity overseeing the safety practices of these rail fixed guideway systems.

Consultation with State and local governments. FTA's mission is to provide financial assistance to mass transportation systems throughout the nation, and the agency thus provides grants to State and local governments. Because this rule will affect almost half

of the States as well as many local governments, we published an ANPRM in the **Federal Register** on June 25, 1992, at 57 FR 28572 to solicit the views of State and local governments. In addition, we held three public hearings in conjunction with the ANPRM. In short, we actively sought the views and comments of the affected States.

Need for Federal action. This rule responds to a Congressional mandate but is designed to give a State maximum flexibility in designing its own oversight program. The NPRM proposes criteria which a State is free to expand upon.

Authority. The statutory authority for this proposed rule is discussed elsewhere in this preamble.

Pre-emption. This rule does not, as such, pre-empt State or local law. There may be instances in which a State or local agency faces a conflict between compliance with the proposed rule and State and local requirements. Because compliance with the rule is a condition of Federal financial assistance, State and local governments have the option of not seeking the Federal funds if they do not choose to comply with this rule.

F. National Environmental Policy Act

The agency has determined that this proposed rule has no environmental implications. Its purpose is to create a State oversight program designed to oversee the safety of rail fixed guideway systems.

G. Energy Impact Implications

This regulation does not affect the use of energy because it creates a State oversight program designed to oversee the safety of rail fixed guideway systems.

List of Subjects in 49 CFR Part 659

Grant programs—transportation, Incorporation by reference, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, for the reasons cited above, the agency proposes to amend title 49 of the Code of Federal Regulations by adding a new part 659, to read as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Sec.

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Subpart D—The Oversight Agency's Relationship With The Transit Agency

659.51 Transit agency responsibilities.

Subpart E—Certifying Compliance

659.61 Contents of certification.

Appendix to Part 659—Sample Certification of Compliance

Authority: Federal Transit Act, as amended (49 U.S.C. app. 1601 *et seq.*).

Subpart A—General Provisions

§ 659.1 Purpose.

This part implements section 3029 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) which added section 28 to the Federal Transit Act, as amended (FT Act). Section 28 requires a State to oversee the safety of rail fixed guideway systems through a designated oversight agency. This part addresses the responsibility of the oversight agency to oversee the rail fixed guideway system and to report its findings to the Federal Transit Administration.

§ 659.3 Scope.

This part applies to a State that has within its boundaries a rail fixed guideway system not regulated by the Federal Railroad Administration (FRA).

§ 659.5 Definitions.

As used in this part—

Accident means any event involving the operation of a rail fixed guideway system resulting in:

(1) Death directly related to the event;

(2) Injury requiring hospitalization within twenty-four hours of the event;

(3) A collision, derailment, or fire causing property damage in excess of $25,000; or

(4) An emergency evacuation.

Accountability factor means a written determination by the transit agency of the tasks essential to the safe operation of the rail fixed guideway system and the designation of transit agency officials accountable for the performance of those tasks.

Biennial safety review means a formal, comprehensive examination of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan.

Certified transit safety professional means a person who has successfully completed the Safety Professional Certification requirements established by the Board of Certified Safety Professionals, 208 Burwash Avenue, Savoy, Illinois 61874–9510, or, a registered professional engineer in system safety.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Hazardous condition means a condition which may endanger human life or property.

Investigation means a process to determine the probable cause of an accident or an unacceptable hazardous condition.

Oversight agency means the entity, other than the transit agency, designated by the State or several States to implement this part.

Rail fixed guideway system means any public transportation facility:

(1) Not regulated by the Federal Railroad Administration;

(2) Which occupies a separate right-of-way exclusively for public transportation service, or uses a steel-wheeled fixed catenary or other rail system sharing a right-of-way with other forms of transportation; and

(3) Which is included in the calculation of fixed guideway route miles under section 9 of the FT Act.

Safety audit means a methodical, ongoing, internal examination of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan.

System safety program guidelines means the American Public Transit Association's Manual for the Development of Rail Transit System Safety Program Plans.

System safety program plan means a document written by the transit agency detailing its safety policies, objectives, responsibilities, and procedures and containing the accountability factor.

System safety program standard means the standard developed and adopted by the State oversight agency which, at a minimum, complies with the American Public Transit Association's Manual for the Development of Rail Transit System Safety Program Plans.

Transit agency means an entity operating a rail fixed guideway system.

Unacceptable hazardous conditions means a hazardous condition determined to be an unacceptable hazardous condition using the Hazard Resolution Matrix of the Rail Safety Audit Manual published by the American Public Transit Association.

§ 659.7 Withholding of funds for non-compliance.

The Administrator of the FTA may withhold up to five percent of the amount required to be apportioned for use in any State or affected urbanized area in such State under section 9 for any fiscal year beginning after September 30, 1994, if the State in the previous fiscal year has not met the requirements of this part and the Administrator determines that the State is not making adequate efforts to comply with this part.

Subpart B—The Role of the State

§ 659.21 Designate oversight agency.

(a) For a transit agency or agencies within a single State, the State must designate an agency of the State to implement the requirements of this part.

(b) For a transit agency operating a system within more than one State, those States may designate a single entity, other than the transit agency, to implement the requirements of this part.

Subpart C—The Oversight Agency's Role

§ 659.31 Appoint a certified transit safety professional.

(a) Except as provided in paragraph (b) of this section, the oversight agency must designate a certified transit safety professional to implement the requirements of this part. The designee may be a State oversight agency employee or a contractor.

(b) An oversight agency satisfies the provisions of paragraph (a) of this section if the individual designated to implement the requirements of this part is certified as a transit safety professional within three years of the effective date of the final rule.

§ 659.33 Adopt system safety program standard.

(a) The oversight agency must develop and adopt a system safety program standard that, at a minimum—

(1) Complies with the American Public Transit Association's Manual for the Development of Rail Transit System Safety Program Plans (APTA's Manual) published on August 20, 1991, hereby incorporated by reference; and

(2) Includes the accountability factor.

(b) APTA's Manual specifies procedures for developing a system safety program plan. It also contains a sample format for a system safety program plan, generally discusses the principle of system safety, and specifically addresses certain issues critical to the safe operation of a rail fixed guideway system.

(c) The incorporation by reference of the American Public Transit Association's Manual for the Development of Rail Transit Systems Safety Program Plans has been submitted to the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Manual may be obtained from the American Public Transit Association, 1201 New York Avenue, NW., Washington DC 20005–3917, (202) 893–4000. Copies also may be inspected at the Federal Transit Administration, room 6432, 400 7th Street, SW., Washington, DC 20590.

§ 659.35 Require system safety program plans.

The oversight agency must require that the transit agency adopt and implement a system safety program plan conforming to the oversight agency's system safety program standard. The system safety program plan must also contain the accountability factor.

§ 659.37 Review system safety program plan and semi-annual safety audit reports.

The oversight agency must:

(a) Approve the transit agency's system safety program plan before October 1, 1994;

(b) After September 30, 1994, review and approve the transit agency's system safety program plan in writing at least every two years;

(c) Develop safety audit procedures; and

(d) Review the semi-annual safety audit reports prepared by the transit agency under § 659.51(a)(3).

§ 659.39 Conduct biennial safety reviews.

The oversight agency must conduct a biennial safety review of the transit agency, on-site, and prepare and issue a report containing findings and recommendations resulting from that review.

§ 659.41 Conduct investigations.

(a) Unless the National Transportation Safety Board has investigated or will investigate an accident, the oversight agency must investigate accidents and unacceptable hazardous conditions occurring at a transit agency under its jurisdiction.

(b) The oversight agency must establish its own procedures to investigate accidents and unacceptable hazardous conditions.

§ 659.43 Require corrective actions.

(a) The oversight agency must require the transit agency to correct or eliminate any hazardous condition.

(b) The oversight agency must require the transit agency to correct or eliminate any unacceptable hazardous condition or any hazardous condition which has resulted in an accident in accordance with a corrective action plan approved by the oversight agency.

§ 659.45 Report to the Federal Transit Administration.

(a) In a report to the FTA, submitted before October 1 of each year, the oversight agency must annually summarize:

(1) Its oversight activities, including biennial safety reviews and investigations conducted under this part; and

(2) The status of corrective action plans.

(b) Reports of accidents, hazardous conditions, and corrective action plans must be forwarded to the FTA upon request.

(c) These reports and annual summaries must be sent to: The Federal Transit Administration, Office of Safety and Security, 400 7th Street, S.W., Washington, D.C. 20590.

§ 659.47 Certify compliance.

The oversight agency must annually certify compliance as specified in subpart E of this part.

Subpart D—The Oversight Agency's Relationship With the Transit Agency

§ 659.51 Transit agency responsibilities.

(a) The oversight agency must require the transit agency to:

(1) Establish and implement a system safety program plan conforming to the oversight agency's system safety program standard by October 1, 1994 and update it as necessary;

(2) Perform safety audits of its safety practices on an ongoing basis using minimum procedures established by the oversight agency;

(3) Prepare and submit semi-annual safety audit reports to the oversight agency on a date specified by the oversight agency;

(4) Classify hazardous conditions according to the Hazard Resolution Matrix of APTA's Rail Safety Audit Manual;

(5) Correct hazardous conditions within a time period specified by the oversight agency;

(6) Designate a certified transit safety professional or an individual who will

become a certified transit safety professional within three years of the date of the final rule to perform continuous safety audits of the transit agency and compile and submit a semi-annual safety audit report to the oversight agency; and

(7) Prepare plans to correct unacceptable hazardous conditions or any hazardous condition which caused an accident within a time period specified by the oversight agency.

(b) Within a period of time specified by the oversight agency, the oversight agency must require the transit agency to report accidents and unacceptable hazardous conditions to the oversight agency.

Subpart E—Certifying Compliance

§ 659.61 Contents of certification.

(a) Before October 1, 1994, and annually thereafter, the oversight agency must certify to the FTA that it has complied with the requirements of this part. Each certification shall comply with the applicable sample certification provided in the appendix to this part. Each certification shall be sent to: The Federal Transit Administration, Office of Safety and Security, 400 7th Street, SW., Washington, DC. 20590.

(b) Each certification must be signed by an appropriate official authorized by the oversight agency and must comply with the applicable sample certification provided in the appendix to this part.

Appendix to Part 659—Sample Certification of Compliance

This appendix contains an example of certification language.

I, (name), (title), certify that (name of the oversight agency) has a State oversight program that meets the requirements of 49 CFR Part 659 and further certify that neither I, (name), nor (name of the oversight agency) nor its contractors has a conflict of interest with any rail fixed guideway system overseen as a result of 49 CFR Part 659.

Issued: December 3, 1993.

Gordon J. Linton,

Administrator.

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LIST OF PUBLIC LAWS

The **List of Public Laws** for December 3, 1993, was inadvertently omitted from the **Federal Register**. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2650 / P.L. 103–159
To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm. (Nov. 30, 1993; 107 Stat. 1536; 11 pages).

H.R. 2401 / P.L. 103–160
National Defense Authorization Act for Fiscal Year 1994 (Nov. 30, 1993; 107 Stat. 1547; 420 pages).

H.R. 3341 / P.L. 103–161
To amend title 38, United States Code, to increase the rate of special pension payable to persons who have received the Congressional Medal of Honor. (Nov. 30, 1993; 107 Stat. 1967; 1 page).

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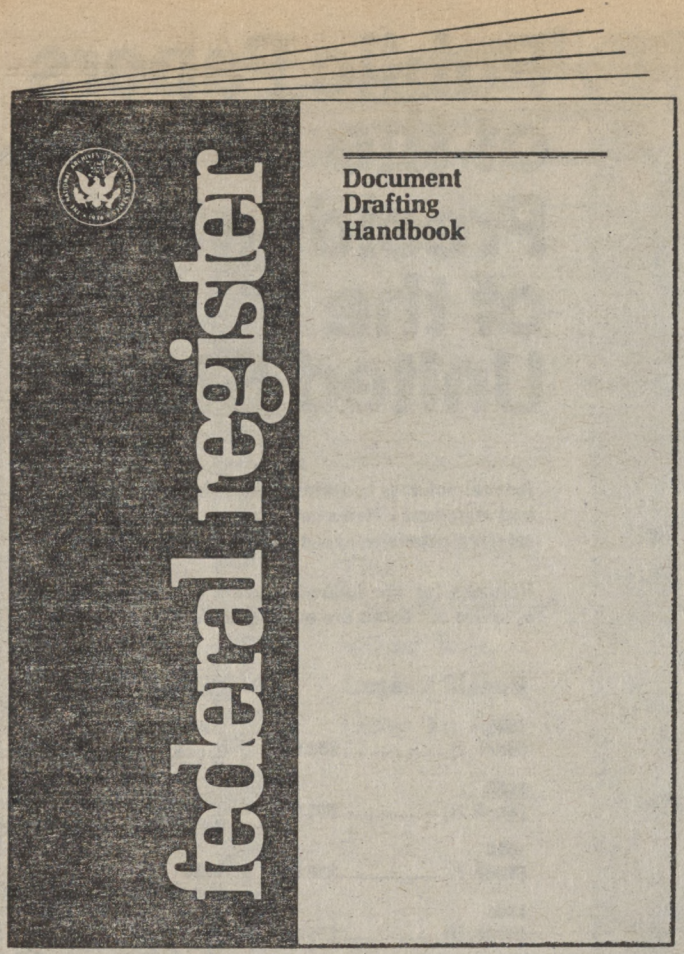

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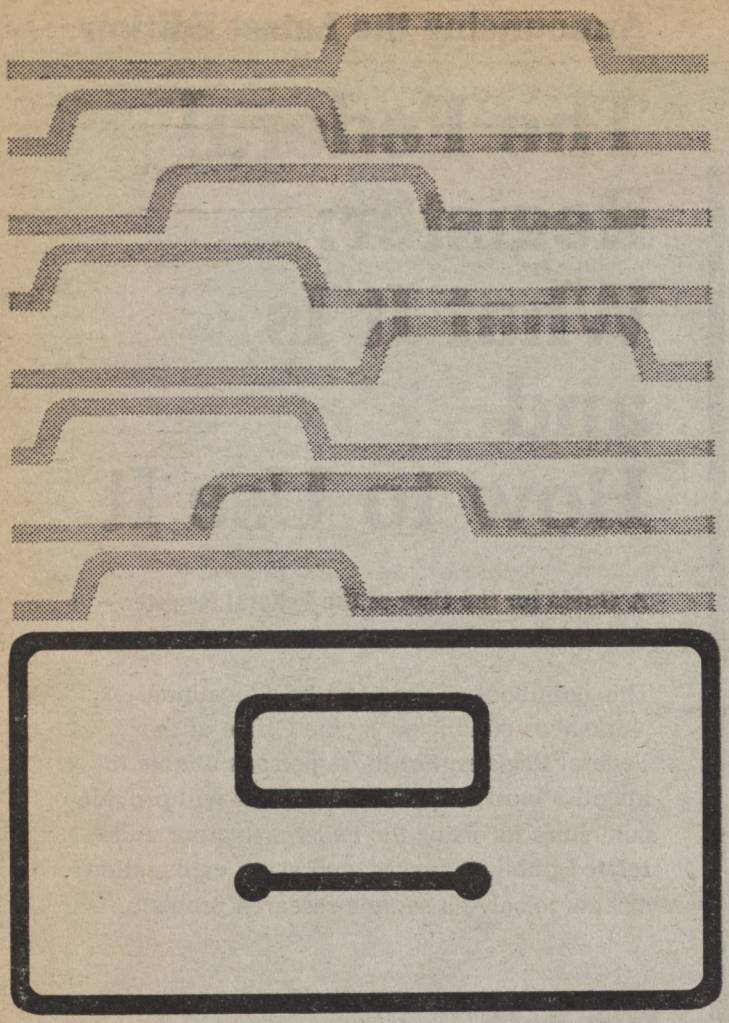

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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