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Friday
January 13, 1995

Briefings on How To Use the Federal Register
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(TWO BRIEFINGS)

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Federal Register

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930

RIN 3206–AG18

Federal Staffing Provisions Supporting Sunset of the Federal Personnel Manual

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule places into regulation a limited number of Federal staffing provisions that were formerly in the Federal Personnel Manual (FPM). The remaining ''provisionally retained'' portions of the FPM were abolished on December 31, 1994. This rule deletes or replaces regulatory language which references the FPM. Its provisions also define or clarify terms and describe procedures used in veterans' preference, reductions in force, veterans' readjustment appointments, term appointments, seasonal and intermittent employment, noncompetitive term appointments based on Peace Corps service, exemption of certain employees from coverage of the Part-time Career Employment Act, physical requirements for employment, and actions taken during a national emergency (including the possible appointment of relatives). They extend delegations to agencies for assigning persons serving under excepted appointments to the work of positions in the competitive service; making temporary appointments of worker trainees pending establishment of a register (TAPER); and extending time limits for overseas temporary appointments. The provisions also delete requirements for a number of regular reports. In the case of part 351, Reduction in Force, and part 353, Restoration to Duty From Military Service or Compensable Injury, sections are reworded for clarity and consistency with decisions of the Merit Systems Protection Board.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Diane Bohling, (202) 606–0960 with questions concerning the changes in 5 CFR 330; Thomas Glennon, (202) 606–0960 concerning the changes in 5 CFR 351; Raleigh Neville, (202) 606–0830 concerning the changes in 5 CFR 340, 5 CFR 353 and 5 CFR 930; and Mike Carmichael or Karen Jacobs, (202) 606–0830, concerning the other changes.

SUPPLEMENTARY INFORMATION: The Vice President's National Performance Review (NPR) recommended that the Office of Personnel Management (OPM) ''phase out the entire 10,000 page Federal Personnel Manual (FPM).'' The President endorsed the NPR recommendations.

In planning to abolish the FPM, OPM met over an extended period with representatives of agencies and employee unions to identify which FPM policies should be dropped, which should be continued in regulation, and which should be available as a helpful reference in an alternative format. The resulting recommendations were reviewed and endorsed by the Interagency Advisory Group of agency personnel directors and by the National Partnership Council.

This rule carries out the recommendations of those groups to retain selected current policies in the area of staffing. Regulations to establish new policies, including implementation of P.L. 103–353 (veterans' reemployment rights), will be proposed separately.

The proposed rule was published in the **Federal Register** at 59 FR 55212 on November 4, 1994, with a request for comments on or before December 5, 1994. A copy of the proposed rule (including a line that was inadvertently dropped in printing) was posted on November 3, 1994, on OPM's computer bulletin board, Mainstreet. At the same time, all personnel directors of departments and agencies were notified by fax of the posting on Mainstreet and of the pending **Federal Register** publication. The publication of the proposed rule was also announced in a meeting of the Interagency Advisory Group of personnel directors.

Comments on the proposed rule were received from three departments, two components of departments that had commented separately, one independent agency, and one employee union.

We did not adopt suggestions for new policies not previously in regulation or in the Federal Personnel Manual. Specifically, that included suggestions to drop excepted service temporary employees from reduction-in-force tenure group III and to deregulate the reemployment priority list program. Although such suggestions will be considered for future program improvements, they would have violated the consensus gained for this particular rule from the long, collaborative review process with agencies and unions. The consensus was to continue, through this rule, a limited number of existing staffing policies that would have ended with the sunset of the FPM. There was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL). That consensus was also likely the reason that few made comments on the proposed rule and that comments sought clarification rather than change

We also did not adopt recommendations to delete references to the FPM in sections of the Code of Federal Regulations outside the scope of this rule. Those deletions will be proposed with other regulatory changes.

A department recommended amending § 301.203 to delegate authority directly to agencies to approve time-limit exceptions for overseas limited appointments. We prefer to maintain OPM's role in approving such delegations until agencies have more experience with the recent regulatory changes for temporary employment.

We also did not conclude that epidemics warrant emergency-indefinite appointment authority in § 230.402(b).

Questions about terminology in the proposed rule are addressed here: ''Equivalent grades in the Federal Wage System'' are mentioned in § 316.201(b) because there technically could be grades in the Federal Wage System other than just ''WG.'' Subpart D of $340 eliminates reference to ''on-call'' employment as redundant; there is no substantive difference between seasonal and on-call. The change in terms from ''physically qualified'' to ''medically

qualified'' in § 930.105(a)(4) conforms to appropriate terminology in part 339 of this chapter; it has nothing to do with drug testing.

Comments did lead us to change wording in 12 places in this final rule, either to clarify provisions or to adhere more closely to existing policy.

In redesignated § 230.402(d)(1) a reference to the Federal Personnel Manual (FPM) is deleted.

Since paragraphs were re-lettered in § 230.402, redesignated § 230.402(h)(2) is amended to refer to previous paragraph (c), not paragraph (b).

A reference to the FPM is deleted from § 300.104(b).

Added wording in § 307.104 clarifies the second year appeal rights of persons holding veterans readjustment appointments.

A line is restored to § 316.201. It inadvertently had been dropped from the proposed rule. It does not change the thrust of the section, but clarifies how long a position should last for there to be a TAPER appointment.

In § 330.202, paragraph (c) is revised for clarity.

In § 330.203, paragraph (d)(2)(iv) is revised to clarify that a person is ineligible for RPL if that person separates for a reason other than RIF on the date scheduled for a RIF separation.

Paragraph (d)(3) of § 330.203 is also reworded to more faithfully reflect existing policy and to avoid adding a new requirement for agencies.

In § 330.208, paragraph (a)(1) is revised to recognize single agency qualification standards.

Section 333.102 is revised to use terms consistently.

In § 353.301, paragraph (a) is corrected so the title and content agree.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 211

Government employees, Veterans.

5 CFR Part 230

Civil defense, Government employees.

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 301

Government employees.

5 CFR Part 307

Government employees, Veterans.

5 CFR Part 310

Government employees.

5 CFR Part 316

Government employees.

5 CFR Part 330

Armed forces reserves, Government employees.

5 CFR Part 333

Government employees.

5 CFR Part 339

Equal employment opportunity, Government employees, Health, Individuals with disabilities.

5 CFR Part 340

Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

Office of Personnel Management.

James B. King,

Director.

Accordingly, 5 CFR parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930 are amended as set forth below.

PART 211—VETERAN PREFERENCE

1. Part 211 is revised to read as follows:

PART 211—VETERAN PREFERENCE

Sec.
211.101 Purpose.
211.102 Definitions.
211.103 Administration of preference.

Authority: 5 U.S.C. 1302.

§ 211.101 Purpose.

The purpose of this part is to define veterans' preference and the administration of preference in Federal employment. (5 U.S.C. 2108)

§ 211.102 Definitions.

For purposes of preference in Federal employment the following definitions apply:

(a) *Veteran* means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or

(3) During the period beginning April 28, 1952, and ending July 1, 1995; or,

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976.

(b) *Disabled veteran* means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(c) *Preference eligible* means veterans, spouses, widows, or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned score on a civil service examination (see 5 U.S.C. 3309). They are also accorded a higher retention standing in the event of a reduction in force (see 5 U.S.C. 3502). Preference does not apply, however, to inservice placement actions such as promotions.

(d) *Armed forces* means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) *Uniformed services* means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(f) *Active duty or active military duty* means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(g) *Separated under honorable conditions* means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

§ 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for

preference based on a common law marriage. Such a claim should be referred to OPM's General Counsel for decision.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

2. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954—1958 Comp., p. 218; sec. 230.402 also issued under 5 U.S.C. 1104.

3. In § 230.402, paragraphs (a) through (h) are redesignated as paragraphs (b) through (i), respectively; a new paragraph (a) is added; and newly redesignated paragraphs (b), (d)(1), and (h)(2) are revised to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *When a national emergency exists*—(1) *Definition.* A national emergency must meet *all* of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) *Termination of a national emergency.* A national emergency no longer exists if it is officially terminated by the President or Congress, or if the *specific* circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) *Basic authority.* Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by paragraphs (c) and (d) of this section, agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

* * * * *

(d)(1) Persons who were recruited on a standby basis prior to the national emergency;

* * * * *

(h) * * *

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (c) of this section.

* * * * *

PART 300—EMPLOYMENT (GENERAL)

4. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

5. In § 300.104, paragraph (b) is revised to read as follows:

§ 300.104 Appeals, grievances and complaints.

(b) *Examination ratings.* A candidate may file an appeal with the Office from his or her examination rating or the rejection of his or her application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal and supporting documents shall be filed with the agency office that determined the rating.

* * * * *

6. In § 300.201, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively and a new paragraph (b) is added to read as follows:

§ 300.201 Examinations.

* * * * *

(b) The Office maintains control over the security and release of testing and examination materials which it has developed and made available to agencies for initial competitive appointment or inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in paragraphs (a)(1) and (a)(2) of this section.

7. A new subpart C, consisting of § 300.301, is added to read as follows:

Subpart C—Details of Employees

Sec.
300.301 Authority.

§ 300.301 Authority.

(a) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or the Veterans Readjustment Act, to a position in the competitive service.

(c) Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under a delegated agreement between the agency and OPM.

8. In § 300.407, paragraph (b) is revised to read as follows:

§ 300.407 Documentation.

* * * * *

(b) When requested by OPM, agencies will provide reports on the use of commercial recruiting firms, based on the records required in paragraph (a) of this section.

PART 301—OVERSEAS EMPLOYMENT

9. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954–1958 Comp., p. 274, unless otherwise noted.

10. In § 301.203, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 301.203 Duration of appointment.

* * * * *

(c) An agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend such an appointment for up to a maximum of 1 additional year.

(d) Upon request from the headquarters level of a Department or agency, OPM may approve, or delegate to agencies the authority to approve, exceptions to the time limits set out in paragraph (c) of this section.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

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

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.102 [Amended]

12. In § 307.102, paragraph (c) is removed.

13. Section 307.103 is revised to read as follows:

§ 307.103 Appointing authority.

(a) An agency may appoint any veteran who served on active duty after August 4, 1964, who meets the basic veterans readjustment eligibility provided by law.

(b) Appointments are subject to investigation by OPM. A law, Executive order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

14. Section 307.104 is added to read as follows:

§ 307.104 Appeal rights.

A veterans readjustment appointment (VRA) is an excepted appointment to a position otherwise in the competitive service. Veterans readjustment appointees have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter, except the appointees are also entitled to limited appeal protection during their 1st year of service as set forth in § 315.806 of this chapter. This means that a VRA appointee with more than 1 year of current continuous service, who is also a preference eligible, can appeal an adverse action to the Merit Systems Protection Board. Nonpreference eligibles serving under VRA appointments do not get such protection until they are converted to the competitive service.

PART 310—EMPLOYMENT OF RELATIVES

15. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 3302, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306.

16. Section 310.202 is revised to read as follows:

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a 2nd month if the emergency need still exists.

PART 316—TEMPORARY AND TERM EMPLOYMENT

17. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302 and E.O. 10577 (3 CFR 1954–1958 Comp. p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 22 U.S.C. 2506 (94 Stat. 2158); 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

18. Section 316.201 is revised to read as follows:

§ 316.201 Purpose and duration.

(a) *General.* OPM may authorize an agency to fill a vacancy by temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified. The agency must follow the provisions of part 333 of this chapter when making a TAPER appointment.

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1, and WG–2 and may reassign or promote the appointees to other positions through grade GS–3, WG–4, or equivalent grades in the Federal Wage System.

19. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year but not more than 4 years when the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, or contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

20. In § 316.302, paragraph (c)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(c) * * *

(3) A person eligible for career or career-conditional employment under §§ 315.601, 315.605, 315.606, 315.607, 316.608, 315.609, or 315.703 of this chapter.

* * * * *

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

21. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S. C. 1302, 3301, 3302; E.O. 10577; 3 CFR, 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under sec. 4432 of Pub. Law 102–484.

22. Section 330.201 is revised to read as follows:

§ 330.201 Establishment and maintenance of RPL.

(a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. The RPL is a required component of agency positive placement programs. In filling vacancies, the agency must give RPL registrants priority consideration over certain outside job applicants and, if it chooses, also may consider RPL registrants before considering internal candidates.

(b) Each agency is required to establish and maintain a reemployment priority list for each commuting area in which it separates eligible competitive service employess by RIF or when a former employee recovers from a compensable injury after more than 1 year, except as provided in paragraph (c) of this section. For purposes of this subpart, *agency* means *Executive agency* as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL and are responsible for giving priority consideration to the RPL registrants.

(c) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart. The intent of this provision is to allow agencies to adopt different placement strategies that are effective for their particular programs

yet satisfy legal entitlements to priority consideration in reemployment.

23. In § 330.202, paragraph (a)(1) is revised and paragraph (c) is added to read as follows:

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours or work per week, in addition to positions at the same representative rate and type of work schedule (e.g., full-time, part-time, seasonal, intermittent, on-call, etc.) as the position from which the employee was or will be separated. Registration may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

* * * * *

(c) Agencies should be prepared to assist employees, when requested, in identifying and listing on the reemployment priority list (RPL) application those positions within the agency for which the employee qualifies and is interested.

24. In § 330.203, paragraphs (a)(4) and (c) are revised and paragraph (d), (e), (f), and (g) are added to read as follows:

§ 330.203 Eligibility due to reduction in force.

(a) * * *

(4) Have not declined an offer under subpart G of part 351 of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was or will be separated.

* * * * *

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL.

(d)(1) When an individual declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, and the position meets the acceptable conditions shown in his or her application, he or she loses RPL consideration for all positions with a representative rate at or below that grade. However, subject to paragraph (d)(2)(iii) of this section, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

(2) Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(i) Requests removal;

(ii) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(iii) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, by the employee's former agency, concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated.

(iv) Separates for some other reason (such as retirement, resignation, etc.) before the date the RIF separation would take effect. An employee who retires on or after the date of separation by RIF does not lose RPL eligibility.

(v) Declines an interview or fails to appear for a scheduled interview only if notified in advance of this requirement and the subsequent consequences.

(vi) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

(3) When an agency removes an individual from the RPL because of failure to reply to a specific permanent job offer or an inquiry of availability for a specific permanent vacancy, the agency must have evidence to show that a written offer or inquiry was made (e.g., a Postal Service ''return receipt signed by addressee only''). The written offer or inquiry to the individual must clearly state that failure to respond will result in loss of RPL consideration for that grade or higher grades, if eligible.

(e) Declination of nonpermanent employment has no effect on RPL eligibility or continuation of RPL consideration.

(f) Consideration for all jobs (whether permanent or nonpermanent) is suspended for any individual who cannot be reached by the agency. Submission of an updated application can reinstate consideration, but the period of eligibility is not extended beyond the original time set in paragraph (c) of this section.

(g) Eligibles who had agreed to transfer with their function but were separated by RIF from the gaining competitive area are registered on the RPL of the gaining competitive area.

25. In § 330.204, paragraphs (a) and (b)(3) are revised and paragraph (c) is added to read as follows:

§ 330.204 Eligibility due to compensable injury.

(a) A competitive service employee in tenure group I or II who is separated (or who accepts a lower graded position in lieu of separation) because of a compensable injury of disability (as defined in part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL provided the individual applies within the timeframes addressed in § 330.202. Part 353 of this chapter contains information on eligibility.

* * * * *

(b) * * *

(3) Declines an offer or fails to respond to an inquiry of availability about a specific position that is the same as or equivalent to the position from which separated.

(c) A former employee must request reemployment consideration with the time limits set in § 330.202.

26. Section 330.205 is revised to read as follows:

§ 330.205 Employment restrictions.

(a) The restrictions in paragraph (b) of this section apply to the filling of all competitive service vacancies, regardless of whether an agency plans to make a temporary, term, or permanent appointment. This means an agency must consider RPL registrants for nonpermanent as well as permanent positions when they have indicated such interest on their RPL application.

(b) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability

within 1 year, or is exercising other statutory or regulatory reemployment rights.

(c) Paragraph (b) of this section does not apply to actions involving employees on an agency's rolls, as authorized in paragraphs (c) (1), (2), and (3) of this section, or in filling a specific position:

(1) When all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an official agency inquiry about their availability for it; or

(2) By a current, qualified employee of the agency through:

(i) Detail or position change (promotion, demotion, reassignment); or

(ii) Conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility (e.g., Veterans Readjustment Appointee, 30 percent disabled veterans, disabled employees under Schedule A appointment, Presidential Management Interns, cooperative education students under Schedule B appointment, and TAPERS); or

(iii) Reappointment without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less and not to a permanent appointment); or

(iv) Extension of an employee's temporary appointment up to the maximum permitted by the appointment authority or as authorized by OPM.

(3) By a 30-day special needs appointment or 700 hour temporary appointment of a severely disabled or mentally restored individual, when the agency's staffing policies provide for these exceptions.

(d) An agency must clear the RPL at the grade level at which it fills a position (regardless of the full performance level). Similarly, if an agency advertises a position at multiple grade levels, it must clear the RPL only at the grade level at which the position is ultimately filled.

(e) Once an agency has cleared its RPL and made a final employment commitment to an individual, the later registration of another employee on the RPL does not prevent the fulfillment of the original commitment, regardless of when the individual actually enters on duty.

(f) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d).

(g) When submitting a request for referral of eligibles, an agency is required to indicate that no qualified RPL registrant is available for the vacancy and therefore the agency may make a new appointment. Similarly, an agency must clear its RPL before making appointments under a direct-hire authority, which includes the Outstanding Scholar provision, or delegated examining authority.

27. In § 330.206, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.

(2) An employee is considered for positions having the same type of work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

* * * * *

(b)(1) An eligible employee under § 330.205 is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at the time and in a manner as the agency determines will provide the individual with maximum opportunities for consideration.

(2) In lieu of expanded consideration in other locations, an individual who cannot be placed in his or her former or equivalent position in the former commuting area may elect to be considered for the next best available position in the former commuting area.

28. In § 330.207, paragraphs (a), (b), (c)(1), and (d) are revised to read as follows:

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. After a method is adopted, the agency uses that method in filling all positions. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency shall place qualified individuals in group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing. A person has no greater priority for the grade or position from which separated than any other person on the list who is qualified for the vacancy. An agency may make an exception to this selection order only in accordance with paragraph (d) of this section.

(c)(1) *Rating and ranking.* For each vacancy to be filled, the agency rates qualified individuals according to their job experience and education. To do this, an agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

* * * * *

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL. The exception may be granted only when necessary to obtain an employee for duties that cannot be taken over without undue interruption (as defined in § 351.203 of this chapter) to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify, in writing, each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

29. In § 330.208, paragraphs (a)(1) and (b) introductory text are revised and

paragraph (a)(4) is added to read as follows:

§ 330.208 Qualification requirements.

(a) * * *

(1) Meets OPM-established or approved qualification standards and requirements for the position, including any minimum educational requirements, and any selection placement factors established by the agency;

* * * * *

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by § 330.207):

* * * * *

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

30. The authority citation for part 333 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5).

31. Section 333.101 is revised to read as follows:

§ 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he or she is not disqualified for any of the reasons listed in § 339.101 and § 731.201 of this chapter. Candidates found to be qualified shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

32. Section 333.102 is revised to read as follows:

§ 333.102 Public notice for temporary and term appointments outside the register.

An agency recruiting outside the register must send a vacancy announcement to the OPM job information center(s) and place an order with the State Employment Service office(s) that have geographic jurisdiction over the position(s). The notices must describe the qualifications required and application deadline; must include equal opportunity and veterans preference provisions; and must follow other OPM instructions for preparing vacancy announcements.

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

33. The authority citation for part 339 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

34. In § 339.102, paragraph (b) is revised to read as follows:

§ 339.102 Purpose and effect.

* * * * *

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title.

* * * * *

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, AND INTERMITTENT)

35. The authority citation for part 340 continues to read as follows:

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

36. In § 340.202, paragraph (c) is revised to read as follows:

§ 340.202 General.

* * * * *

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term ''part-time career employment'' do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. For this purpose, a mixed tour of duty consists of annually recurring periods of full-time, part-time, or intermittent service as long as the employee does not work part-time more than 6 pay periods per calendar year.

37. Subpart D of part 340 is revised to read as follows:

Subpart D—Seasonal and Intermittent Employment

Sec.
340.401 Definitions.
340.402 Seasonal employment
340.403 Intermittent employment.

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

Subpart D—Seasonal and intermittent Employment

§ 340.401 Definitions.

(a) *Seasonal employment* means annually recurring periods of work of less than 12 months each year. Seasonal employees are permanent employees who are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) *Intermittent employment* means employment without a regularly scheduled tour of duty.

§ 340.402 Seasonal employment.

(a) *Appropriate use.* Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) *Length of the season.* Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period. While in nonpay status, a seasonal employee may accept other employment, Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee responsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) *Employment agreement.* An employment agreement must be executed between the agency and the seasonal employee prior to the employee's entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,

(2) The minimum and maximum period the employee can expect to work,

(3) The basis on which release and recall procedures will be effected, and

(4) The benefits to which the employee will be entitled while in a nonpay status.

(d) *Release and recall procedures.* A seasonal employee is released to nonpay status at the end of a season and recalled to duty the next season. Release and recall procedures must be

established in advance and uniformly applied. They may be based on performance, seniority, veterans' preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) *Noncompetitive movement.* Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) *Appropriate use.* An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) *Noncompetitive movement.* Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

PART 351—REDUCTION IN FORCE

38. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; § 351.801 also issued under E.O. 12828, 58 FR 2965.

39. In § 351.202, paragraph (c)(7) is added to read as follows:

§ 351.202 Coverage.

* * * * *

(c) * * *

(7) A change in an employee's work schedule from other-than-full-time to full-time. (A change from full-time to other than full-time for a reason covered in § 351.201(A)(2) is covered by this part.)

40. Section 351.203 is amended by adding alphabetically the definitions of ''Furlough'' and ''Undue Interruption'' to read as follows:

§ 351.203 Definitions.

* * * * *

Furlough under this part means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

* * * * *

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

41. In § 351.301, the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 351.301 Applicability.

* * * * *

(b) In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (i.e., in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

42. In § 351.302, paragraphs (f) and (g) are added to read as follows:

§ 351.302 Transfer of employees.

* * * * *

(f) An agency may not separate an employee who declines to transfer with the function any sooner than it transfers employees who chose to transfer with the function to the gaining competitive area.

(g) Agencies may ask employees in a canvass letter whether the employee wishes to transfer with the function when the function transfers to a different local commuting area. The canvass letter must give the employee information concerning entitlements available to the employee if the employee accepts the offer to transfer, and if the employee declines the offer to transfer. An employee may later change and initial acceptance offer without penalty. However, an employee may not later change an initial declination of the offer to transfer.

43. In § 351.303, paragraph (a) is revised and paragraph (c)(3) is added to read as follows:

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

* * * * *

(c) * * *

(3) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).

* * * * *

44. In § 351.403, paragraph (a) is revised, paragraph (b)(5) is removed, and paragraph (b)(6) is redesignated as (b)(5) to read as follows:

§ 351.403 Competitive level.

(a)(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2) Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

* * * * *

45. In § 351.501, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

* * * * *

46. Section 351.502 is revised to read as follows:

§ 351.502 Order of retention—excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under § 351.501(a) for competing employees in the competitive service.

(b) Groups are defined as follows:

(1) Group I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group II includes each employee:

(i) Serving a trial period; or

(ii) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having such excepted appointments.

(3) Group III includes each employee:

(i) Whose tenure is indefinite (i.e., without specific time limit), but not actually or potentially permanent;

(ii) Whose appointment has a specific time limitation of more than 1 year; or

(iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with no break in service of 1 workday or more.

47. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

* * * * *

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.607 or § 351.608 is determined as of the date the employee would have been released from the competitive level had the exception not been used. The retention standing of each employee retained under either exception remains fixed until completion of the reduction in force action which resulted in the temporary retention.

* * * * *

48. In § 351.701, paragraph (a) is revised to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the lease possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

* * * * *

49. In § 351.702, paragraph (a)(4) is revised to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

* * * * *

50. In § 351.704, paragraph (b)(5) is added to read as follows:

§ 351.704 Rights and prohibitions.

* * * * *

(b) * * *

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

51. Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

Subpart A—General Provisions

Sec.
353.101 Scope.
353.102 Definitions.
353.103 Persons covered.
353.104 Notification of rights and obligations.
353.105 Maintenance of records.
353.106 Personnel actions during employee's absence.
353.107 Status upon reemployment.
353.108 Effect of performance and conduct on restoration rights.
353.109 Transfer of function to another agency.
353.110 OPM placement assistance.
353.111 Restoration rights of TAPER employees.

Subpart B—Military Service

353.201 Leaves of absence.
353.202 Mandatory restoration.
353.203 Physical disqualification.
353.204 Retention protection.
353.205 Prohibition against discrimination.

Subpart C—Compensable Injury

353.301 Restoration rights.
353.302 Status upon reemployment.

Subpart D—Appeal Rights

353.401 Appeals to the Merit Systems Protection Board.

Authority: 38 U.S.C. 4301, et seq., and 5 U.S.C. 8151.

Subpart A—General Provisions

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 4301 et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part. Subpart A covers those provisions that are common to both of the above groups of employees. Subpart B deals with provisions that apply just to military duty and subpart C covers provisions that pertain just to injured employees. Subpart D covers the appeal rights of both groups.

§ 353.102 Definitions.

In this part:

Agency means:

(1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and

(2) With respect to military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military duty means a period of:

(1) Active duty for training or for service in the Armed Forces of the United States;

(2) Inactive duty training in the Armed Forces of the United States; and

(3) Active duty in the Public Health Service that is covered by 38 U.S.C. 4304 (b). For the purpose of coverage under 38 U.S.C. 4304 (c) and (d), full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. For the purpose of 38 U.S.C. 4304 (d), inactive duty training performed by that member under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training.

Partially recovered means an injured employee, though not yet able to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1) (i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent without little likelihood for improvement or recovery.

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment with time limitation in a position outside the competitive service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.111 covers the restoration rights of employees serving under temporary appointments pending establishment of a register (TAPER).

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of military duty or compensable injury can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of military duty or compensable injury shall be considered for that position in accordance with the provisions in part 335 of this chapter.

§ 353.107 Status upon reemployment.

Upon reemployment, an employee who was absent on military duty or because of compensable injury is generally entitled to be treated as though he or she had never left. This means the entire period from the time the employee entered military service or was injured until he or she was reemployed is creditable for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure,

completion of probation, and leave rate accrual.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or military duty. However, separation for cause that is substantially unrelated to the injury or to the performance of military duty negates restoration rights. If during the period of injury or military duty the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent on military duty or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be reinstated to a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

(a) *Employee returning from military duty.*

(1) OPM will provide placement assistance to an employee with restoration rights in the executive or legislative branch, who either has competitive status, or if in the legislative branch is able to acquire competitive status under 5 U.S.C. 3304(c), provided—

(i) The employee's executive branch agency is abolished and its functions are not transferred, or it is not possible for the agency to restore the employee, or

(ii) It is not possible for a legislative branch employee to be restored in the legislative branch.

(2) If OPM determines the individual is qualified for a position in the executive branch which is either vacant or filled under temporary appointment, the returning employee will be offered the position.

(b) *Employee returning from compensable injury.* OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(c). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Priority Placement Program under part 330 of this chapter.

(c) This section does not apply to employees serving under a temporary appointment pending establishment of a register (TAPER).

§ 353.111 Restoration rights of TAPER employees.

An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under § 316.201 of this chapter (other than an employee serving in a position classified above GS–15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

Subpart B—Military Service

§ 353.201 Leaves of absence.

(a) *Entitlement.*

(1) The following employees are entitled under 38 U.S.C. 4304 to a leave of absence in connection with military duty:

(i) A member of a Reserve component (Reserve or National Guard) who performs active duty for training or inactive duty (38 U.S.C. 4304(d)), or

(ii) An employee who reports for enlistment, induction or physical examination (38 U.S.C. 4304(e)).

(2) There is no limitation in law as to the timing or duration of leaves of absence, nor is there any authority for an agency to deny a leave of absence. If an agency has concerns about the timing, frequency, or length of an employee's requests for a leave of absence, it should contact the commander of the military unit to determine if the duty can be changed.

(b) *Authorization required.* To be eligible for a leave of absence, the employee must be under military orders. Any of the following is acceptable evidence of orders:

(1) Written military orders,

(2) An inactive duty training or ''drill schedule'' published by the employee's military command or unit, or

(3) Verbal confirmation of such orders from the employee's military command or unit or military superior.

(c) *Work schedules.* An agency is not required to reschedule an employee's work in order to accommodate his or her Reserve obligation, and may not require the employee to reschedule his or her work in order to perform military duty on his or her own time.

(d) *Return to duty.*

(1) An employee on a leave of absence for military duty is required to report for work at the beginning of the first regularly scheduled workday following release, rejection for service or completion of physical examination. If hospitalized incident to training or examination, the employee is required to report at the beginning of the first regularly scheduled workday following discharge from hospitalization, or within 1 year or release from military duty, whichever is earlier. In all cases, necessary travel time or other delays beyond the individual's control may extend the reporting date. An employee who fails to report within these time limits is subject to normal agency disciplinary procedures related to absences from work.

(2) An employee on a leave of absence returns to the position he or she left, or if applicable, to the position to which reassigned or promoted while absent. The employee is entitled to the same seniority, status, pay and vacation he or she would have had if not absent on military duty.

(3) An employee returning from a leave of absence has no special protections against discharge without cause. However, the employee may not be disadvantaged where vacation leave is concerned. Thus, insofar as possible, the employee is entitled to have an annual vacation period of extended leave for rest and recreation approved for the same time as it would ordinarily have been granted.

§ 353.202 Mandatory restoration.

(a) *Basic entitlement.* An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 4301 (inducted) or 4304 (a), (b), or (c) (enlisted, called to active duty, Reservist entered on active duty, or Reservist serving basic training), must be restored as soon as possible after making application, but in no event later than 30 days after the individual's release from military duty.

(b) *Conditions.* To be eligible for restoration, the employee must have left his or her employment for the purpose of entering the military, must satisfactorily complete his or her period of service, and apply for restoration—

(1) Within 90 days of release from active duty (or from hospitalization continuing after discharge for a period of no more than 1 year) in the case of employees returning under 38 U.S.C. 4304 (a) or (b); and

(2) Within 31 days of release from active duty (or from hospitalization incident to the military service, or 1 year after the employee's scheduled release from military training, whichever is earlier), in the case of employees returning under 38 U.S.C. 4304(c).

(c) *Length of military duty.* Each time an employee leaves his or her employment to enter military service, he or she is subject to the time limits prescribed in 38 U.S.C. 4304 (a) and (b) for purposes of restoration rights. Generally, these are as follows:

(1) *Regular active duty* soldiers have 4 years plus 1 additional year if the additional duty was ''at the request and for the convenience of the Federal Government.'' (Their orders or DD Form 214 must so state.) Also, in the event of a Presidential call-up such as Operation Desert Storm, numerous active duty troops in key positions may be held over beyond their enlistments. This additional duty is covered because it is ''additional service imposed pursuant to law.''

(2) *Reserves and National Guard* are covered under 38 U.S.C. 4304(b)(2). Normally, their restoration rights are limited to 4 years. (They do not get the extra 5th year ''at the request and for the convenience of the Federal Government.'') To go beyond 4 years, their service has to be other than for training, it is limited by the time period that the President is authorized to call up troops (currently 180 days), and, if voluntary, their orders or DD Form 214 must say that the additional duty was at the request and for the convenience of the Government.

(3) *Mobilization authority.*

(i) Since 1978, 10 U.S.C. 673b has authorized the President to call up as many as 200,000 members of the Selected Reserve for up to 90 days. In 1986, this authority was broadened to allow the President to extend the call-up for an additional 90 days, if necessary, without regard to a state of national emergency or war, for the purpose of augmenting the active component forces for an operational mission.

(ii) The President is also authorized by 10 U.S.C. 673a to call up as many as one million members of the Ready Reserves for not longer than 24 months in a national emergency.

(iii) Under 10 U.S.C. 672, with a declaration of war or national emergency by the Congress, all Reserve components, including Standby and Retired, could be ordered to active duty for the duration of the war, plus 6 months.

§ 353.203 Physical disqualification.

An individual who is physically disqualified for the former position or an equivalent one because of disability sustained during military service shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case.

§ 353.204 Retention protection.

(a) *While on military duty.* An employee with restoration rights under 38 U.S.C. 4301 or 4304 (a), (b), or (c) may not be demoted or separated (other than military separation) while on military duty. He or she is not a ''competing employee'' under § 351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay. An employee on a leave of absence under 38 U.S.C. 4304 (d) or (e) has no special protections in a reduction in force.

(b) *Upon reemployment.* Upon reemployment, an employee with a restoration right under 38 U.S.C. 4301 or 4304 (a) or (b) may not be discharged for a period of 1 year except for cause. A member of a Reserve component returning from an initial period of active duty for training under 38 U.S.C. 4304(c) may not be discharged for a period of 6 months except for cause. (Reduction in force is not considered ''for cause.'') Employees returning from a leave of absence under 38 U.S.C. 4304 (d) or (e) have no special protections against discharge.

(c) *TAPER employees.* This section does not apply to employees serving under a temporary appointment pending establishment of a register.

§ 353.205 Prohibition against discrimination.

A person who seeks or holds a position in the Federal Government may not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency may offer the employee a position (as described in this paragraph) in another location. This paragraph also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) *Fully recovered after 1 year.* An employee who was separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.

(c) *Physically disqualified.* An individual who is physically disqualified for the former position or equivalent because of a compensable injury is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility

for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered.* Agencies must make every effort to restore, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

§ 353.302 Status upon reemployment.

An individual who is restored following a compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, leave rate accrual, and completion of probation. However, an injured employee enjoys no special protections in a reduction in force. Separation by reduction in force or for cause while on compensation terminates entitlement to credit for the subsequent period the individual continues to receive compensation, and also means the individual has no restoration rights.

Subpart D—Appeal Rights

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals are to be submitted in accordance with MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATION (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

52. The authority citation for subpart A of part 930 continues to read as follows:

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107).

52. In § 930.105, paragraph (a) is revised to read as follows:

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record;

(2) Possess a valid State license;

(3) Except as provided in § 930.107, pass a road test; and

(4) Demonstrate that they are medically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures established in this part.

* * * * *

54. Section 930.106 is revised to read as follows:

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of § 930.105 and any applicable OPM and agency regulations governing such details.

55. Section 930.108 is revised to read as follows:

§ 930.108 Periodic medical evaluation.

At least once every 4 years, each agency will ensure that employees who operate Government-owned or leased vehicles are medically able to do so without undue risk to themselves or others. When there is a question about an employee's ability to operate a motor vehicle safely, the employee may be referred for a medical examination in accordance with the provisions of part 339 of this chapter.

56. In § 930.109 paragraph (b) is revised to read as follows:

§ 930.109 Periodic review and renewal of authorization.

* * * * *

(b) An agency may renew the employee's authorization only after the appropriate agency official has determined that the employee is medically qualified and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

[FR Doc. 95–830 Filed 1–10–95; 3:46 pm]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–2]

RIN 0579–AA21

Importation of Plants Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' to allow the importation of four additional genera of plants established in growing media. These genera are *Alstroemeria, Ananas, Anthurium,* and *Nidularium.* We are deferring final action on importation of *Rhododendron* pending consultation under the Endangered Species Act on the potential impacts of importing *Rhododendron* established in growing media. We are also adopting the pest risk evaluation standards we proposed for evaluating pest risks associated with importing plants established in growing media. This final rule will affect persons interested in importing *Alstroemeria, Ananas, Anthurium,* and *Nidularium,* and domestic growers of these genera.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Grosser or Frank Cooper, Senior Operations Officers, Port Operations,

Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contacts will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436–8295 (Hyattsville); (301) 734–8295 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize us to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of plant pests.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The regulations restrict or prohibit the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either ''prohibited articles'' or ''restricted articles.''

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States, if imported into the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Section 319.37–8, ''Growing Media,'' allows importation of certain restricted articles established in growing media (potted plants), if the plants were potted in an approved growing medium and were grown in a greenhouse in accordance with safeguard conditions specified in the regulations. Potted plants that currently may be imported under the regulations include Polypodiophyta (ferns), African violet, gloxinia, begonia, peperomia, and hyacinth.

Proposed Rule

On September 7, 1993, APHIS published in the **Federal Register** (58 FR 47074–47084, Docket No. 89–154–1) a proposal to amend § 319.37–8 to allow the importation of plants in growing media (potted plants) of the following additional genera: *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron.* We solicited comments concerning our proposal for 60 days ending December 6, 1993. During this comment period, we also received comments at a public hearing which was announced in the proposed rule and which was held in Washington, DC, on October 26, 1993.

We received 122 comments by the close of the comment period. They were from embassies of foreign governments, domestic grower and nursery associations, State plant protection agencies, environmental interest organizations, and foreign nurseries and greenhouses. The majority of these commenters opposed adoption of the proposal to allow the importation of five additional genera of plants in growing media. Several commenters suggested changes to pest risk assessment procedures, without specifically opposing adoption of the proposed pest risk evaluation standards for plants in growing media. No commenters opposed the proposal to approve several new growing media, although several commenters expressed the opinion that plant pests could grow in the already approved growing media. All of the comments are discussed below, under ''Comments and Responses.''

After carefully evaluating the comments on the proposed rule, APHIS has made the following decisions on the proposal:

1. We will adopt the proposed pest risk evaluation standards and the proposed requirements for specific inspection, handling, and growing conditions for all plants in growing media that are allowed to be imported under the regulations. We believe these standards and requirements clearly provide better pest protection than the requirements now contained in § 319.37–8. Therefore, we are revising the regulations to adopt the proposed standards and requirements, with several slight modifications made in response to comments. These modifications are discussed below, under ''Comments and Responses.''

2. In addition to the six kinds of plants in growing media previously allowed importation by the regulations (Polypodiophyta, African violets, gloxinia, begonia, peperomia, and hyacinth), we will allow the importation of the following genera of plants in growing media: *Alstroemeria, Ananas, Anthurium,* and *Nidularium.* We believe that these plants in growing media may be safely imported without significant risk of introducing into the United States any tree, plant or fruit disease, or any injurious insect, new to or not widely prevalent or distributed within and throughout the United States. Comments objecting to the importation of these genera in growing media did not provide sufficient evidence to convince us that importing these genera would present a significant risk of introducing and spreading dangerous plant pests.

3. We will defer action on the provisions of the proposed rule that apply to *Rhododendron.* Commenters identified specific issues under the Endangered Species Act regarding the proposed importation of *Rhododendron* in growing media. For instance, some commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced or imported on *Rhododendron.* We have determined that in compliance with Section 7 of the Endangered Species Act (16 U.S.C. 1537), consultation is necessary between APHIS and the Fish and Wildlife Service before we take final action on our proposal to allow the importation of *Rhododendron* in growing media. This consultation is necessary due to the presence in the United States of species of *Rhododendron* that are listed, and are proposed for listing, as endangered or threatened under the Endangered Species Act.

After completion of the Endangered Species Act consultation, we will proceed with rulemaking to either finalize or withdraw the proposed changes concerning importation of *Rhododendron.*

Comments and Responses

The comments have been summarized and grouped below according to the comment topics. Our responses to each topic follow the summary.

Comments that specifically addressed only *Rhododendron* issues are not discussed in this document. They will be addressed in any future rulemaking on the proposed *Rhododendron* provisions.

The Acceptable Level of Risk for Importing Plants in Growing Media

Several commenters argued that APHIS is subject to strict statutory standards that would preclude regulations allowing importation of articles if there is any plant pest risk associated with the importation. One commenter stated that ''[the Plant Quarantine Act on its face indicates that the Secretary of Agriculture and his delegate, APHIS, should err on the side of caution: 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests, then importations 'shall' be restricted.'' This commenter cited § 159 of the Plant Quarantine Act (7 U.S.C. 151 *et seq.*), which states:

> Whenever the Secretary of Agriculture shall determine that the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term ''nursery stock'' as defined in section 152 of this title may result in the entry into the United States or any of its Territories or Districts of injurious plant diseases or insect pests, he shall promulgate his determination, specifying the class of plants and plant products the importation of which shall be restricted and the country and locality where they are grown, and thereafter, and until such promulgation is withdrawn, such plants and plant products imported or offered for import into the United States or any of its Territories or Districts shall be subject to all the provisions of sections 154 and 156 to 158 of this title.

Response: This section clearly states that it is the responsibility of the Secretary to determine when unrestricted importations ''may result'' in the introduction and spread of injurious plant pests. If such a determination is made, the Secretary is not required to prohibit the importation. He or she may restrict it; the appropriate restriction may involve a prohibition, or may involve importation under conditions to control pest risk.

Therefore, the Secretary is not obliged to prohibit the importation of the genera in the proposal 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests. Instead, importation of the articles is subject to the standards of § 154, which give the Secretary a great deal of discretion in deciding when and what types of import restrictions are necessary. Section 154 generally requires that nursery stock imports must be authorized by a permit, accompanied by a certificate, and imported ''under such conditions and regulations as the said Secretary of Agriculture may prescribe.'' The Secretary is also authorized ''to limit entry of nursery stock from foreign countries under such rules and regulations *as he may deem necessary*'' (emphasis added).

The proposed rule supported the goal of preventing the introduction and establishment of dangerous plant pests by proposing methods the Secretary deems effective in supporting this goal. Therefore, we believe the proposed action is consistent with the Plant Quarantine Act standards.

Adequacy of Port-of-Arrival Inspection To Mitigate Pest Risk

Many commenters stated that inspection at the port of arrival is not an effective means for preventing the entry of pests. Some cited instances where shipments that passed such an inspection were later found to be infested with pests. Other commenters noted that many diseases and small pests cannot be effectively identified through visual inspection. Some questioned whether APHIS had sufficient resources to continuously implement effective inspection programs at all ports of entry.

Response: Current conditions for any imported article allow for inspection at the port of first arrival; however, because any pests that might be in the media cannot be readily observed, we have imposed conditions concerning origin, testing, growth, inspection and storage of the plants that should essentially eliminate the risk of exotic pests being present in the media. This scheme to ensure freedom of the media from pests has been proven over nearly 20 years of importations.

Reliance on Foreign Plant Protection Services

Several commenters stated that the proposal relies heavily on cooperation by the plant protection services of foreign countries to inspect growing facilities and ensure that articles to be exported to the United States are grown in compliance with regulatory standards. They maintained that these foreign plant protection services may not effectively fulfill their role in enforcing the regulations, and that APHIS does not have the authority or resources to ensure that they do so.

Response: Each foreign grower is required to sign an agreement with the plant protection organization of the foreign country, agreeing to abide by the conditions of our regulations. In addition, each exporting country must sign an agreement with APHIS agreeing to implement the conditions of the regulations. The producing greenhouses and the growing plants must be made available for inspection by inspectors of APHIS and the foreign plant protection organization. No shipment will be allowed entry into the United States unless the accompanying phytosanitary certificate is endorsed by an APHIS inspector, either in the country of export or the port of entry, as required by the regulation. This endorsement is based on monitoring inspections that show that the plants were grown under the requirements of the regulations. Also, if pests are found or other violations noted, individual shippers or greenhouse growers can be suspended from preclearance. APHIS has a record of prohibiting the importation of, or requiring treatments for, various commodities that were repeatedly found infested or infected with exotic plant pests. However, no such action has been taken with plants in growing media shipped under § 319.37–8(e) or –8(f) because no exotic pests have ever been found with such shipments.

Comments in Favor of the Proposal

Several commenters stressed that the APHIS proposal does not relax the level of protection against pests associated with plants imported in growing media, and that the proposal essentially would allow the entry in media of genera that are already allowed entry if bare-rooted. These commenters also stated that the proposed media have proven to be of no or very low risk, and that compliance agreements between foreign growers and their governments and between foreign governments and APHIS provide all necessary guarantees and are enforceable.

Supportive commenters also believe that adequate inspection will be available since only a few growers will participate in the program, and further note that APHIS has long experience in inspecting plants abroad and at ports of arrival. They also believe the proposal would not result in a magnitude of imports that would overwhelm enforcement and inspection resources since observing APHIS requirements would be very expensive.

Choosing Which Genera To Import

Several commenters stated that the five genera in the proposal were not chosen because they represent genera which pose the least risk if imported, but because they are the most economically attractive genera for importation.

Response: Over the last 20 years, approximately 60 genera of plants in media have been requested for

importation into the United States by foreign governments. These are, of course, the genera the exporting countries especially desire to ship to the United States. It is APHIS policy to respond to such requests, regardless of their origin. We intend to consider all of the requested genera. However, as explained in the advance notice of proposed rulemaking published October 7, 1991 (56 FR 50523–50524, Docket No. 91–036), and in the proposed rule published September 7, 1993 (58 FR 47074–47084, Docket No. 89–154–1), we selected the five genera in the proposal for study first because they represent a diversity of horticultural and botanical types, and because they are among the first plants requested by foreign governments to be imported in growing media. These five genera were proposed for addition to the list of approved plants for importation in growing media because we found that they could be safely imported under specified safeguards without introducing exotic plant pests harmful to U.S. agriculture.

In developing the list of pests to be studied for the five genera, we listed all pests reported on these hosts, whether or not we were familiar with their potential risk at that time. The list was developed without knowing the potential risk of each and every organism. All pests on the list were subjected to the pest risk analysis to determine which pests had a potential to be high risk based on the pest risk assessment standards. The high risk pests were subjected to detailed study, as described in the proposed rule.

Concern About Foreign Growers Observing Conditions

Several commenters stated that the proposed growing restrictions will not be feasible for the foreign growers to observe, and they will, therefore, not observe them. These commenters also said that European growers cannot grow azaleas in the method prescribed by APHIS; instead, based on current practices, they would build a small greenhouse that meets the requirements for export plants, and then run tremendous numbers of plants through it illegally.

Response: If restrictions are not feasible for any particular foreign growers, those foreign growers will not be approved to ship plants in media to the United States.

Other commenters said that not all European growers will be careful in observing requirements, so some degree of unwanted pest contamination is inevitable for plants in growing media imported into the United States.

Response: No human enterprise is without risk. However, we believe based on our research, and experience with similar potted plants, that the proposed four genera we are approving can be imported into the United States without significant risk, provided the required conditions are observed.

Regulations Should Include Consequences (Penalties) for Non-Compliance

Some commenters believed that the risk of crop devastation or imposed quarantine destruction is a burden placed on U.S. importers and ultimately on the American taxpayer. They suggested that the regulations should spell out consequences and penalties for all domestic and foreign parties who fail to comply with regulatory requirements.

Response: The consequences for non-compliance are elimination from the program for individual growers, shippers, or foreign countries. (See explanation under ''Concern about Foreign Growers Observing Conditions'' above.)

Several commenters stated that importers should be held financially responsible for the risks of importation.

Response: USDA has no authority to hold importers responsible for risks of importation; however, individual shipments will be refused entry unless the phytosanitary certificate required to accompany the shipment is endorsed by a Plant Protection and Quarantine inspector, as required by the regulation. This endorsement is based on monitoring inspections that show that the plants were grown under the requirements of the regulations. Also, if pests are found or other violations noted, individual shippers or greenhouse growers can be suspended from preclearance.

Two commenters suggested that the regulations should suspend a producer from preclearance if a violation is found until the situation is corrected, and suspend the producer for at least 1 year if subsequent violations are found.

Response: Because the required agreements allow cancellation by either party, APHIS has authority to suspend violators from preclearance. We intend to employ this cancellation authority in enforcement. We do not believe it is necessary to set specific time periods for the duration of a cancellation or suspension in order to use the tool effectively.

Limits on Methods To Control Pests Introduced Into the United States

Several commenters stated that the U.S. Environmental Protection Agency (EPA) limits on use of some pesticides in the United States would make it impossible to use the most effective chemical controls to combat pests that could be introduced with the regulated articles.

Response: If safeguards are observed, introductions of exotic pests with plants in media are extremely unlikely. No exotic pests have been detected in nearly 20 years of importations of plants in media from Europe and Israel. However, should new pests be introduced, their susceptibility to eradication or control will depend on the nature of the pest and the availability of control measures. It does not follow that because EPA action has resulted in loss of some chemical controls, that any new introduced pests could not be adequately controlled, chemically or otherwise.

Several commenters were concerned that pests introduced by the regulated articles will require more domestic usage of allowed pesticides, which could pose a health risk.

Response: We are concerned about possible health risks from the application of chemicals for quarantine purposes. However, we have no reason to believe that chemical controls applied in accordance with label requirements would present a health risk. The question of health risks from application of chemical pesticides is within the purview of the EPA and the Food and Drug Administration.

Several commenters stated that we are potentially defenseless against pests that may have begun to develop genetic resistance to the more powerful controls that may be legal in exporting countries.

Response: We would be glad to study evidence that pests in foreign countries have developed genetic resistance to pesticides not legal for use in the United States. However, if such resistance does occur, it does not mean that the pests would be resistant to pesticides that are legal for use in this country.

Growing Media Concerns

Several commenters stated that pests and diseases can grow in the growing media currently allowed for the regulated articles.

Response: We have no evidence that unused approved media is infested or infected with exotic plant pests. If prescribed safeguards are observed, such media used for approved plants will not become infested with exotic plant pests.

One commenter suggested that the definition of ''media'' should not be changed from ''sterile'' to ''approved.''

Response: There is no current definition of ''media'' as ''sterile'' in this regulation. We made no proposal to

change the definition of ''media''. Therefore this comment is not germane to the proposal.

One commenter suggested that Dutch and Israeli imports should be imported only in absolutely sterile media. This commenter stated that all kinds of weeds and diseases are imported into The Netherlands and handled there in ways that circumvent inspection or quarantine requirements theoretically designed to control the pests. The commenter also stated that sterile media is necessary for plants from Israel because desert weeds and diseases that occur there have not been identified or are not well known, but present risks.

Response: We cannot respond since we have no evidence to support these claims, and the commenter did not provide evidence to support his claim.

Several commenters stated that no plants in media should be allowed to be imported into the United States.

Response: Certain plants are already enterable in media; we did not propose to change the entry status of those plants. This commenter did not explain why no plants in media should be allowed entry.

Anthurium Concerns

Commenters opposed to allowing the importation of Anthurium species noted that the Anthurium industry in Hawaii has had to deal with introduction of *Xanthomonas campestris* pathovar *dieffenbachiae* with losses of $8.5 million. They stated that Hawaii is especially liable to new pest infestations, and that anthuriums are especially susceptible to new pests. They also stated that the scientific information on pests of anthuriums is probably not all inclusive because anthuriums have not been of great economic importance compared to other cut flowers.

Response: The special vulnerability of Hawaii to tropical pests that do not survive well in most of the United States was considered by the pest risk analysis for anthuriums. During the analysis, Hawaii, Puerto Rico, California, and Florida were specifically considered and recognized as areas that needed special consideration due to their climate. We understand that the scientific information on pests of anthuriums, like most plants, is not all inclusive. We must use the best information available in making our decisions. The safeguards in the rule are deliberately broad to provide protection against a diversity of plant pests including those that were not identified.

Several commenters stated that the proposed requirements were not fully adequate because the APHIS pest risk analysis states that for some plants, inspection at port of entry would not serve as an adequate safeguard since symptoms of significant diseases are not present during the incubation period.

Response: As with other plants in media, the primary safeguards are those applied before and during growth in the foreign country. These safeguards are very strict because inspection at port of entry will not serve as an adequate safeguard for certain pests, either because of their size, or because symptoms are not present during the incubation period, or because pests would be hidden by the growing medium.

Several commenters stated that the decision to import the five genera, especially *Rhododendron,* seems to go against the findings of the APHIS committee of researchers who prepared the worksheets and evaluations of pest risk (the Kahn report, made available through the proposed rule), which recommended against admitting *Rhododendron* due to pathogens in Europe, and raised concerns about other genera.

Response: The function of the Kahn report was not to recommend that the genera under study be admitted or prohibited, but to identify the risks that would be associated with their admission. The Kahn report did identify significant risks that would be associated with unregulated admission of *Rhododendron* in growing media, and less significant risks regarding the other genera. APHIS evaluated those risks and tailored specific regulatory controls and safeguards to mitigate the risks in preparing the proposed rule. Since this final rule does not include importation for *Rhododendron,* a discussion of the efficacy of controls and requirements to mitigate risks associated with importation of *Rhododendron* will be deferred until such time as we publish further rulemaking for that genus.

Some commenters stated that there is no reason to import the five genera, since production of the same genera or easily substitutable plants in the United States is more than adequate, and new varieties can be obtained by cuttings or tissue culture.

Response: We have no authority to base a prohibition on the availability of plants in the United States. Any prohibition or restriction must be based on pest risk.

Previous Introductions of Serious Pests Into the United States

Several commenters stated that a large number of pests have been introduced into the United States and have caused significant economic and environmental harm. They stated that many of these pests were introduced despite import controls believed to be as effective as the proposed regulations for plants in growing media. They believe that available and legal methods of control have proved inadequate to control most of these pests, and that the proposed regulations would only speed the introduction of more pests of this type. Examples of introduced pests cited by these commenters include Egyptian cotton moth, Asian gypsy moth, Geranium *Xanthomonas* bacterial blight, fire ants, Mexican fruit fly, Mediterranean fruit fly, honeybee tracheal mite, Narcissus bulb nematode, apple ermine moth, Varroa mite, azalea flower spot, chrysanthemum white rust, sweet potato white fly, *Thrips palmi,* lethal yellowing, *Ganaderma zonaturum* and Apopka weevil, *Melaleuca,* brown snails, zebra mussel, European gypsy moth, purple loosestrife, a Japanese weed (Phylanthese), TSWV virus (spread by thrips), serpentine leaf miner, Japanese beetles, golden nematode, black vine weevil, pine shoot beetle, Dutch elm disease, Chestnut blight, European pine shoot moth, apple maggot, oriental fruit moth, Caribbean fruit fly, citrus canker, citrus leafminer, black parlatoria scale, *Diaprepes* root weevil, stunt of *Chrysanthemum, Cylindrocladium* of azalea, *Liriomyza trifolii, L. huidobrensis, Spodotera exigua, Frankliniella occidentalis,* and *Bemisia tabaci.*

Response: The majority of the organisms listed by these commenters are usually not found associated with plants in growing media of the genera proposed for importation. In some cases, such as apple maggot, *Frankliniella occidentalis,* and others, the pests are indigenous to North America. Several of the pests named, such as the Egyptian cotton moth, have not, in fact, become established even temporarily in the United States. Chestnut blight, European Gypsy Moth, and other introduced pests that did become established, did so prior to the establishment of Federal plant quarantines, and their presence does not support a charge that quarantine regulations are not effective. *Melaleuca* is a horticultural introduction only recently considered as a noxious weed; for many years, our regulatory programs did not attempt to restrict its importation. The honeybee tracheal mite, azalea flower spot, and other remaining pests are not likely to be associated with plants in growing media grown under the conditions in the proposal.

We believe that the lack of quarantine significant introductions of any pests in association with the five taxa of plants currently allowed importation in growing media during the past 20 years is also evidence that pests are unlikely to be introduced in growing media imported under the proposed requirements.

If safeguards are observed, no exotic pests should be introduced with the plants. We expect that APHIS and the foreign plant protection organization will apply adequate controls to ensure consistent and correct application of the safeguards.

Examples of Infected or Infested Stock That Has Been Imported

One commenter reported he bought virus-infected geranium stock from the Canary Islands and Mexico. Another mentioned Fischer Geranium ISA voluntarily cancelling 80 million geranium cuttings from Mexico because of a possible virus disease that might infect other ornamentals. A commenter who imported plant cuttings from Israel said he had them inspected and released by APHIS but that a follow up inspection found Egyptian cotton moth, resulting in a $250,000 loss.

A commenter stated he imported nursery stock from The Netherlands that turned out to be infested with the noxious weed ''keek,'' which could not be eradicated. Another cited growers who have been shut down because of imported products infested with Egyptian cotton moth and white rust of chrysanthemums. Another cited an importation of *Alstroemeria* plants from The Netherlands that had tomato spot wilt virus and were being distributed by a Dutch-American propagator.

A commenter reports that mixed fern species arriving at Apopka were found with four different taxa of insects, and that undetermined species of both *Aphelenchoides* and *Helicotylenchus* were found in sterile peat imported from nurseries in The Netherlands.

Another commenter reports that rootstocks from The Netherlands have been found to be infested with *Meloidogyne* and *Pratylenchus* species. Another commenter notes that the State of Oregon has found serious plant pests or diseases in imported pre-inspected plant materials.

Response: While these comments document a general background risk that pests may be introduced into the United States, they do not provide evidence that the restrictions and safeguards discussed in the proposal for importing plants in media would fail to prevent introduction of pests. We continue to believe that the proposed restrictions and safeguards are effective, for the reasons discussed in the proposal.

Safeguard Concerns

Several commenters suggest that the frequency and timing of inspections should be critically examined because pests may build up in a short time. Plant auctions and resale transactions would have to be policed to ensure that the plants were grown under qualifying conditions. These commenters also believe that APHIS must take steps to assure effective pest exclusion programs at ports of entry, and guarantee development and maintenance of programs to exclude and/or control pests.

Several commenters suggested that APHIS should include provisions to limit numbers of plants imported. They felt limits on plant import numbers should relate to the known capacity of each exporting country to grow plants under approved conditions and should take account of the reasonably expected output for each growing facility.

Response: Allocating resources to enforce regulations is an important part of any regulatory program, and APHIS intends to devote the resources required to ensure that inspections, record-keeping, port of arrival activities and other actions required under the regulations are maintained at the level required for successful implementation of this program.

Regarding enforcement and verification of compliance with the regulations, all growers of plants in media to be shipped to the United States must keep records of kinds and numbers and time of shipment for all plants brought into, and shipped from, the greenhouse. These records must be made available to inspectors of APHIS and of the plant protection service of the foreign country. These records will also help ensure that the number of plants imported under the regulations does not exceed the number that could reasonably be grown in approved facilities. If more plants are imported than we believe could reasonably be grown in approved facilities, we will investigate possible violations.

Unscheduled visits will be made to the approved greenhouses by inspectors of both APHIS and the plant protection services of the growing countries. In addition to monitoring the number of plants that can be shipped, the inspectors will enforce the very strict controls placed on the greenhouses, including automatic closing doors, screening, raised benches, etc.

One commenter suggested that the lack of a protocol for detecting movement of plants from unapproved greenhouses through approved greenhouses and the lack of a quarantine period in the United States for imported material allow too great a risk of nondetection of pests.

Response: The record-keeping and inspection requirements for growers discussed above address the problem of movements from unapproved greenhouses through approved greenhouses. In response to the quarantine period comment, APHIS requires postentry quarantine only when other import requirements cannot ensure the material is free from dangerous plant pests. The pest risk associated with the genera in growing media in the proposal can usually be addressed by other means. APHIS will propose postentry quarantine as a requirement to admit any plant in growing media when such a requirement is necessary; for example, the proposal includes postentry quarantine for *Ananas* and *Nidularium* imported into Hawaii.

Adequacy of Requirements for Growing Conditions in the Country of Origin

Several commenters noted that pests may not be able to pass through the screens proposed for greenhouses, but other openings will let them in because greenhouses expand and contract and have small cracks and broken panes of glass.

Response: In addition to specifying a required screen mesh size, the proposed regulations also rely on a performance standard for pest exclusion, which inspectors will enforce. The regulations require that the articles must be grown in a greenhouse ''in which sanitary procedures adequate to exclude plant pests and diseases are always employed'' (§ 319.37–8(e)(2)(ii)).

One commenter questioned the proposed requirement that growing plants may be watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water. Water fit for human consumption (potable water) may still contain plant pests or pathogens.

Response: We believe that water that has been contaminated with organic material to the point that it harbors significant numbers of plant pests is also likely to harbor human disease pathogens that make it not potable. It therefore would not be allowed to be used by the regulations. Similarly, water that has been treated to render it potable has been exposed to chemicals or treatment conditions that will destroy human pathogens and plant pests alike.

One commenter asked: What is clean rainwater? Can it be collected as runoff

from buildings, which may be contaminated? This commenter suggested that all irrigation water should be treated with ultraviolet irradiation or filtered to eliminate spread of pathogens.

Response: Under the proposed requirement, if rainwater is used it must be boiled or pasteurized, which would destroy pathogens.

Several commenters suggested that the height requirement for the raised growing benches is not sufficient to prevent something on the ground being spread by insects or by water splashing.

Response: The benches are not raised over ''ground,'' but over concrete or gravel over plastic sheeting. The purpose of any elevation of the benches is to allow air circulation underneath, to separate the bench and its plants from the drainage off the bench, and to simplify cleaning and sanitation. The minimum height specified was necessary to accomplish these tasks. Some benches may use trickle irrigation for watering or contain approved growing media watered by a circulatory system. In either case there would be no splashing. If there were some splashing, there would be no soil that would serve as a source of contamination and spread. In addition, the height requirement for potted plants has been in effect for six different kinds of plants for about 20 years. No exotic pests have been found with shipments of these plants.

Several commenters stated that pesticides in the growing facilities will keep infestations at a low level making visual inspection useless; pesticide use should be prohibited to avoid this problem of masking.

Response: The use of pesticides and other safeguards, such as screens, are methods of reducing the risk of introducing exotic pests. We believe that the use of pesticides with other safeguards will result in a product that is essentially pest-free. Nineteen years of experience with six other genera of plants in growing media supports the concept of using multiple safeguards. This systems approach has long been used here and in foreign countries to reduce pest risk and to provide a horticultural product acceptable for domestic and international trade.

Other Safeguard Concerns

Several commenters stated that they have visited growing facilities that are likely candidates for growing articles under the regulations, and stated that the physical and procedural safeguards required by the regulations are not in place.

Response: Shipments from growing facilities may not begin until after the required growing agreements have been signed. APHIS will not sign an agreement until the required safeguards and procedures are in place.

Concerns About APHIS Resources

Commenters raised the following questions and concerns about the level of APHIS resources for enforcing the proposed regulations: APHIS does not have adequate resources and commitment to fulfill its monitoring responsibility in foreign countries. The proposal has no specifications for APHIS funding or staffing for inspection of greenhouses, mother stock, and export plants. APHIS is understaffed and politically powerless as evidenced by problems with geraniums, poinsettia mildew, white rust, and the withdrawal from the U.S. market of Fisher Geraniums. APHIS does not have sufficient staff at ports of entry, as evidenced by unwanted pests that continue to be shipped in, e.g., *Xanthomonas pelargonii* and the cotton moth on geraniums. Budget cuts in USDA should prohibit any new products being considered for importation under the regulations. APHIS cannot control likely problems because USDA has been a primary target for budget reductions. It is inappropriate to propose additional importation of plant genera when many inspection positions at ports of entry are vacant. Current PPQ staffs are not able to adequately inspect and monitor disposition of imported plant materials. The APHIS Vision 2000 document projects continuing decreases in PPQ staff.

Response: It is true that many variables in the annual budget process can affect the level of resources APHIS can apply to any given program at any given time. APHIS intends to manage its resources to allocate the necessary number of staff hours to this program to ensure the level of inspection and enforcement necessary for its safe operation. If at any time we are unable to provide the resources necessary for full implementation of the proposed requirements, we will discontinue or limit importations under the regulations. Our statutory authority allows us to take such action whenever it is necessary.

Several State governments indicated their desire for a system by which APHIS would notify them of all importations destined for their States, especially since they believe USDA has no plans to increase port of entry inspection staff and may have to decrease current staff.

Response: APHIS has a system to notify State Departments of Agriculture of the arrival in the United States of plants destined for their States. Any State may request and receive notification from APHIS of the arrival of plants imported in accordance with these regulations.

Pest Risk Analysis Methodology

Some commenters believed the database of pest/host information APHIS assembled in the course of pest risk assessment was too narrow and exclusive. Several felt that because the automated databases employed do not contain reports from before 1970, applicable historical information about possible pest risks was not included. Two commenters cited specific pests that were not identified by the database (pathogens from Israel and Egyptian cotton moth) and stated that these pests should have been considered in evaluating the proposed importations.

Some commenters felt that published reports of pests associated with particular plant articles are an insufficient source of data for pest risk decisionmaking. One stated that ignoring a pathogen until it does enough damage to be noticed in research articles does not ensure safety of our agriculture; we can't assume an organism is not of quarantine significance only because there is little or no economic damage or biological information or data published in scientific journals. Another stated that a lack of information in scientific papers on a particular pest does not constitute proof that there is no problem with that pest. Another cited the comparative paucity of reports in the scientific and regulatory literature of pests in Asia and parts of Europe as a sign that the database employed by the regulations is incomplete.

Response: The scientist obtained an excellent coverage of the worlds' scientific literature by using the data bases in their search for literature. In addition, PPQ furnished copies of important papers for use in the assessment. Furthermore, scientists had the option to consult the references to older papers that are found at the end of the scientific articles that appear after 1970. The outside scientists had their own references and their University libraries as well.

We agree that the pest and potential host data employed were not and cannot be comprehensive. However, we believe the database assembled the best feasible collection of data relevant to the decisionmaking process required for the proposal of regulations. To address the fact that unknown or underreported

pests no doubt exist, and could be associated with some of the articles proposed for importation, the growing requirements and safeguards are deliberately broad. The safeguards address fundamental modes of pest access to hosts and survivability of pests on hosts. The safeguards that control known pests should also be widely effective in controlling unknown pests, and pests that are not known to be associated with the particular articles covered by the regulations.

Several commenters stated that the plant industry has a right to expect that the United States government will obtain sufficient information on potential problems and establish adequate safeguards before allowing entry of foreign plant material. They stated that it is not acceptable to remove existing safeguards in order to facilitate trade simply because ''no information is available'' in the database searches employed by APHIS. These commenters felt that whenever there are risks associated with importing a plant article, importation should be prohibited in accordance with the Plant Quarantine Act, unless definitive scientific evidence exists that the article may be safely imported under safeguards.

Response: The Plant Quarantine Act does not prohibit the importation of any plants. However, it authorizes the Secretary of Agriculture to determine that it is necessary to forbid the importation of plants in order to prevent the introduction of plant diseases and injurious insects from infested countries.

Many years ago, a general prohibition was promulgated against the importation of plants in growing media, with certain exceptions. It appears this prohibition was based on the idea that growing media in general may contain many kinds of plant pests, and that elimination of those pests by inspection or treatment was not feasible.

The exceptions were made because APHIS found that certain plants in growing media could be safely imported into the United States. The exceptions that existed before 1980 included, for example, plants from most of Canada, and orchid plants on fern bark slabs. These exceptions were made using the best information available to APHIS, and we have no information that the plants present any significant risk of introducing exotic plant pests. In 1980, we added five kinds of plants in growing media that could be imported, provided that strict quarantine conditions were observed. The plants were requested by various European countries and some U.S. importers. The proposal to allow importation of these plants in growing media was based on the best information available to us at that time, which indicated the plants could be safely imported. The validity of allowing these plants in media to be imported is supported by the fact that many such plants have been imported without any evidence of introducing exotic plant pests.

Now we have proposed to add five new kinds of plants established in growing media. This final rule allows importation of four of the proposed genera. Again, we have used the best information available, which includes nearly 20 years of experience with potted plants from The Netherlands to determine that the genera of plants may be imported without significant pest risk, if the proposed conditions are observed.

Several commenters stated that since many fungi and other pests are not well known, it is impossible to determine when a new strain of a pest is being introduced with a newly allowed host. These commenters opposed increasing the variety of plants imported in growing media for this reason.

Response: The commenters should note that the plants we are allowing to be imported may already be imported bare-rooted, and therefore do not represent new types of host material. Certainly, allowing the host material to be imported associated with growing media presents some risks not presented by bare-rooted plants. However, the risk analyses acknowledged the existence of unknown fungi and other pests, and evaluated the likely scope of the risk they present by using risks of known fungi and other pests as benchmarks.

Several commenters suggested that the pest risk analysis was weak because the outside scientists who assisted in studying the risks were not in a position to review recommended safeguards and analyze their efficacy.

Response: We deliberately asked the researchers to evaluate the pest risks without regard to particular potential inspections, treatments, or other safeguards that might be imposed by APHIS. We did this to obtain an unbiased baseline of pest risk potential, and because we were employing the researchers to evaluate pest risks, not the efficacy of a variety of treatments and safeguards. The selection of particular treatment or safeguard requirements is a regulatory decision, not a scientific one.

Several commenters felt that the proposed rule shows that APHIS apparently ignored the findings of its own scientists and team of outside experts, who in the Kahn report identified major risks for importation of *Rhododendron* and significant risks for other genera.

Response: The Kahn report identified risks, but did not address whether some feasible combination of safeguards could control those risks. APHIS has extensive program operations experience and methods development data that document which safeguards can be used to control particular types of risks. APHIS evaluated the risks identified in the Kahn report and concluded that import requirements and safeguards of proven effectiveness could be employed to reduce those risks to a safe level.

The statement that APHIS ignored the results of its own scientists is misleading. There were two groups. One group was charged with pest risk analysis to determine the potential risk of each organisms assuming the only safeguard in place was inspection of a sample at a port of entry. The reason for this specification was to allow outside scientists to make biological assessments without being encumbered with quarantine procedures. The thrust was toward determining the potential risk based on life cycles-a biological assessment where the true or projected risk may be determined.

Under those circumstances, it is not surprising that based on the life cycles of the most important exotic pests, that the recommendation was to prohibit *Rhododendron*. The scientist believed that inspection at a port of entry, as a sole safeguard, is not an adequate safeguard to prevent the entry of *Rhododendron* pests.

However, the commenter did not consider the actions of the second group, which was charged with risk management. The second group considered all the hazardous and high risk plant pests listed by the scientists in the first group and set up a system of independent safeguards listed in the proposed rule. The whole proposed rule is equal to the sum of its parts—risk assessment and risk management.

Other Pest Risk Analysis Methodology Concerns

Commenters made the following suggestions: Pest risk analyses done by APHIS should consider fewer plants at a time. APHIS should expand the coverage of the analyses to ensure including the pests that pose the greatest risk. APHIS should add an additional criterion to its risk assessment standards to measure quality, depth, and coverage of available information on a given genus.

Response: We conducted a pest risk analysis for each of five genera of plants.

We believe that the various species within each genus have sufficient similarities in terms of pest host potential to make this a reasonable approach. We believe the analyses did address the pests posing the greatest risk, and we are not aware of a statistical model that demonstrates otherwise. We believe rating quality, depth, and coverage of available information on a given genus is best done by professional judgment of qualified plant scientists, not by a formula, and this is the approach we used.

Preemption and Other Concerns of States

One commenter expressed concern about the preemption clause that would prevent Hawaii from enforcing its statutes to protect Hawaiian agriculture. This commenter stated that Hawaii is unique in having a higher probability of pests becoming established, due to its climate. The commenter believes APHIS should clarify at what point foreign commerce ceases, especially as to whether affected States will be able to participate in the decisionmaking or whether States will simply be notified of the final decision.

Response: The extent to which this regulation would preempt State or local requirements is no more or less than with our other regulations. Federal regulations would preempt State or local requirements only when they are inconsistent with the Federal requirement. Federal requirements preempt State or local requirements while the articles are in foreign commerce, which generally lasts at least until the article is purchased by the ultimate user and taken to its final destination.

Several commenters stated that the proposed changes would increase pressure on the California Department of Food and Agriculture for subsequent detection of pests after release by APHIS.

Response: The rule was designed to prevent the introduction of pests, not to discover them after importation. We believe that articles imported in accordance with the requirements of the regulations will contain few or no significant plant pests, and should therefore require little increase in the workload for the plant protection services of California or other States.

Economic Concerns

A number of commenters raised concerns about the preliminary economic analysis and suggested ways to improve it. The analysis has been revised to address impacts on both wholesale and retail firms, to utilize up-to-date data, and to address other concerns of commenters. See the ''Executive Order 12866 and Regulatory Flexibility Act'' section of this document.

Some commenters thought that the economic analysis should take into account the potential cost should dangerous pests be introduced and cause major infestations.

Response: We think the economic analysis should focus on the expected effects of the proposed action, and should rely as far as possible on data that are known or can be reasonably extrapolated. Although it is possible to assume that a pest introduction will occur despite strict regulatory requirements, and to endow the introduced pest with the capability to cause any degree of harm to U.S. plants, this type of speculation does not seem to us to have much value in the absence of any real data. We based the economic analysis on what we believe to be the effects of the regulations, based on past experience and study of the proposed action. The expected effects include importation of a modest amount of plant material, without the introduction and establishment of serious plant pests.

Other Policy Issues

One commenter stated that the APHIS mandate is to protect our environment and not to foster foreign trade.

Response: Regulatory actions by APHIS may have positive or negative effects on foreign trade, and we are required to analyze those likely effects and make the analysis available to the public. However, we do not base our import regulations on their possible effect on trade, but on analysis of whether articles may be imported with an insignificant risk of the introduction of plant pests.

Several commenters stated that this proposal sets a precedent that will allow many other, more dangerous plants to be imported in media.

Response: The precedent for importing plants in growing media from other than Canada was set in 1980, when five kinds of plants were allowed importation in accordance with § 319.37–8(e). APHIS intends to propose allowing the importation of additional requested plants when it finds the plants can be imported without significant risk of introducing exotic plant pests. APHIS also intends to prohibit (or continue prohibiting) those plants it finds can not be imported without a significant risk of introducing exotic plant pests.

One commenter stated that APHIS must endeavor to ensure that no pest of any plant is introduced; only after doing this can APHIS make adjustments to promote free trade.

Response: APHIS has no authority to prohibit the importation of plants in order to ''ensure that no pest of any plant is introduced''. Rather, the Plant Quarantine Act gives us authority to prohibit the importation of plants into the United States ''in order to prevent the introduction into the United States of any tree, plant, or fruit disease or of any injurious insect, *new to or not theretofore widely prevalent or distributed within and throughout the United States*'' (emphasis added).

Endangered Species Concerns

Several commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced on imported *Rhododendron*. Some commenters further argued that other plant and tree species that are currently listed, or that are candidates for listing, could be harmed by pests brought in with the five genera proposed for importation.

Response: We will consult with the Fish and Wildlife Service under the Endangered Species Act prior to taking final action on the proposal for *Rhododendron*. Regarding the other genera, no commenter provided information linking their importation to any specific risk to a domestic species that is listed or a formal candidate for listing under the Endangered Species Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be economically significant, and was reviewed by OMB under Executive Order 12866.

The composite effect of this rulemaking and several anticipated related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of economically significant in Executive Order 12866.

We have prepared a final Regulatory Impact Analysis (RIA) and a final Regulatory Flexibility Analysis (RFA) concerning the current final rule and future rules allowing the importation of additional plants in growing media. The exact content of future rules to be proposed in this area, including the final list of plants to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development

of these proposed rules. Therefore, the final RIA and RFA take a broad approach and make certain necessary assumptions in order to form an estimate of economic effects. The RIA and RFA assume that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and make generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. However, it is unlikely that APHIS, after conducting pest risk analyses, will propose to allow entry of all requested plants. In addition, the safeguards and precautionary procedures necessary for safe entry of some genera will be developed and refined later in the rule development process. Therefore, the RIA and RFA will be continually updated and refined as choices are made and rulemaking advances, to incorporate more precise information on the costs, benefits, and other economic effects associated with rulemaking decisions.

The current version of the RIA and RFA addresses potential impacts of possible future actions in general terms, and addresses the impacts of adding the genera and requirements discussed by this proposed rule more specifically. Copies of the RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738.

This final rule will allow importation of articles of the genera *Alstroemeria, Ananas, Anthurium,* and *Nidularium* that meet the requirements of the regulations. We anticipate that this change would have the following economic implications. Allowing entry of additional genera would enhance consumer purchasing power (consumer surplus). Foreign producers would be able to market their plants in the U.S. market. This will likely decrease domestic prices for the four genera, and will enable U.S. consumers to purchase a wider variety of potted plants at lower prices.

Given prevailing price discrepancies between domestic and foreign plant markets, revenue for domestic producers will likely decrease slightly as a result of freer trade in the four genera affected by this proposal. The exact amount of decrease will be determined by demand elasticities for potted plants. The net impact to society would be positive since consumer gains will more than offset losses incurred by domestic producers.

Based on florist and nursery sales, the estimated value of potted *Alstroemeria, Ananas, Anthurium,* and *Nidularium* production in the United States totals about $1.4 million annually. This represents less than one percent of the total annual value of the domestic nursery and floriculture industry, estimated at about $8.9 billion. Allowing imports of these potted plant genera could cause some domestic producers to switch to growing other plant genera.

Utilizing available production and price data, low and high impact scenarios we developed to estimate potential changes in net U.S. welfare from *Anthurium* imports. This study assumes that prices will drop by 10 and 30 percent in the low and high impact scenarios respectively. A unitary supply elasticity and three demand elasticities (-0.5, -1, and -1.5) were used to estimate a range of potential net impacts for both scenarios.

Consumers and domestic importers of *Alstroemeria, Ananas,* and *Nidularium* will also benefit from the rule's impact. The revisions will increase the availability of the three genera in the U.S. market. However, APHIS was not able to quantify the impact on the domestic market for *Alstroemeria, Ananas,* and *Nidularium*. These three genera are produced by a handful of small producers and data is not published to avoid disclosing proprietary information.

The low impact scenario indicates that the rule's revisions will increase net welfare for U.S. society by between $7,000 and $20,000. Domestic consumers of *Anthurium* will incur welfare gains of between $137,000 and $143,000. By contrast, U.S. *Anthurium* producers will incur welfare losses totaling between $123,000 and $130,000.

When prices are reduced by 30 percent net welfare is increased by between $183,000 and $283,000. Consumer welfare is increased by between $430,000 and $490,000, and producer welfare is decreased by between $207,000 and $246,000.

Information contained in the ''Census of Horticultural Specialties (1988)'' [1] can be used to segment domestic nurseries by value of annual sales. Value of annual sales was used as a guide in determining which nurseries would qualify as a ''small'' business. Additionally, the Small Business Administration (SBA) has established guidelines for determining which economic entities meet the definition of a ''small'' entity.

The four genera are produced by about 79 domestic producers. Nurseries with annual sales of $3.5 million or less are considered ''small'' for purposes of this analysis. Annual receipts of less than $3.5 million is the standard used for all industries not specifically listed by the SBA. All of the 79 commercial nurseries are small according to the above criteria.[2] These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. The nature of their business requires nurseries to make frequent adjustments to the types of plants they grow and sell, as new types become popular and public taste changes. If producing the four genera becomes unprofitable, these nurseries should be able to defray losses by shifting to other, more profitable product lines. Therefore, the Agency anticipates that the revisions will not have a significant economic impact on a substantial number of small producers.

The SBA definition of a small business engaged in the import/export business is one that employs no more than 100 employees. The number of firms that may be qualified as a small business under this definition cannot be determined. Small importers will likely benefit from the rule change. The regulatory revisions will enable some small importers to enhance their income through imports of the four genera in growing media.

Small retailers will benefit from importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium* in growing media. The rule will enhance the availability and quality of potted plants in the U.S. market. Plant retailers will benefit from lower wholesale prices and will likely pass these savings on to their customers. This will increase annual sales volume and revenue.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will allow *Alstroemeria, Ananas, Anthurium,* and

[1] Limitations of data: The Census of Horticultural Specialties (1988) does not represent all producers of horticultural specialty products in 1988. Because the census was voluntary, it only represents those growers in 1987 who cooperated and provided information on their activities for 1988. In addition, it includes 2,829 additional growers enumerated in 28 States by the National Agricultural Statistics Service (NASS).

[2] U.S. Department of Commerce; ''Census of Horticultural Specialties (1988)''; Washington, DC. Information was not available for *Alstroemeria, Ananas,* and *Nidularium* due to proprietary concerns.

Nidularium established in growing media to be imported into the United States from any country that meets the requirements of § 319.37–8(e). Under this rule, State and local laws and regulations regarding articles imported will be preempted while the articles are in foreign commerce. Some nursery stock articles are imported for immediate distribution and sale to the public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This final rule has no retroactive effect, and will not require administrative proceedings before parties may file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The assessment provides a basis for the conclusion that the importation in growing media of the four genera of plants covered by the rule, under the conditions specified in the rule, would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37–1, the following definitions are added in alphabetical order:

§ 319.37–1 Definitions.

* * * * *

Clean well water. Well water that does not contain plant pathogens or other plant pests.

* * * * *

Potable water. Water which is approved for drinking purposes by the national or local health authority having jurisdiction.

* * * * *

3. In § 319.37–13, footnote 11 and the reference to it are redesignated as footnote 12.

4. In § 319.37–8, paragraph (e) is revised and paragraph (g) is added to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria*, *Ananas*,[11] *Anthurium*, *Begonia*, *Gloxinia* (= *Sinningia*), *Nidularium*,[11] *Peperomia*, Polypodiophyta (=Filicales) (ferns), and *Saintpaulia*.

(1) Approved growing media are baked expanded clay pellets, cork, glass wool, organic and inorganic fibers, peat, perlite, polymer stabilized starch, plastic particles, phenol formaldehyde, polyethylene, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, vermiculite, or volcanic rock, or any combination of these media. Growing media must not have been previously used.

(2) Articles imported under this paragraph must be grown in compliance with a written agreement for enforcement of this section signed by the plant protection service of the country where grown and Plant Protection and Quarantine, must be developed from mother stock that was inspected and found free from evidence of disease and pests by an APHIS inspector or foreign plant protection service inspector no more than 60 days prior to the time the article is established in the greenhouse (except for articles developed from seeds germinated in the greenhouse), and must be:

(i) Grown in compliance with a written agreement between the grower and the plant protection service of the country where the article is grown, in which the grower agrees to comply with the provisions of this section and to allow inspectors, and representatives of the plant protection service of the country where the article is grown, access to the growing facility as necessary to monitor compliance with the provisions of this section;

(ii) Grown solely in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed, including cleaning and disinfection of floors, benches and tools, and the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests. The greenhouse must be free from sand and soil and must have screening with openings of not more than 0.6 mm on all vents and openings except entryways. All entryways must be equipped with automatic closing doors;

(iii) Rooted and grown in an active state of foliar growth for at least four consecutive months immediately prior to importation into the United States, in a greenhouse unit that is used solely for articles grown in compliance with this paragraph;

(iv) Grown from seeds germinated in the greenhouse unit; or descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendent plants, *provided* that if the mother plant was imported into the exporting country from another country, it must be:

(A) Grown for at least 12 months in the exporting country prior to importation of the descendent plants into the United States, or

(B) Treated at the time of importation into the exporting country with a

[11] These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States;

(v) Watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water;

(vi) Rooted and grown in approved growing media listed in § 319.37–8(e)(1) on benches supported by legs and raised at least 46 cm above the floor;

(vii) Stored and packaged only in areas free of sand, soil, earth, and plant pests; and,

(viii) Inspected in the greenhouse and found free from evidence of plant pests and diseases by an APHIS inspector or an inspector of the plant protection service of the exporting country, no more than 30 days prior to the date of export to the United States.

* * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* When evaluating a request to allow importation of additional taxa of plants established in growing media, the Animal and Plant Health Inspection Service will conduct the following analysis in determining the pest risks associated with each requested plant article and in determining whether or not to propose allowing importation into the United States of the requested plant article.

(1) *Collect commodity information.*

(i) Determine the kind of growing medium, origin and taxon of the regulated article.

(ii) Collect information on the method of preparing the regulated article for importation.

(iii) Evaluate history of past plant pest interceptions or introductions (including data from plant protection services of foreign countries) associated with each regulated article.

(2) *Catalog quarantine pests.* For the regulated article specified in an application, determine what plant pests or potential plant pests are associated with the type of plant from which the regulated article was derived, in the country and locality of origin. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (g)(3) of this section:

(i) Non-indigenous plant pest not present in the United States;

(ii) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(iii) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(iv) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(v) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in (g)(2)(i) through (iv) of this section.

(3) *Conduct individual pest risk assessments.* Each of the quarantine pests identified by application of the criteria in paragraph (g)(2) of this section will be evaluated based on the following estimates:

(i) Estimate the probability the quarantine pest will be on, with, or in the regulated article at the time of importation;

(ii) Estimate the probability the quarantine pest will survive in transit on the regulated article and enter the United States undetected;

(iii) Estimate the probability of the quarantine pest colonizing once entered into the United States;

(iv) Estimate the probability of the quarantine pest spreading beyond the colonized area; and

(v) Estimate the actual and perceived economic, environmental and social damage that would occur if the quarantine pest is introduced, colonizes, and spreads.

(4) *Determine overall estimation of risk based on compilation of component estimates.* This step will evaluate whether the pest risk of importing a regulated article established in growing media, as developed through the estimates of paragraph (g)(3) of this section, is greater than the pest risk of importing the regulated article with bare roots as allowed by § 319.37–8(a).

(i) If the pest risk is determined to be the same or less, the regulated article established in growing media will be allowed importation under the same conditions as the same regulated article with bare roots.

(ii) If the pest risk is determined to be greater for the regulated article established in growing media, APHIS will evaluate available mitigation measures to determine whether they would allow safe importation of the regulated article. Mitigation measures currently in use as requirements of this subsection, and any other mitigation methods relevant to the regulated article and plant pests involved, will be compared with the individual pest risk assessments in order to determine whether requiring particular mitigation measures in connection with importation of the regulated article would reduce the pest risk to a level equal to or less than the risk associated with importing the regulated article with bare roots as allowed by § 319.37–8(a). If APHIS determines that use of particular mitigation measures could reduce the pest risk to this level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the appropriate mitigation measures, APHIS will propose to allow importation into the United States of the requested regulated article if the appropriate mitigation measures are employed.

§ 319.37–9 [Amended]

5. In § 319.37–9, the phrase ''is not intermixed with other approved packing material;'' is removed.

Done in Washington, DC, this 9th day of January 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–935 Filed 1–12–95; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 34–35204]

RIN 3235–AG10

Rulemaking for EDGAR System; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains a correction to the final rules that were published Friday, December 30, 1994 (59 FR 67752). Those rules relate to the implementation of the Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system.

EFFECTIVE DATE: The EDGAR rules and amendments are effective January 30, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance at (202) 942–2910.

SUPPLEMENTARY INFORMATION:

Background

The disclosure form that is the subject of this correction was intended to be

amended in connection with the rulemaking to fully implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Divisions of Corporation Finance and Investment Management and for those making filings with respect to such registrants. Development and implementation of the EDGAR system was effected pursuant to Section 35A of the Securities Exchange Act of 1934 (15 U.S.C. 78*ll*).

Need for Corrections

This action is necessary to correct an internal cross reference within Form 8–A, for registration of certain classes of securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934. 15 U.S.C. 78*l*(b) or (g).

Correction of Publication

Accordingly, the publication on December 30, 1994 of the final EDGAR rules, which were the subject of FR Doc. 94–31579, is corrected as follows:

1. On page 67765, second column, the amendatory language for amendment No. 35 is corrected to read as follows:

''35. By amending Form 8–A (referenced in § 249.208a), Instruction II.2 of Instructions as to Exhibits, by revising the phrase 'pursuant to Instruction 3 above' to read 'pursuant to Instruction II.1, above,'.''

Dated: January 9, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–912 Filed 1–12–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of a generic neomycin sulfate oral solution in the drinking water and milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–118, which provides for the use of neomycin oral solution (neomycin sulfate) in the drinking water and milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate. Approval of ANADA 200–118 is as a generic copy of the Upjohn Co.'s approved NADA 11–315. The ANADA is approved as of November 29, 1994, and 21 CFR 520.1485(b) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the heading of the section is editorially revised to reflect the name of the product.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1485 is amended by revising the section heading and paragraph (b) to read as follows:

§ 520.1485 Neomycin sulfate oral solution.

* * * * *

(b) *Sponsors.* See Nos. 000009 and 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: January 3, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–899 Filed 1–12–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Salinomycin In Combination

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of three abbreviated new animal drug applications (ANADA's) filed by Hoechst-Roussel Agri-Vet Co. The ANADA's provide for using approved Type A medicated articles to make Type C medicated broiler feeds containing salinomycin with chlortetracycline and roxarsone, or salinomycin with chlortetracycline, or salinomycin with oxytetracycline.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., P.O. Box 2500, Somerville, NJ 08876–1258, filed the following ANADA's:

ANADA 200–091, salinomycin with chlortetracycline and roxarsone, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 grams per ton (g/t) salinomycin sodium activity, chlortetracycline calcium complex equivalent to 500 g/t chlortetracycline hydrochloride, and 45.4 g/t roxarsone for prevention of coccidiosis and as an aid in reduction of mortality due to certain *Escherichia coli* infections.

ANADA 200–095, salinomycin with chlortetracycline, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t salinomycin sodium activity with

chlortetracycline calcium complex equivalent to 500 g/t chlortetracycline hydrochloride for prevention of coccidiosis and as an aid in the reduction of mortality due to certain *E. coli* infections.

ANADA 200–096, salinomycin with oxytetracycline, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t salinomycin sodium activity with 500 g/t oxytetracycline for prevention of coccidiosis and as an aid in the reduction of mortality due to airsacculitis caused by certain strains of *E. coli*.

ANADA's 200–091 and 200–095 are approved as generic copies of American Cyanamid's NADA's 140–867 and 140–859. ANADA 200–096 is approved as a generic copy of Pfizer's NADA 140–448. ANADA 200–091 is approved as of January 13, 1995. ANADA's 200–095 and 200–096 are approved as of November 25, 1994. The regulations are amended in §§ 558.450 and 558.550 (21 CFR 558.450 and 558.550) to reflect the approvals.

These approvals are for use of Type A medicated articles to make Type C medicated feeds. Roxarsone is a Category II drug which, as in 21 CFR 558.4, requires an approved Form FDA 1900 for making a Type C medicated feed. Use of salinomycin, chlortetracycline, and roxarsone to make Type C medicated feeds as in ANADA 200–091 requires an approved Form FDA 1900.

FDA has published several documents amending § 558.550(a) to create paragraphs (a)(1) and (a)(2) and add a series of amendments to paragraph (a)(2). At this time, FDA is editorially amending the regulation following addition of these approvals to simplify the text.

In addition, FDA provided for the use of 45 and 45.4 g/t of roxarsone in this regulation. Those used at 45 g/t are amended to read 45.4 g/t.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.450 [Amended]

2. Section 558.450 *Oxytetracycline* is amended in paragraph (d)(1), in table 1, under the heading ''Sponsor,'' in entry (v) for ''Salinomycin 40 to 60,'' by removing ''000069'' and adding in its place ''000069, 012799''.

3. Section 558.550 is amended by revising paragraph (a)(2) and by amending paragraph (b)(1)(ii)(*a*) and (b)(1)(xv)(*a*) by removing ''45'' and adding in its place ''45.4'' to read as follows:

§ 558.550 Salinomycin.

(a) * * *

(2) To 012799 for use as in paragraphs (b)(1)(i), (b)(1)(iii) through (b)(1)(xvi), and (b)(3)(i) through (b)(3)(iii) of this section.

* * * * *

Dated: January 4, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–898 Filed 1–12–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 36

Nondiscrimination on the Basis of Disability by Public Aaccomodations and in Commercial Facilities

CFR Correction

In Title 28 of the Code of Federal Regulations, parts 0 to 42, revised as of July 1, 1994, appendix A to part 36 is corrected as follows:

1. On page 544, section 4.30.4, the first sentence is amended by adding the words ''(0.8 mm) minimum'' after ''1/32 in''.

2. On page 554, section 7.3, paragraph (1), the third entry in the first column of the table is revised to read ''9—15''.

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning January 1, 1995. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in November 1994 through January 1995. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), the Pension Benefit Guaranty Corporation (''PBGC'') collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 27 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code (''Code''). Similarly, under 29 CFR 2622.7, the interest rate to be credited or

charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning January 1, 1995, the interest charged on the underpayment of taxes will be at a rate of 9 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the January 1, 1995, through March 31, 1995, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in November of 1994 through January of 1995.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these actions is a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because they will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning January 1, 1995, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
*	*	*
Jan. 1, 1995	Mar. 31, 1995	9

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in November of 1994 through January of 1995, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate[1]
*	*
Nov. 1994	6.35
Dec. 1994	6.46
Jan. 1995	6.30

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning January 1, 1995, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* *	* *	*
Jan. 1, 1995	Mar. 31, 1995	9

Issued in Washington, DC, this 10th day of January 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–966 Filed 1–12–95; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's (''PBGC's'') regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in February 1995, and to multiemployer plans with valuation dates in February 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the February 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's (''PBGC's'') regulations on Valuation of Plan Benefits in single-Employer Plans (29 CFR part 2619, the ''single-employer regulation'') and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the ''multiemployer regulation'').

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and ''benefit liabilities,'' *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during February 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during February 1995.

For annuity benefits, the interest rates will be 7.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.00% for the period during which benefits are in pay status, 5.25% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for January 1995) of .20 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions are unchanged from those in effect for January 1995.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during February 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during February 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 16 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
16	2–1–95	3–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rate (denoted by i_1, i_2,, . . . , and referred to generally as i_t,) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * * * * *						
February 1995	.0730	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 16 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to

be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
16	2–1–95	3–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
February 1995	.0730	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of January 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–965 Filed 1–12–95; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. This amendment adds to the appendix of that regulation a new interest rate to be effective from January 1, 1995, to March 31, 1995. The effect of the amendment is to advise the public of the new rate.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), the Pension Benefit Guaranty Corporation (''the PBGC'') promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates'').

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 8.50 percent, which will

be effective from January 1, 1995, through March 31, 1995. This rate represents an increase of .75 percent from the rate in effect for the fourth quarter of 1994. This rate is based on the prime rate in effect on December 15, 1994.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
*	*	*	*
1/01/95	3/31/95	12/15/94	8.50

Issued in Washington, DC, on this 10th day of January 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–967 Filed 1–12–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB40

Regulations Governing Recoupment of Overpayments on Indian Mineral Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its Royalty Management Program regulations to codify longstanding policy with respect to recoupment of overpayments made by lessees and other payors on Indian mineral leases. The established policy is that recoupments cannot exceed 50 percent of the reported revenues in the current month on an allotted lease or 100 percent of the reported revenues in the current month on a tribal lease.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff at (303) 231–3432, FAX (303) 231–3194.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Royalty Management Program, Rules and Procedures Staff, Lakewood, Colorado.

I. Background

In the Notice of Proposed Rulemaking (55 FR 3232, January 31, 1990), MMS described the current policy regarding recoupment of overpayments made by lessees and other payors on Indian mineral leases. As stated in the proposed rule, royalty payments on production from mineral leases are a major source of income to many Indian allottees and tribes and, for some allottees, the only source.

The current policy permits lessees and payors to recoup overpayments as a credit against future rental or royalty accruals due to Indian tribes or allottees. Lessees and operators were instructed to follow the recoupment policy in ''Notice to Lessees and Operators of Indian Oil and Gas Leases No. 1A'' (NTL–1A), issued by the Conservation Division of the U.S. Geological Survey in 1977. Section IX of NTL–1A provided that in the case of tribal leases the credit must be against the same lease or, with approval of the tribe, against amounts due under other tribal leases. In the case of allotted leases, such credits were limited to the lease on which the overpayments were made with recovery of the overpayment prorated over a period of time necessary to prevent an allottee's current monthly revenue being reduced by more than 50 percent. This recoupment policy was adopted by MMS and instructions were included in Volume II of the MMS ''Oil and Gas Payor Handbook'' by Addendum No. 12, effective December 1, 1983. Also, instructions were included in the revised MMS ''Oil and Gas Payor Handbook'' issued in December 1986 (Section 3.7, ''Reporting Indian Overpayment Recoupments''). The instructions are also included in the MMS ''AFS Payor Handbook—Solid Minerals'' issued in September 1984 (Chapter 5, ''Recoupments on Indian Leases''). These payor handbooks have been provided to all royalty payors on Federal and Indian leases for specific guidance with respect to reporting requirements on oil and gas and solid mineral leases.

MMS published in the **Federal Register** revised final oil and gas product valuation regulations at 30 CFR Part 206 on January 15, 1988, effective March 1, 1988 (53 FR 1184 and 53 FR 1230). Paragraph 206.150(e)(2) of the revised regulations terminated NTL–1A. However, MMS' policy and procedure remained in the payor handbooks.

Although the Indian lease overpayment recoupment policy has been the same for many years, MMS has determined that its regulations should state the policy. Consequently, MMS published the January 31, 1990, proposed rulemaking to codify the policy and procedure. In response to the proposed rule, MMS received comments from four lessees/payors and other interested parties. All of these comments were considered in the final rule and are discussed in Section II below. The final rule is summarized in Section III below.

II. Comments Received on Proposed Rule

The proposed rule provided for a 30-day public comment period, which ended March 2, 1990. Four commenters (three industry and one Indian representative) submitted comments during the comment period which are addressed in this section.

Comment: The Indian representative objected to the proposed requirement that BIA approval be obtained before lessees and payors could recoup more than 50 percent of the monthly reported revenues on an individual allotted lease. This objection was based on the commenter's opinion that BIA is ill-equipped to make an independent determination of the propriety of any claimed overpayment. Because there is an obvious adverse impact on allottees subject to recoupment, this commenter recommended that the final rule require prior consultation and concurrence of the affected allottee regarding requests from lessees and payors to recoup more than 50 percent of reported revenues in an individual month.

Response: MMS agrees with the commenter's recommendation with respect to affected Indian allottees. However, in many situations, it may be impractical to obtain concurrence for more than a 50 percent recoupment from all affected Indians in a timely manner. Therefore, the final regulation was changed and no longer provides for such an exception to the 50 percent recoupment limitation on allotted leases.

Comment: One industry commenter agreed with the proposed recoupment procedure and in general with the proposed limitation. However, the commenter expressed concern regarding the need for expeditious handling of requests for recoupments in excess of the limitation. The commenter emphasized that it was important that the request for any recoupment above the limitation be processed timely, unless interest could be recovered by the lessee on the overpayment.

Response: Since the final regulation no longer provides for recoupments in excess of the limitations, expeditious handling of such requests is a moot point. In regard to interest on overpayments, MMS does not have legal authority to pay interest on overpayments made by lessees and payors.

Comment: Another industry commenter agreed that MMS regulations should establish the recoupment policy. However, this commenter questioned the necessity for the requirement that written permission be obtained from a tribe before overpayments made on one lease could be recouped from a different tribal lease. In this commenter's opinion, a lessee or payor should be able to take a credit and recoup any overpayment against any and all of its producing leases with that tribe without requiring that tribe's approval, because the tribe's revenue is generally not limited to a single lease.

Response: Royalty payments on production from mineral leases are a major source of income to many tribes. When a lessee or payor can recoup an overpayment against payments due on all producing tribal leases without permission, the tribe cannot plan the distribution of royalty revenues with reasonable accuracy.

In order that the tribe may plan for decreases in royalty revenues, MMS has determined that a payor must obtain written permission from the tribe to recoup overpayments made on one tribal lease from a different tribal lease. Paragraphs 218.53(b) and 218.203(b) of the final rule require that the payor provide MMS with a copy of the tribe's written permission in accordance with instructions provided in the ''Oil and Gas Payor Handbook'' and the ''AFS Payor Handbook—Solid Minerals''.

Comment: A different industry commenter who was in general support of the proposed rule stated that a strict application of the policy may, in some cases, be inequitable. For example, if a lessee or payor is required to make a payment to an Indian allottee on a Bill for Collection that is under appeal and the lessee or payor prevails on the appeal, the lessee/payor may not be able to recoup if the company is no longer the payor on the lease or the level of production on the lease has declined to a point where recoupment is not an adequate remedy. In this commenter's opinion, it would not be good policy in these situations to allow an allottee to keep the payment and prevent the lessee from otherwise obtaining a refund. The commenter recommended that the final rule allow lessees to obtain a cash refund when recoupment is an inadequate remedy.

Response: MMS recognizes the merit of this commenter's concerns. However, this situation can be avoided if the payor, in accordance with 30 CFR 243.2, elects to post a surety pending a decision on the appeal rather than submitting payment. If the appellant prevails on its appeal, the surety would be returned and recoupment or refund of a payment would not be necessary. If the payor elects to submit payment and is not able to recoup the payment, MMS does not have legal authority to refund the payment from general funds, but can seek a special congressional appropriation for the amount of any refund due to the payor.

Comment: One industry commenter state that any rulemaking that would deny or delay recovery of any overpayment, other than under a strict statute of limitations imposed equitably on both the Indian(s) and lessee, would be a violation of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights.''

Response: A continuing payor with sufficient recoupable balances would not be denied recoupment of any overpayment under the proposed or final rule. MMS has determined that the procedures set forth in the proposed or final rule do not violate E.O. 12630.

III. Summary of Final Rule

This final rulemaking codifies MMS' longstanding policy with respect to recoupment of overpayments made by lessees and other royalty payors on Indian mineral leases by the addition of new sections at 30 CFR 218.53 (previously reserved) and 30 CFR 218.203. Overpayments subject to recoupment under the adopted rule include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

The final rule permits lessees and payors to recoup overpayments as credits against reported revenues due to Indian tribes or allottees in the current month on the same lease. Specifically, the final rule allows recoupment of overpayments not to exceed 50 percent of reported revenues in that month on an allotted lease or 100 percent of the reported revenues in that month on a tribal lease. A payor may recoup an overpayment made on one tribal lease from a different tribal lease only if written permission is authorized by tribal statute or resolution.

The final rule also provides that MMS may issue an order to a payor prohibiting recoupment of any amount for a reasonable period of time as MMS may need to review the nature and amount of any overpayment. Situations may arise in which a payor believes it has made an overpayment and is entitled to recoup the overpaid amount. However, the payor in fact may not have overpaid, and should not be allowed to recoup since recoupments reduce the Indian lessor's expected revenues. The authority in paragraph (d) of both § 218.53 and § 218.203 allows MMS to prevent the payor from taking the recoupment until the fact that the payor has overpaid and the amount of the

overpayment have been reviewed. MMS expects to use this authority only in limited circumstances, such as when there is information suggesting there has been no overpayment, or where the proposed recoupment would be extraordinarily large and result in reduced revenues for a long period of time to the Indian lessor.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The rule is needed to conform regulations to existing policy and practice.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0022.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: November 28, 1994.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for Part 218 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 218.53 (previously reserved) under Subpart B (Oil and Gas, General) is added to read as follows:

§ 218.53 Recoupment of overpayments on Indian mineral leases.

(a) Whenever an overpayment is made under an Indian oil and gas lease, a payor may recoup the overpayment through a recoupment on Form MMS–2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS pursuant to instructions for reporting recoupments in the MMS ''Oil and Gas Payor Handbook.'' See 30 CFR 210.53. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

3. A new § 218.203 under Subpart E (Solid Minerals, General) is added to read as follows:

§ 218.203 Recoupment of overpayments on Indian mineral leases.

(a) Whenever an overpayment is made under an Indian solid mineral lease, a payor may recoup the overpayment through a recoupment on Form MMS–2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS pursuant to instructions for reporting recoupments in the ''AFS Payor Handbook—Solid Minerals.'' See 30 CFR 210.204. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

[FR Doc. 95–854 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency adopts an exemption to a system of

records from certain provisions of the Privacy Act. The system of records is identified as S100.10 GC, entitled Whistleblower Complaint and Investigation Files.

The exemption is intended to increase the value of the system of records for law enforcement purposes; to comply with prohibitions against the disclosure of certain kinds of information; and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen, 703–617–7583.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute ''significant regulatory action.'' Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the right and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense, certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This rule adds an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA performs as one of its principal functions investigations into whistleblower complaints arising from DLA employees and the employees of DLA contractors. The exempt system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The authority for the exemption may be found in 5 U.S.C 552a(k)(2). The system would thus be exempt from sections 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f). The Director adopts these exemptions. The proposed rule was published on October 13, 1994, at 59 FR 51911. No comments were received, therefore, the DLA is adopting the exemption rule.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, the Defense Logistics Agency amends 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. 32 CFR part 323, Appendix H is amended by adding paragraph d.

Appendix H to Part 323—DLA Exemption Rules

* * * * *

d. ID: S100.10 GC (Specific exemption).

1. *System name:* Whistleblower Complaint and Investigation Files.

2. *Exemption:* Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

3. *Authority:* 5 U.S.C. 552a(k)(2).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1), because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (e)(4)(H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system. However, DLA will continue to publish such a notice in broad generic terms as is its current practice.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: January 6, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–843 Filed 1–12–95; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL–5125–7]

RIN 2050–AD06

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. This amendment adds new and revised methods as Update II to the Third Edition of the EPA-approved test methods manual ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. It also incorporates the SW–846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994 as part of the wood surface protection rule), into 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA. The intent of this amendment is to provide better and more complete analytical technologies for RCRA-related testing and thus promote cost effectiveness and flexibility in choosing analytical test methods.

EFFECTIVE DATE: January 13, 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 13, 1995.

ADDRESSES: The official record for this rulemaking (Docket No. F–94–WT2F–FFFFF) is located at the U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (room M–2616), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846 as amended by Updates I, II, and IIA are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783–3238. The GPO document number is 955–001–00000–1. New subscriptions to SW–846 may be ordered from GPO at a cost of $319.00 (subject to change). There is a 25% surcharge for foreign subscriptions and renewals.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 920–9810; or, for hearing impaired, call TDD (800) 553–7672 or (703) 486–3323. For technical information, contact Kim Kirkland or Charles Sellers, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4761.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

II. Background Summary and Regulatory Framework

EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. Use of some of these methods is required by specific regulations, as discussed below. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

Several of the hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in SW–846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. For the convenience of the reader, the Agency lists below a number of the sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW–846 methods in general:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (*i.e.*, delisting petitions);

(2) Section 261.22(a) (1) and (2)—Evaluation of waste against the corrosivity characteristic;

(3) Section 261.24(a)—Leaching procedure for evaluation of a waste against the toxicity characteristic;

(4) Section 261.35(b)(2)(iii)(A)—Testing rinsates from wood preserving cleaning processes;

(5) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of a waste to determine if free liquid is a component of the waste;

(6) 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)—Testing total organic concentration of air emission standards for process vents;

(7) 264.1063(d)(2) and 265.1063(d)(2)—Testing total organic concentration of air emission standards for equipment leaks;

(8) Section 266.106(a)—Analysis in support of compliance with standards to control metals emissions from burning hazardous waste in boilers and industrial furnaces;

(9) Section 266.112(b) (1) and (2)(i)—Certain analysis in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(10) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(11) Sections 268.40 (a), (b) and (f), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste extract to determine compliance with Land Disposal treatment standards;

(12) Section 268.7(a)—Leaching procedure for evaluation of a waste to determine if the waste is restricted from land disposal;

(13) Sections 270.19(c)(1) (iii) and (iv), and 270.62(b)(2)(i) (C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(14) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2) (i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in satisfying RCRA-related sampling and analysis requirements.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Update II represents such an incorporation.

III. Update IIA to SW–846, Third Edition

On January 4, 1994 (59 FR 458), the Agency issued a final hazardous waste listing determination for wastes generated from the use of chlorophenolic formulations in wood surface protection processes. This rule also finalized an April 27, 1993 (58 FR 25707) proposal to include Method 4010, ''Screening for Pentachlorophenol by Immunoassay'' in the Third Edition of SW–846. No comments were received on Method 4010 and it was incorporated by reference in 40 CFR 260.11(a) as Update IIA to the Third Edition of SW–846 in the January 4, 1994 Final Rule. Update IIA (Method 4010) is being distributed to SW–846 subscribers as part of the Final Update II package.

IV. Overview of August 31, 1993 NPRM and Summary of Responses to Public Comments

A. Overview of Proposal

On August 31, 1993 (58 FR 46052), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by (1) adding revised methods and chapters and new methods as Update II to SW–846 and incorporating the Third Edition as amended by Updates I and II, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA; (2) deleting a statement in Chapter Seven that states that ''Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid'' for purposes of characteristic testing; and (3) clarifying the regulatory requirements as to the temperature for pH measurements of highly alkaline wastes during corrosivity characteristic testing.

The Agency solicited comments on each of these proposed changes. Items B through D of this section summarize the major comments that were received and the actions taken by the Agency in response to those comments.[1]

B. Responses to Comments Regarding the Addition of Update II Methods and Chapters to SW–846

The Agency proposed, as part of Update II to SW–846, to revise several methods and chapters already contained in the Third Edition of SW–846 and its Update I, as incorporated by reference into 40 CFR 260.11. The revisions were proposed to improve the methods and provide additional performance information for these methods. The proposed revisions more accurately reflect SW–846 method improvements. Finally, as part of Update II, the Agency also proposed to add 33 new methods to SW–846.

The Agency received very few negative comments on the proposal to add the methods and revise certain chapters of Update II to SW–846. However, based on public comment and other reasons explained below in sections IV.B.1 and IV.B.2 of this preamble, the Agency has decided not to promulgate proposed new Methods 5100 and 5110 and the proposed revised Method 9200A in Final Update II. The Agency is promulgating all other Proposed Update II new and revised methods and chapters as Final Update II of SW–846.

The comments received by the Agency on the addition of new methods and the revision of existing methods and chapters were technical in nature. Details on these comments and the Agency's responses may be found in the background document to this rulemaking. The Agency has incorporated several of the suggested changes into the Update II package, as described in the background document. Sections IV.B.1 through IV.B.8 of this preamble summarize the major comments and responses which the Agency believes may be of particular interest to the regulated community.

1. Non-Promulgation of Methods 5100 and 5110 in Update II

The Agency wishes to eliminate the promulgation of redundant, cross-program methods, where possible. Therefore, the Agency is not promulgating Method 5100 and 5110 in Final Update II because they are redundant and obsolete versions of the Office of Air Quality, Planning and Standards (OAQPS) Methods 25D and 25E, issued in support of analyses conducted under the Clean Air Act. There are currently no RCRA applications for which Method 5100 or 5110 are applicable. Based on the Agency's current policy of not proliferating redundant methods when appropriate methods are available from other Program Offices, and that there are no planned RCRA applications for these methods in the near future, the Agency believes that there is no need to promulgate Method 5100 or 5110 at this time. For informational purposes, Method 25D can be found in Appendix A of 40 CFR part 60; and Method 25E is currently available from the Office of Air Quality Planning and Standards (OAQPS), Mailcode MD–14, Technical Support Division, Research Triangle Park, NC 27711, (919) 541–5536.

2. Non-Promulgation of Method 9200A in Update II

The analytical procedure found in SW–846 Method 9200 (Nitrate) was recently demonstrated to be unreliable by both the Agency's Environmental Monitoring Support Laboratory in Cincinnati (EMSL–Ci) and the American Water Works Association (AWWA). The unstable nature of the analytical reagents and excessively tight temperature control requirements were contributing factors to the method's unreliability. In fact, on December 15,

[1] Other comments, together with the Agency's response thereto, have been placed in the official record for this rulemaking, ''Response to Public Comments Background Document, Promulgation of the Second Update to SW–846, Third Edition''. (Docket No. F–94–WT2F–FFFFF)

1993 (58 FR 65622), the Agency proposed to remove Method 353.1, which contains a brucine-sulfanilic acid procedure similar to Method 9200, as approved for the determination of nitrate under 40 CFR 141.23 of the National Primary Drinking Water Regulations. The AWWA also removed the brucine-sulfanilic acid (Method 419 D) method from its publication ''Standard Methods for the Examination of Water and Wastewater''. To be consistent with this and any other related Agency actions, the Agency is not including Method 9200A, a modified version of Method 9200, in Final Update II, and plans to propose the removal of Method 9200 from SW–846 at a later date. (Method 9200A reversed the order of brucine-sulfanilic acid and sulfuric acid reagents from that described in Method 9200 in an unsuccessful attempt to improve reliability.) In the rare cases where nitrate is a target analyte for RCRA-related analyses, the regulated community may use Method 9056—The Determination of Inorganic Anions by Ion Chromatography which is included in this Final Rule, or an appropriate method approved and issued by other Agency programs, such as Method 353.2—Nitrogen, Nitrate-Nitrite, found in the methods manual ''Methods for Chemical Analysis of Water and Wastes''. (Although Method 353.2 provides combined nitrate-nitrite results, separate values can be obtained according to Sec. 2.1 of the method.)

3. Flexibility Allowance in SW–846

Many public comments requested the use of alternative equipment, materials, and procedures during the application of the Update II SW–846 methods. Although the Agency agrees with most of the alternatives suggested by these comments, the Agency did not change the content of any method in response to the comments because the necessary flexibility in equipment, materials, or method application is already allowed by the SW–846 Disclaimer, presented at the beginning of the document, and Sections 2.1.1 and 2.1.2 of Chapter Two. Based on the large number of comments requesting the inclusion of alternatives in SW–846 methods, the Agency believes that this inherent flexibility and performance-based approach allowed by SW–846 is not sufficiently understood by the regulated community. The Agency, therefore, wishes to stress that flexibility in the use of equipment, glassware, and procedures is allowed pursuant to the SW–846 Disclaimer and Secs. 2.1.1 and 2.1.2 of Chapter Two.

Specifically, as stated in the SW–846 Disclaimer, SW–846 methods are designed to be used with equipment from any manufacturer that results in suitable method performance. In general, the equipment specifications and settings given in the SW–846 methods represent the particular instruments used during method development, or subsequently approved for use in the method. However, these specifications need not be explicitly followed. Other equipment may be used as long as the laboratory achieves equivalent or superior method performance appropriate for the particular application.

In addition, many types and sizes of glassware and supplies are commercially available and it is possible to prepare reagents and standards in many different ways. Therefore, as stated in both the SW–846 Disclaimer and Sec. 2.1.2 of Chapter Two, those specified in the methods may be replaced by any similar type as long as the substitution does not affect the overall quality of the analyses. Finally, Sec. 2.1.1 of Chapter Two observes that SW–846 methods were designed through sample sizing and concentration procedures to address trace analyses (<1000 ppm); however, the methods can be made applicable to other analyses through the use of appropriate sample preparation techniques.

4. Consolidation of GFAA Methods

One commenter suggested that the Agency consolidate the separate graphite furnace atomic absorption (GFAA) methods in the 7000 Series into a single method. The commenter found the present approach of separate methods for individual elements to be cumbersome and redundant. The Agency appreciates this point, and is considering both Flame and GFAA method consolidation as a future option for SW–846, provided that analytical flexibility can be retained during analysis of the individual elements. However, it is not possible to combine individual GFAA methods as part of this Final Rule without further study by the Agency and without providing an opportunity for public comment on any new, consolidated method. The Agency believes that adding the individual GFAA methods to SW–846 at this time is more beneficial to the analytical community.

5. SPE as a Preparative Method to Method 8081A

One commenter requested that the Agency add solid phase extraction (SPE) as a preparative method in water matrices for determination by Method 8081A—Organochlorine Pesticides by Gas Chromatography: Capillary Column Technique. The Agency agrees that such a method would be useful, but it cannot be added at this time as part of Final Update II. The addition of this method requires submission of performance data for review by the SW–846 Technical Workgroup, proposal in the **Federal Register** and an opportunity for public comment. SPE is a preparative technique for separating extractable organic analytes from water matrices for determination by gas chromatography or other appropriate technique, and will be considered for inclusion in SW–846 as a 3500 Series method. The Agency is working on the development of a general SPE method which will be included in a future update of SW–846.

6. Deletion of Ultrasonic Extraction (Method 3550) as a Preparative Method for Method 8141A and the Re-Inclusion of Tables 5, 6 and 7 to Method 8141A

One commenter observed that when Method 3550—Ultrasonic Extraction is used as a preparative method for Method 8141A, several analytes of interest are lost. The Agency agrees; a published study has demonstrated that decomposition of compounds of interest during sample preparation by ultrasonic extraction is indeed a problem.[2] Therefore, the Agency has deleted all references to Method 3550 in Method 8141A and has added a section which clearly states that Method 3550 is not an appropriate sample preparation method for Method 8141A because of the potential for target analyte destruction during the ultrasonic extraction process. For consistency with this information, references to Method 8141 were also removed from Table 2 of Method 3550A which delineates specific extraction conditions for various determinative methods.

In addition, the Agency has re-included three organophosphorus compound performance data tables in the final version of Method 8141A which were inadvertently deleted from the proposed version of the method. Specifically, the Agency is re-including Table 5, which provides recovery data from separatory funnel extraction; Table 6, which provides recovery data from continuous liquid-liquid extraction; and Table 7, which provides recovery data from Soxhlet extraction. These tables are unchanged from the original versions which were included in Method 8141 as Tables 4, 5 and 6, respectively.

[2] Kotronarou, et al., Environ. Sci. Technol., 1992, 26, pp. 1460–1462.

7. Consistent Use of ''RF'' as Terminology for ''Relative Response Factor'' in GC Methods

A few commenters noted an inconsistent use of the terminology ''RF'' versus ''RRF'' in the 8000 Series gas chromatography (GC) methods. In response to these comments, the Agency has replaced all uses of the term ''RRF'' with the term ''RF'' to consistently represent ''relative response factor'' in all GC methods. This is an editorial change to eliminate confusion caused by two terms having the same definition.

8. Additional Ion Trap Data Guidance in Method 8260A

The Agency received several comments requesting additional guidance regarding how to use ion trap mass spectrometers in Method 8260A—Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry: Capillary Column Technique. In response to these comments, the Agency has added several new sections to the method, specifically Sec. 4.4.2.4, which identifies use of a fourth capillary column and Sec. 7.2.7 which provides guidance regarding the direct split interface of the column. In addition, the Agency added guidance to Sec. 4.4.3.1 regarding the selection of the proper quantitation ion in the event of ion-molecule reactions with water and methanol which may produce interferences that coelute with chloromethane and chloroethane. The Agency also added optional quantitation ions to Table 5 for chloromethane and chloroethane for use in the event that the ion-molecule reactions with water and methanol are observed.

C. Free Liquids and Characteristic Tests

In section III.C of the August 31, 1993 proposed rule, the Agency proposed to delete a statement in Chapter Seven of SW–846 which stated ''Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid'' for purposes of testing for the hazardous waste characteristics. In the proposed Chapter Seven, the Agency replaced that statement with ''Use the pressure filtration technique specified in Method 1311 (TCLP) to determine free liquid''. The Agency has decided not to include the proposed revision to Chapter Seven at this time because, based on public comment, the Agency was not sufficiently clear regarding its intent, as some commenters suggested, and the appropriate application of the revised guidance. It was not the Agency's intent to discourage the use of Method 9095 in demonstrating the ''positive'', i.e., that a liquid exists for the purpose of testing for the corrosivity and ignitability characteristics. The Agency instead intended to propose, as guidance, that Method 9095 (or any other common laboratory separation technique) is not adequate to demonstrate the ''negative'', i.e., that a waste *does not* contain a liquid for the purpose of characteristic testing. Consistent with that intent, a proper statement of the use of Method 9095 to determine a free liquid for the purpose of testing for hazardous waste characteristics is as follows:

''The definitive procedure for determining if a waste contains a liquid for the purposes of the ignitability and corrosivity characteristics is the pressure filtration technique specified in Method 1311. However, if one obtains a free liquid phase using Method 9095, then that liquid may instead be used for purposes of determining ignitability and corrosivity. However, wastes that do not yield a free liquid phase using Method 9095 should then be assessed for the presence of an ignitable or corrosive liquid using the pressure filtration technique specified in Method 1311.''

Since this language was not explicitly proposed for inclusion in Chapter Seven, or otherwise provided for public comment, and since the Agency received numerous negative public comments regarding the content of section III.C of the proposed rule, the Agency will not at this time revise Chapter Seven by removing the statement on the use of Method 9095 from Sec. 7.2.1 of the Chapter. The Agency, nonetheless, stands behind the position described in the language above and may, therefore, repropose this revision to Chapter Seven in the future with better clarification regarding its intent.

In response to public comment, the Agency also notes that Chapter Seven is RCRA guidance, and that the Agency did not propose to add an analytical requirement regarding liquid determinations to any part of the RCRA regulations.

D. pH Testing

The Agency requested comment on whether to add a temperature requirement for the purposes of corrosivity testing by proposed Method 9040A (pH Electrometric Measurement) and Method 9045B (Soil and Waste pH). The Agency is still responding to public comments regarding this proposed temperature requirement. The Agency did not want to delay the promulgation of Update II as a result of its ongoing deliberations on this limited aspect of the proposal. Therefore, Methods 9040A and 9045B of Update II do not at this time include any changes regarding a temperature requirement during the measurement of pH for determination of the characteristic of corrosivity. Final action regarding whether or not to add a temperature requirement will be deferred until the Agency has fully responded to all relevant comments. If the Agency decides at that time to add a temperature requirement to Method 9040A or 9045B as a result of public comment, the methods will be revised and added to SW–846 as part of a separate rulemaking. Responses to comments regarding the pH temperature clarification will also be included in a separate background document specifically prepared to support such a future action.

V. Overview of the Final Rule

This rule makes final the Agency's proposal to add revised methods and chapters and new methods as Update II to SW–846 and incorporate the Third Edition as amended by Updates I, II, and IIA, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA.

Table 1 lists all of the revised methods and chapters and new methods that are approved by the Agency for inclusion in Final Update II to SW–846. The table lists the chapters and methods of Update II in the order of their relative location in SW–846. The vertical ''* * *'' notation indicates portions of SW–846, Third Edition (as amended by Updates I and IIA), which are unchanged by Final Update II.

TABLE 1.—FINAL UPDATE II OF SW–846, THIRD EDITION [1]

Method No.	Title
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	Abstract
	Table of Contents
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	Chapter Two—Choosing the Correct Procedure
	Chapter Three—Metallic Analytes
	3.1 Sampling Considerations
	3.2 Sample Preparation Methods
	.
	.
	.
3015	Microwave Assisted Acid Digestion of Aqueous Samples and Extracts
3051	Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils
	3.3 Methods for Determination of Metals
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TABLE 1.—FINAL UPDATE II OF SW–846, THIRD EDITION [1]—Continued

Method No.	Title
6020	Inductively Coupled Plasma—Mass Spectrometry
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7060A	Arsenic (Atomic Absorption, Furnace Technique)
	.
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7062	Antimony and Arsenic (Atomic Absorption, Borohydride Reduction)
7080A	Barium (Atomic Absorption, Direct Aspiration)
	.
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	.
7131A	Cadmium (Atomic Absorption, Furnace Technique)
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	.
7470A	Mercury in Liquid Waste (Manual Cold-Vapor Technique)
7471A	Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)
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	.
	.
7741A	Selenium (Atomic Absorption, Gaseous Hydride)
7742	Selenium (Atomic Absorption, Borohydride Reduction)
	.
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	.
	Chapter Four—Organic Analytes
	4.1 General Considerations
	4.2 Sample Preparation Methods
	4.2.1 Extractions and Preparations
	.
	.
	.
3510B	Separatory Funnel Liquid-Liquid Extraction
3520B	Continuous Liquid-Liquid Extraction
3540B	Soxhlet Extraction
3541	Automated Soxhlet Extraction
3550A	Ultrasonic Extraction
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	.
5040A	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): GC/MS Technique
5041	Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Wide-bore Capillary Column Technique
	4.2.2 Cleanup
3600B	Cleanup
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3630B	Silica Gel Cleanup
3640A	Gel-Permeation Cleanup
	.
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TABLE 1.—FINAL UPDATE II OF SW–846, THIRD EDITION [1]—Continued

Method No.	Title
3665	Sulfuric Acid/Permanganate Cleanup
	4.3 Determination of Organic Analytes
	4.3.1 Gas Chromatographic Methods
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8010B	Halogenated Volatile Organics by Gas Chromatography
	.
	.
	.
8020A	Aromatic Volatile Organics by Gas Chromatography
8021A	Halogenated Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors in Series: Capillary Column Technique
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8031	Acrylonitrile by Gas Chromatography
8032	Acrylamide by Gas Chromatography
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8061	Phthalate Esters by Capillary Gas Chromatography with Electron Capture Detection (GC/ECD)
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8080A	Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography
8081	Organochlorine Pesticides and PCBs as Aroclors by Gas Chromatography: Capillary Column Technique
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8120A	Chlorinated Hydrocarbons by Gas Chromatography
8121	Chlorinated Hydrocarbons by Gas Chromatography: Capillary Column Technique
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	.
8141A	Organophosphorus Compounds by Gas Chromatography: Capillary Column Technique
8150B	Chlorinated Herbicides by Gas Chromatography
8151	Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzylation Derivatization: Capillary Column Technique
	4.3.2 Gas Chromatographic/Mass Spectroscopic Methods

TABLE 1.—FINAL UPDATE II OF SW–846, THIRD EDITION [1]—Continued

Method No.	Title
8240B	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)
8250A	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)
8260A	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique
8270B	Semivolatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS): Capillary Column Technique
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	.
8290	Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/ High-Resolution Mass Spectrometry (HRGC/HRMS)
4.3.3	High Performance Liquid Chromatographic Methods
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	.
8315	Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC)
8316	Acrylamide, Acrylonitrile and Acrolein by High Performance Liquid Chromatography (HPLC)
8318	N-Methylcarbamates by High Performance Liquid Chromatography (HPLC)
8321	Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/ Thermospray/Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) Detection
8330	Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC)
8331	Tetrazene by Reverse Phase High Performance Liquid Chromatography (HPLC)
	4.3.4 Fourier Transform Infrared Methods
8410	Gas Chromatography/Fourier Transform Infrared (GC/FT-IR) Spectrometry for Semivolatile Organics: Capillary Column
	4.4 Miscellaneous Screening Methods
	.
	.
	.
4010 [2]	Screening for Pentachlorophenol by Immunoassay
8275	Thermal Chromatography/Mass Spectrometry (TC/MS) for Screening Semivolatile Organic Compounds
	Chapter Five—Miscellaneous Test Methods

TABLE 1.—FINAL UPDATE II OF SW–846, THIRD EDITION [1]—Continued

Method No.	Title
5050	Bomb Preparation Method for Solid Wastes
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9020B	Total Organic Halides (TOX)
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9056	Determination of Inorganic Anions by Ion Chromatography
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9071A	Oil and Grease Extraction Method for Sludge and Sediment Samples
9075	Test Method for Total Chlorine in New and Used Petroleum Products by X-Ray Fluorescence Spectrometry (XRF)
9076	Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry
9077	Test Methods for Total Chlorine in New and Used Petroleum Products (Field Test Kit Methods)
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	.
9252A	Chloride (Titrimetric, Mercuric Nitrate)
9253	Chloride (Titrimetric, Silver Nitrate)
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	Chapter Six—Properties
1312	Synthetic Precipitation Leaching Procedure
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	.
	.
9040A	ph Electrometric Measurement
	.
	.
	.
9045B	Soil and Waste pH
	.
	.
	.
9096	Liquid Release Test (LRT) Procedure
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	.
	.
	Chapter Seven—Introduction & Regulatory Definitions
	.
	.
	.

[1] The vertical "* * *" indicates unchanged portions of SW–846.

[2] Method 4010 is Update IIA.

VI. State Authority

A. Applicability in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorization

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, this rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's proposed rule is determined based on the date of final rule promulgation in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in fulfillment of the final rule until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official applications for final authorization within 12 months after the effective date of today's rule are not required to include in their applications requirements equivalent to the requirements in today's rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of today's rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when, among other things, the Agency finds that the regulated community does not need six months to come into compliance. Since today's rule provides greater flexibility to the regulated community in testing and monitoring solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedures Act, 5 U.S.C. section 553(d), for not delaying the effective date of this rule. Therefore, this rule is effective January 13, 1995.

VIII. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether a 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.

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

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. section 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to all of the regulated community by providing an increased choice of appropriate analytical methods for RCRA applications, including small entities. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Thus, the regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: December 13, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' reference to read as follows:

§ 260.11 References.

(a) * * *

''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), and IIA (August, 1993)]. The Third Edition of SW–846 and Updates I, II, and IIA (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

* * * * *

[FR Doc. 95–821 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5138–9]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from the reorganization of the Michigan Department of Natural Resources (MDNR) by Executive Order 1991–31.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, RCRA Regulatory Development Section, U.S. EPA, Region 5, 77 W. Jackson (HRM–7J), Chicago, Illinois 60604, or telephone (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1994, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b) have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented, or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21(b).

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991);

and November 30, 1993 (58 FR 51244, October 1, 1993). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; and August 10, 1992, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description indicated that the Site Review Board (SRB) also had authority to approve or deny construction permit applications.

On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31 (EO 1991–31). EO 1991–31, which became effective on September 2, 1993, provides that:

> All the statutory authority, power, duties, functions, and responsibilities of the Commission of Natural Resources and the Department of Natural Resources * * * and of the director of the Department of Natural Resources and of the agencies, boards and commissions contained therein * * * are hereby transferred to the director of a new Michigan Department of Natural Resources, by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

EO 1991–31, Section I(A)(1).

EO 1991–31 also affected the SRB. EO 1991–31 also provides that:

> * * * the functions, duties, and responsibilities of the Site Review Boards * * * are transferred by a Type II transfer * * * and a Site Review Board shall be advisory to the director of the new Michigan Department of Natural Resources.

EO 1991–31, Section III(C)(9). The Director of the MDNR now has the authority to approve or deny construction permit applications.

Pursuant to EPA's request, on March 10 and August 18, 1994, Michigan submitted documents to EPA that were necessary for EPA to determine the impact of EO 1991–31 upon the authorized State hazardous waste management program. The documents consisted of a modified Program Description, an addendum to the Attorney General's Statement, and an addendum to the Memorandum of Agreement between the State and EPA outlining the policies, responsibilities and procedures under which the program is administered. Michigan in its submittal indicated that there had been no substantive changes in Michigan's hazardous waste management program as a result of EO 1991–31. Rather, according to Michigan, EO 1991–31 resulted in some internal reorganization of the MDNR.

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 271.21(b). On October 21, 1994, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at two locations in Michigan.

B. Comments

In response to the October 21, 1994, notice, EPA received comments from the National Wildlife Federation (NWF), who disagreed with EPA's proposed approval of Michigan's hazardous waste management program revisions. A summary of NWF's comments and EPA's response is provided below:

In its first comment, NWF claims that Michigan has failed to demonstrate that its reorganized program complies with the minimum Federal requirements concerning public participation of Section 7004(b) of RCRA. The commenter noted that in changing the role of the SRB from a decision-making body to an advisory body, EO 1991–31 transferred the permit decision-making power to the Director of the MDNR. According to the commenter, the MDNR Director, unlike the former SRB, is not subject to Michigan's Open Meetings Act. The commenter states that public access to monitor the Director is limited by the reorganization, and Michigan's public has no right to observe and attend the meetings at which key permitting decisions are made. Therefore, the commenter believes that the ''new MDNR'' fails to encourage public participation.

EPA does not agree that this change represents a change in the public participation requirements of Michigan's hazardous waste program that is inconsistent with RCRA Section 7004(b)(2). Michigan, in its submittal to EPA of information on March 10 and August 18, 1994, demonstrated that EO 1991–31 did not substantially alter the public participation processes or affect the authorized State program's equivalence or consistency to the Federal program. The State's public participation provisions include the following: notice of the State's intent to issue a permit through publication in major local newspapers of general circulation; broadcasts of such notice over local radio stations; written notice to certain State and local governmental agencies; at least a 45-day public comment period; and an informal public hearing if one is requested during the comment period (see Michigan Administrative Code Sections R299.9513 and R 299.9514). The change in the applicability of the State's Open Meetings Act did not constitute a change in the State hazardous waste program, since the State's Open Meetings Act has never been relied upon by the State to meet the Federal guidelines for public participation (see 40 CFR 271.14 and 124). RCRA Section 3006(b) requires States to maintain equivalency to the Federal program; however, States can also pass legislation that is more stringent than the Federal programs. The Michigan Open Meetings Act would fall in that category since it is a State law that goes beyond the Federal requirements for public participation. Consequently, the change in the applicability of the State's Open Meetings Act to the MDNR Director does not represent a change in Michigan's hazardous waste management program. Any direct comments on the Michigan Open Meetings Act should be referred to the State of Michigan.[1]

The commenter also suggested that EO 1991–31 affected the public participation requirements, since it changed the manner in which the State develops administrative rules implementing Michigan's hazardous waste program. The Director of the MDNR now establishes the administrative rules by which the program is administered rather than the Michigan Natural Resources Commission (MNRC). The commenter stated that the Director of the MDNR, unlike MNRC, is not subject to Michigan's Open Meetings Act and therefore the Director can make final decisions on administrative rules pertaining to the hazardous waste management program in closed meetings and the substance of those meetings need not be recorded. The commenter suggested that this represents a significant change in the way the State develops administrative

[1] It should be noted, though, that public involvement in RCRA activities is receiving increased visibility. On June 2, 1994, EPA published in the **Federal Register** (59 FR 28680–28711) a proposed rule that would require earlier and more meaningful public participation in the RCRA permitting process. This Agency rulemaking is anticipated to be finalized the summer of 1995. When this rule becomes finalized, States will be required to be authorized for these activities. However, for the time being, the State of Michigan is meeting all the current requirements for public participation under the Federal RCRA program.

rules for Michigan's hazardous waste management program.

EPA does not agree that this apparent change in the manner in which administrative rules are developed represents a change in Michigan's hazardous waste management program that is inconsistent with RCRA Section 7004(b). A State's Federally authorized hazardous waste management program consists of the statutes and rules which govern the State's program. EPA has no role to play in overseeing or dictating how those statutes and rules are developed. Instead, EPA's role is to determine whether the statutes and rules which comprise the program comply with minimum Federal requirements for authorized programs (e.g., providing public notice, hearings, and comment periods on permit decisions). If the State desires to change those statutes or rules, EPA has no role in determining the manner in which those statutes or rules are changed, so long as the State submits the proposed changes to EPA for review. Consequently, this change in the manner in which the State develops administrative rules is outside the scope of EPA's review of the State's hazardous waste management program under 40 CFR 271.

The second comment made by NWF is that, pursuant to 40 CFR 271.21(c), whenever a State transfers all or part of the approved hazardous waste management program from the approved State agency to any other State agency, the new agency is not authorized to administer the program until approved by EPA. The commenter claimed that EO 1991–31 consolidated various departments and agencies into a ''new'' MDNR, since the Director of the MDNR has assumed, under a Type III transfer, all the powers, duties and authorities which were formerly allocated to the Hazardous Waste Management Planning Committee (HWMPC), as well as all powers (including sole power to issue permits), duties and authority formerly allocated to the SRB, under a Type II transfer. The commenter also claimed that this reorganization is a ''transfer'' within the purview of 40 CFR 271.21(c), because the ''old MDNR'' and the ''new MDNR,'' as well as the SRB, HWMPC, and the Director of the ''new MDNR'' are each separate ''agencies'' within the meaning of 40 CFR 271.21(c). The commenter also claimed that both the State courts and the State of Michigan have indicated that the reorganization constitutes a revision and transfer.

EPA has determined that the revisions to Michigan's program are consistent with the requirements of RCRA and its implementing regulations. Based on the information available to us, EPA has determined that the reorganization of Michigan's hazardous waste management program resulting from EO 1991–31 constitutes a program revision requiring appropriate EPA review and approval. However, EPA has determined that the reorganization of the MDNR resulting from EO 1991–31 does not constitute a transfer to another agency for the purposes of 40 CFR 271.21(c).

EPA recognizes that the Michigan Supreme Court has held that EO 1991–31 created a ''new'' MDNR. Dodak v. Engler, 443 Mich. 560 (1993). However, the Michigan Attorney General, in a letter dated November 8, 1993, has stated that the Executive Order did not create a new agency. In any event, the question of whether MDNR remained the same agency or whether it became ''any other State agency'' as a result of 1991–31 is not at issue in this determination. The MDNR, as described above, has been the approved State agency for the implementation of Michigan RCRA hazardous waste management program, both before and after the Executive Order. Whether MDNR is considered to be a ''new'' agency under State law is not controlling with respect to whether there has been a transfer of authority from an ''approved State agency to any other State agency.'' Instead, it is EPA's regulations which are controlling in this issue.

EPA's regulations at 40 CFR 271.21(c) do not provide clear guidance on whether the reorganization and consolidation of environmental programs accomplished by EO 1991–31 constitutes a ''transfer'' of authority requiring prior EPA approval. The preamble to the 1986 State hazardous waste program regulations similarly fails to provide any such guidance. (See 51 FR 33712, September 22, 1986). However, the 1980 preamble to the final National Pollutant Discharge Elimination System State program rule, in addressing language at 40 CFR 123.62(c), which is similar to that at 40 CFR 271.21(c), stated:

> One commenter requested that there be no formal EPA review of nominal changes in the structure and responsibilities of State agencies administering an approved program. It was not the intent of the proposal nor is it of these final regulations to require EPA review in such cases [''nominal changes'' in State agencies]. Only when controlling Federal or State statutory or regulatory authority is modified or supplemented, or when the State proposes to transfer all or part of a program from an approved State agency to another State agency may EPA approval be necessary. Changes solely to the internal structure of an approved State agency, with no changes to the overall authority of the agency, do not require EPA approval.

45 FR 33290, 33384 (May 19, 1980).

In addition, EPA's guidance to States on developing applications for revisions to their authorized State programs, the State Authorization Manual (SAM) (OSWER Directive 9540.00–9A, October 1990) is also consistent with the above preamble language. The SAM, on page 2–2, states that: ''. . . changes within the internal structure of the approved State agency, with no changes in the overall authority of the agency, do not require EPA approval.'' EPA interprets the language of 40 CFR 271.21(c) as not applying to changes within the internal structure that do not substantively change the overall authority of the agency. The controlling authorities under State law pertaining to the RCRA hazardous waste management program were not affected by EO 1991–31, nor were the overall functions or structure of the Michigan hazardous waste management program substantially changed. Therefore, EPA does not view the reorganization of the MDNR resulting from EO 1991–31 as a transfer under the purview of 40 CFR 271.21(c).

In regards to the Michigan HWMPC, that department has never been considered to be part of Michigan's authorized State hazardous waste program. The HWMPC was established by Section 8A of Michigan Public Act 64 for the purpose of developing a State hazardous waste management plan. The plan was adopted by the Michigan Natural Resources Commission on January 1, 1992. Abolishment of the HWMPC by EO 1991–31 and transfer of the all of its statutory authority, powers, and duties to the MDNR did not impact the State's hazardous waste management program, since RCRA does not require States to develop such a plan.

In regards to the SRB, EPA does not agree that the transfer of permit decision-making authority from the SRB to the Director of the ''new'' MDNR constitutes a transfer between agencies under the purview of 40 CFR 271.21(c). As described above, the prior EPA approval requirement in 40 CFR 271.21(c) applies in situations where such restructuring or consolidation impacts the controlling authorities by which a State implements the RCRA hazardous waste management program. EO 1991–31 did not affect the State's controlling authorities by which the State implements the RCRA hazardous waste management program, but rather it transferred decision-making responsibilities within the authorized State hazardous waste management

program. Consequently, EPA does not view the change in roles of the SRB and the MDNR Director as a transfer of authorities between agencies under the purview of 40 CFR 271.21(c).

The third comment made by NWF is not related in any way to EO 1991–31. The commenter suggested that Michigan's program has wrongfully failed to eliminate the exemption for municipal waste combustion ash addressed in *Chicago v. Environmental Defense Fund*, 114 S.Ct. 1588 (1994). According to the commenter, Michigan's reorganized RCRA program is therefore not in conformance with the Federal RCRA program, and authority for it should be withdrawn pursuant to 40 CFR 271.22. In the present matter, EPA requested that Michigan submit information to EPA pursuant to 40 CFR 271.21(d) on whether any revisions occurred in Michigan's Federally authorized hazardous waste management program as a result of EO 1991–31. EPA has not requested information pertaining to any other issues regarding Michigan's hazardous waste management program. Therefore, EPA is limiting its review to the effects of EO 1991–31.

EPA appreciates the comments received on these matters, has forwarded them to Michigan, and will consider them in the context of EPA's ongoing oversight of Michigan's hazardous waste management program. If, in the course of its ongoing oversight, EPA determines that additional program revisions have occurred, EPA will take the appropriate steps as set forth at 40 CFR 271.21 to review and approve or disapprove of the revisions.

C. Decision

I conclude that Michigan's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities, nor will it impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 4, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–823 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7110

[AK–932–1410–00; AA–6649]

Withdrawal of Public Lands for Atka Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 13,968.61 acres of public lands located within the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Atxam Corporation, the village corporation for Atka. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any withdrawal of record.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Alaska Peninsula Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by the Atxam Corporation, the village corporation for Atka:

Seward Meridian

T. 52 S., R. 72 W.,
Secs. 15 to 34, inclusive.
T. 75 S., R. 121 W.,
Secs. 28, 33, 34, and 35.
T. 76 S., R. 121 W.,

Secs. 3 and 4.
T. 93 S., R. 177 W., (Unsurveyed)
Sec. 8.
T. 93 S., R. 179 W., (Unsurveyed)
Sec. 28.

The areas described aggregate approximately 13,968.61 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make lands available for selection by the Atxam Corporation, to fulfill the entitlement of the village for Atka under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to Sections 302(1), 303(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1988) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1988), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1988).

Dated: January 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–973 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–265; FCC 94–326]

Cable Television Act of 1992—Program Distribution and Carriage Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration; denial.

SUMMARY: In this Memorandum Opinion and Order (MO&O) the Commission denies a petition for reconsideration of its rule that prohibits exclusive programming contracts between cable operators and satellite cable or satellite broadcast programming vendors in which a cable operator has an attributable interest, in areas unserved by cable. The rule was promulgated to implement section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). The Commission held that the rule is a reasonable interpretation of the 1992 Cable Act and that there are other provisions in the Act under which a distributor can challenge a non-cable distributor's exclusive contract.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz or Maura Cantrill, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commissions Memorandum Opinion and Order adopted December 15, 1994 and released December 23, 1994. A synopsis of the First Report and Order (First R&O) that was reconsidered in the MO&O may be found at 58 FR 27658 (May 11, 1993). This action will not add or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. By this action, the Commission denies National Rural Telecommunications Cooperative's (NRTC) petition for reconsideration of the Commission's rule implementing section 628(c)(2)(C) of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).[1] The rule was adopted in the First Report and Order in MM Docket 92–265 (First R&O), 8 FCC Rcd 3359 (1993); 58 FR 27658 (May 11, 1993).

2. The 1992 Cable Act amended the Communications Act of 1934, in part, by adding a new section 628. Section 628 is intended to foster the development of competition to traditional cable systems by providing greater access by competing multichannel systems to cable programming services. Section 628(b) of the 1992 Cable Act generally prohibits ''unfair'' or ''deceptive'' practices the purpose or effect of which is to prevent a distributor from providing programming to subscribers or consumers and section 628(c) proscribes specific conduct that the Commission shall prohibit in its rules. The Act provides that the regulations promulgated to implement section 628(c)(2)(C) must:

> Prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section.

Section 76.1002(c)(1) of the Commission's rules adopted in the First R&O to implement this section of the 1992 Cable Act prohibits exclusive contracts between cable operators and vertically integrated programmers in areas that are not served by cable operators. NRTC filed a petition for reconsideration of the First R&O, requesting the Commission to amend its implementing rule to include any behavior of a vertically integrated programmer that prevents any distributor from obtaining programming in areas not served by cable, and specifically exclusive contracts for the distribution of programming between direct broadcast satellite (''DBS'') distributors and vertically integrated satellite cable programming vendors.

II. Background

3. The 1992 Cable Act and its legislative history indicate that Congress

[1] Pub. L. No. 102–385, 106 Stat. 1460 section 19 (1992), amending Communications Act of 1934, section 628.

was concerned with expanding the availability of programming and eliminating unjustified discrimination in the price charged to non-cable technologies.[2] Congress noted that vertically integrated program suppliers have the incentive and ability to favor their affiliated cable operators over other multichannel video programming distributors (''MVPDs'').[3] Thus, Congress concluded that program access provisions targeted at breaking the ''stranglehold'' over programming created by those vertical relationships in the cable industry would lead to a more balanced competitive environment in the multichannel video programming marketplace.[4] Direct broadcast satellites were among the technologies that were to be fostered through the program access provisions of the 1992 Cable Act.[5]

4. As background on the DBS industry, the first DBS satellite (''DBS–1'') was launched in December 1993; it is co-owned and jointly operated by Hughes Communications Galaxy, Inc., (whose affiliated company, DirecTV, is the DBS provider) and United States Satellite Broadcasting, Inc. (''USSB''), which is owned by Hubbard Broadcasting, Inc. The satellite is situated at the 101° West Longitude orbital position. DirecTV owns eleven of the sixteen transponders on DBS–1 and USSB owns the remaining five. On June 17, 1994, DirecTV and USSB began providing DBS service to the entire continental United States. Currently, DirecTV offers 150 channels and USSB offers 20 channels. At present, DirecTV and USSB are the only entities offering high-power Ku-band (small dish) DBS service in the United States, although several other parties hold construction permits for other orbital locations.

5. NRTC is the exclusive marketer and distributor of DirecTV programming in certain specified rural areas. The DBS distribution agreement between DirecTV and NRTC requires DirecTV to obtain certain programming on behalf of NRTC. USSB entered into exclusive distribution agreements with Viacom and Time Warner, two vertically integrated satellite cable programming vendors, to carry HBO and Showtime, respectively, granting distribution rights at the 101° West Longitude orbital location.[6] The agreements do not restrict access to the programming by multichannel multipoint distribution services (''MMDS''), satellite master antenna television (''SMATV''), or C-band satellite distributors; and the agreements do not restrict access by any DBS distributor at any other orbital location.

III. Discussion

6. Because there are several possible interpretations of the statutory provisions involved here (sections 628(b) and (c)), to resolve this matter it is appropriate to rely not just on the language of the Act but also on a careful analysis of the structure, legislative history, and the underlying policy objectives of section 628 of the 1992 Cable Act. This is the process that previously has been followed in implementing the provisions of the 1992 Cable Act and in developing a coherent set of rules for their enforcement. Having made careful use of that process to assure that the various program access provisions of the 1992 Cable Act fit together in a coordinated fashion, failure to follow that course now could lead to anomalous results.

7. Based on a thorough review of these factors, we believe our initial interpretation of section 628(c)(2)(C) of the 1992 Cable Act, as reflected in implementing rule § 76.1002(c)(1), is reasonable and should stand. We believe that this interpretation is supported by the findings and policy set forth in the 1992 Cable Act and its legislative history and best fulfills the underlying purposes of the 1992 Cable Act—to foster competition to traditional cable systems. We note, however, that in declining to broaden the scope of § 76.1002(c)(1)—to prohibit *per se* the exclusive DBS contracts at issue—we do not preclude the petitioner or any other aggrieved party from seeking relief from such contracts through other appropriate provisions of the 1992 Cable Act. We further find that contrary to all parties' assertions, the final judgments issued in the federal antitrust actions against Primestar Partners, that involved allegations of anticompetitive restrictions on access to cable programming, have no relevance to the disposition of the issue before us. The *Primestar Final Judgment* specifically provides that the decrees do not preempt the 1992 Cable Act or the Commission's rules.[7]

8. We are not persuaded that section 628(c)(2)(C) is clear and unambiguous. Indeed, ambiguity exists when a statute is capable of being construed ''by reasonably well-informed persons in two or more different senses.''[8] NRTC

[2] 1992 Cable Act, sections 2, 19, Communications Act section 628, 47 U.S.C. 548; House Comm. on Energy and Commerce, H.R. Rep. No. 102–862, (''Conference Report'') 102d Cong., 2d Sess. at 93 (1992); Senate Comm. on Commerce, Science and Transportation, S. Conf. Rep. No. 102–92, (''Senate Report''), 102d Cong., 1st Sess. at 23–29 (1991); House Comm. on Energy and Commerce, H.R. Rep. No. 102–628, (''House Report'') 102d Cong., 2d Sess. at 165–68 (1992); 138 Cong. Rec. H6487–6571 (daily ed. July 23, 1992).

[3] 1992 Cable Act, section 2(a)(5).

[4] *See* 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart in support of the Tauzin amendment).

[5] House Report at 165–66 (additional views of Messrs. Tauzin, Harris, Cooper, Synar, Eckart, Bruce, Slattery, Boucher, Hall, Holloway, Upton and Hastert).

[6] The DBS–1 satellite at the 101° West Longitude location can deliver a signal to the entire continental United States (''full-CONUS''). Under international treaties and agreements, the United States is assigned eight orbital locations for high-power DBS satellites. These eighth orbital locations are divided between eastern locations which provide signals to the eastern half of the continental United States (''half-CONUS'') and western locations which provide signals to the western half-CONUS. Three of the four eastern orbital locations (101° West Longitude, 110° West Longitude, and 119° West Longitude) can also deliver a full-CONUS signal. The fourth eastern orbital location, 61.5° West Longitude, may not be able to deliver an adequate full-CONUS signal.

[7] *United States* v. *Primestar Partners,* 1994–1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994); *State of New York ex rel. Abrams* v. *Primestar Partners,* 1993–2 Trade Cas. (CCH) ¶¶ 70,403, 404 (S.D.N.Y. 1993). *See also,* Transcript of Hearing on Proposed Consent Decree, *State of New York ex rel. Abrams* v. *Primestar Partners,* No. 93–3868, at 22–23 (S.D.N.Y. Sept. 3, 1993) (presiding judge stating ''there is nothing in this decree that binds the FCC in any way * * * nor should any finding I make in approving this decree be taken * * * as any imprimatur of approval or suggestion that the particular exclusive contracts are lawful or unlawful. That is a matter for the FCC and a matter as to which I would have to defer to the FCC''). Further, in its *Amicus Curiae Memorandum of Law,* the Commission specifically recommended against approval of the various decrees warning, *inter alia,* that the court's apparent blessing of exclusivity would encourage arguments by proponents of exclusivity that the Commission should find no need to prohibit exclusivity in light of the court's apparent willingness not to prohibit it. *Memorandum of Law of the Federal Communications Commission as Amicus Curiae* at 14, filed August 23, 1993, *State of New York ex rel. Abrams* v. *Primestar Partners,* No. 93–3868 (S.D.N.Y)(''*Memorandum*''). Indeed, in support of its position the Commission noted the reconsideration pending in this proceeding and referenced USSB's argument in this proceeding that the Primestar decrees essentially sanction exclusivity in the DBS context. *Memorandum* at n. 24.

[8] *United States* v. *Iron Mountain Mines, Inc.* 812 F. Supp. 1528, 1557 (E.D.Cal 1992) (citing Sutherland Stat. Const. § 46.04 at 99 (5th ed. 1992)). In this regard, we note that the Commission has received letters from members of Congress involved in legislative debates on the 1992 Cable Act that support conflicting interpretations of that provision. For example, *compare Ex Parte* Letter from Representatives Rick Boucher, Ron Wyden, Jim Slattery, Ralph Hall, Billy Tauzin, Jim Cooper, Blanche Lambert and Mike Synar to Chairman Hundt, June 15, 1994, *with Ex Parte* Letter from Senator Jeff Bingaman to Chairman Hundt, July 6, 1994; *Ex Parte* Letter from Rep. Al Swift to Chairman Hundt, July 8 1994; *Ex Parte* Letter from Rep. Henry A. Waxman to Chairman Hundt, Aug. 16, 1994; *Ex Parte* Letter from Senators Bob Packwood and Dan Coats to Chairman Hundt, Aug. 24, 1994; *Ex Parte* Letter from Rep. Thomas Manton to Chairman Hundt, Aug. 30, 1994; *Ex Parte* Letter from Representatives Harris W. Fawell, Philip M. Crane, Steven H. Schiff, Carlos J. Moorhead, Scott L. Klug, Cardiss Collins, Jack Fields and J. Dennis Hastert to Chairman Hundt, Aug. 24, 1994.

suggests that the meaning of Section 628(c)(2)(C) can best be revealed by a literal reading, without the parenthetical phrase beginning with ''including.'' NRTC regards this phrase as merely illustrative. While the use of the word ''including'' does support NRTC's interpretation that the reference to cable operators is simply an example,[9] NRTC's reading would eliminate the defining reference for the words ''such programming'' that immediately follow. An alternate interpretation of the section is that the ''including'' phrase supplies the definition for the whole section through the words ''such programming,'' i.e., programming that is the subject of an exclusive contract with a cable operator. Neither interpretation is perfect. NRTC's interpretation would negate the predicate for use of the phrase ''such programming.'' The alternative interpretation would negate the illustrative implication of the term ''including.'' The ''including'' and the ''such programming'' language cannot be reconciled simply from the statutory language. Although the language of section 628(c)(2)(C) is capable of being read to suggest that the Commission is required to consider practices other than exclusive contracts between cable operators and their affiliated programmers within the prohibition, because the legislative history is silent as to conduct that should be prohibited *per se*, other than cable operators' practices, the Commission believes that its current implementing rule is the most reasonable interpretation of Section 628(c)(2)(C).[10]

9. The legislative history of Section 628 specifically, and of the 1992 Cable Act in general, reveals that Congress was concerned with market power abuses exercised by cable operators and their affiliated programming suppliers that would deny programming to non-cable technologies, and did not address any such abuses exercised by non-cable technologies, such as DBS.

10. The legislative history of section 628(c)(2)(C) more particularly illustrates congressional concern over cable operators' use of exclusivity to stifle competition from other technologies. The Conference Report describes the House provisions on unserved areas (which ultimately were adopted in section 628(c)(2)(C) with modifications) as prohibiting ''exclusive contracts and other arrangements between a cable operator and a vendor.'' [11] During the House floor debates on the amendment, which ultimately was adopted in the House bill, the sponsor and supporters of the amendment emphasized its importance in lifting barriers to entry into the video distribution market by competing technologies imposed by the cable industry's ''stranglehold'' over programming through exclusivity.[12] In contrast, the legislative history is silent with respect to the use of exclusive programming contracts by non-cable competing technologies. While we recognize that silence as to non-cable technologies is not inherently dispositive in light of the ambiguous statutory language, we give great weight to the legislative history's emphasis on cable operators.

11. Our interpretation is bolstered by the fact that, given the statute's distinction between cable operators' exclusive contracts in areas served and unserved by cable, the Commission's inclusion of DBS exclusive contracts within the per se prohibition of section 628(c)(2)(C) could have an unintended effect on the DBS industry. While section 628(c)(2)(C) prohibits exclusive contracts between cable operators and programming vendors with cable affiliation in areas that are not served by cable, section 628(c)(2)(D) allows such contracts in areas that are served and where the Commission determines the contracts are in the public interest. Moreover, DBS distributors, unlike cable operators, would not be required to seek a public interest determination for areas served by cable because section 628(c)(2)(D) specifically applies only to cable operators' exclusive contracts. If section 628(c)(2)(C) is read to prohibit per se DBS exclusive contracts, such contracts would be completely permissible in served areas but prohibited in unserved areas. As a result, the DBS operators who do not possess the exclusive rights would have to identify and ''block out'' the served areas (where such exclusive contracts would be valid), while their distribution in the unserved areas could continue. There is no indication in the legislative history that Congress intended the DBS industry to engage in such an odd and potentially burdensome exercise. Nor is it clear why the DBS exclusive contracts, as opposed to cable exclusive contracts, would turn on whether the area is served by cable.

12. Our decision is supported by the rules of statutory construction that require us to examine the whole statute when interpreting a part.[13] While NRTC's interpretation of the ''including'' phrase, contained in section 628(c)(2)(C), is a plausible reading taken in isolation, we believe that the more compelling rule of statutory construction is to construe the language in section 628(c)(2)(C) in a manner most harmonious with the policies and the other provisions of the 1992 Cable Act. We agree with Opponents that section 628(c)(2)(C), read in conjunction with section 628(c)(2)(D), supports the common understanding of Congress' intent in this section to restrict cable operators' use of exclusive contracts in served and unserved areas.[14] The stated purpose of the program access provisions is to increase competition from non-cable technologies, to increase the availability of satellite programming to persons in rural areas and ''to spur the development of communications technology,'' [15] such as DBS. We believe that an outright ban on any MVPD exclusive contracts in areas unserved by cable, without any determination of the effect of such exclusivity on competition, defeats the very purpose of the 1992 Cable Act to foster competition from other non-cable technologies.

13. In addition to our interpretation of the statute, we find no evidence in the

[9] *Puerto Rico Maritime Shipping Authority* v. *Interstate Commerce Commission,* 645 F.2d 1102, 1112 n. 26 (D.C. Cir. 1981) (''It is hornbook law that the use of the word 'including' indicates that the specified list [] that follows is illustrative, not exclusive.'')

[10] Indeed, if NRTC's interpretation were adopted, it could be argued that NRTC's exclusive marketing agreements, *supra* ¶ 5, could themselves violate this provision of the 1992 Cable Act. Although DirecTV is not a satellite cable programming vendor in which a cable operator has an attributable interest, its exclusive agreement with NRTC precludes competitors of NRTC from accessing certain vertically integrated services that are distributed over DBS only by DirecTV.

[11] Conference Report at 92 (emphasis added).

[12] *See* 138 Cong. Rec. H6534 (daily ed. July 23, 1992) (statement of Rep. Tauzin); 138 Cong. Rec. H6537 (daily ed. July 23, 1992) (statement of Rep. Houghton); 138 Cong. Rec. H6539 (daily ed. July 23, 1992) (statement of Rep. Lancaster); 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart); 138 Cong. Rec. H6541 (daily ed. July 23, 1992) (statement of Rep. Harris).

[13] Sutherland Stat. Const. §§ 46.05, 4702 at 103, 139 (5th ed. 1992); *See Kokoszka* v. *Belford,* 417 U.S. 642, 650 (1974) (''When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute * * * and the objects and policy of the law, as indicated by its various provisions, and give to it such construction as will carry into execution the will of the legislature.''); *see also Richards* v. *United States,* 369 U.S. 1, 11 (1962); *Philbrook* v. *Glodgett,* 421 U.S. 707, 713 (1975).

[14] Indeed, the contemporaneous understanding of sections 628(c)(2) (C) and (D), that these sections only restricted cable operators' exclusive contracts, was articulated by most parties involved in the original rule making, including DirecTV. See Reply Comments of DirecTV in MM Docket 92–265, filed Feb. 16, 1993, at 12 n.11 and Appendix (summary of Tauzin amendment) (''The Commission is directed to prohibit any arrangement between a cable operator and a programming vendor, including exclusive contracts, which would prevent a distribution competitor from providing programming to persons unserved by a cable operator.'').

[15] 47 U.S.C. 548(a).

pleadings submitted in this proceeding that non-cable exclusive contracts of the type involved here are either harmful to the development of competition, ''unfair'' or ''deceptive,'' or have negative effects on consumers. The record does not demonstrate that such contracts will hinder the development of DBS as an effective competitor to cable; that USSB's contracts with Viacom and Time Warner have impeded the entry either of DirecTV or NRTC into the DBS marketplace; or that the contracts generally have harmed the entry of DBS service into the multichannel video programming marketplace. Indeed, the evidence presented suggests that a DBS distributor's exclusive contract for programming covering one orbital location may foster DBS as a significant competitor to cable. Such contracts may allow a distributor to distinguish its service from that of another, avoid duplication of programming, and eventually lead to more diversity in programming for the consumer. To the extent such contracts allow a greater number of DBS distributors to establish distinctive competing services, we believe they further congressional policy to ''rely on the marketplace, to the maximum extent feasible, to achieve greater availability of the relevant programming.'' [16] In contrast to cable exclusivity in areas unserved by cable, which would foreclose services from non-cable multichannel video programming distributors, consumers will be able to receive all DBS programming from one DBS provider or another by being able to select specific programming services without having to purchase entire programming packages. We agree with Opponents that prohibiting a DBS distributor's exclusive contract for programming covering one orbital location may in fact create unnecessary inefficiencies because the same programming could then occupy multiple transponders on the same satellite and decrease the diverse mix of programming available. Without prejudging any future complaints, we currently believe that the record before us provides no basis to conclude that the market power abuses, about which Congress was concerned, are present in the exclusive contracts at issue here.

14. Our reaffirmation of our interpretation of section 628(c)(2)(C) does not foreclose all remedies to an MVPD who claims to be aggrieved by an exclusive contract between a non-cable MVPD and a vertically integrated satellite cable programming vendor. In the *First R&O*, we previously determined that while section 628(b) does not specify types of ''unfair'' practices that are prohibited, it ''is a clear repository of Commission jurisdiction to adopt additional rules or to take additional action to accomplish statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast programming.'' [17] The Commission did not sanction exclusive contracts between non-cable MVPDs and vertically integrated cable programming vendors, thus leaving open the possibility that such contracts could be challenged on the basis that they involve non-price discrimination or ''unfair practices.'' Section 628(b) of the 1992 Cable Act and the Commission's implementing rule, § 76.1001, provide a broad prohibition against ''unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.'' [18] Also in the *First R&O*, the Commission stated that section 628(b) does not prescribe specific practices (in contract to section 628(c)), but does require a showing of anti-competitive harm, i.e., that the purpose or effect of the complained of conduct is to ''hinder significantly or to prevent an MVPD from providing programming to subscribers or customers.'' [19] The Commission has stated that the objectives of the ''unfair practices'' provision are to provide a mechanism for addressing conduct, primarily associated with horizontal and vertical concentration within the cable and satellite cable programming fields, that inhibits the development of multichannel video programming distribution competition.[20] Therefore, where future contracts cause a restriction in the availability of programming to alternative distributors and their subscribers, an aggrieved MVPD could seek redress by filing an ''unfair practices'' complaint under § 76.1001 of the Commission's rules.

15. Finally, we believe that using § 76.1001 as an avenue to address non-cable exclusive contracts, such as those at issue here, will afford the Commission the opportunity to consider all the ramifications of such contracts, including the effect on competition, based upon the particular facts of each case. This case-by-case review will avoid amending a Commission rule to create an overly broad per se prohibition appears to be contrary to Congress' intent.

16. For the reasons discussed above, we reaffirm our interpretation of section 628(c)(2)(C) as reflected in our implementing rule. We believe that this is the most reasonable interpretation based on the fact that Congress specifically directed the Commission to prohibit exclusive contracts between cable operators and vertically integrated programming vendors in unserved areas, but did not specifically address the inclusion of exclusive contracts between non-cable MVPDs and vertically integrated programming vendors within section 628(c)(2)(C)'s prohibition. We believe that any complaints regarding exclusive agreements are more appropriately addressed through other provisions of the statute. Thus, the Commission denies NRTC's request.

IV. Ordering Clause

17. Accordingly, it is ordered, that the Petition for Reconsideration of the National Rural Telecommunications Cooperative is denied.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–894 Filed 1–12–95; 8:45 am]

BILLING CODE 6712–01–M

[16] First R&O, 8 FCC Rcd at 3369 (citing 1992 Cable Act section (2)(b)(2)).

[17] Id. at 3374.

[18] 47 U.S.C. 548(b); 47 CFR 76.1001.

[19] First R&O, 8 FCC Rcd at 3377.

[20] Id. at 3373.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950109008–5008–01; I.D. 122894A]

Northeast Multispecies Fishery; Amendment to an Emergency Interim Rule

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

ACTION: Emergency interim rule; amendment.

SUMMARY: NMFS issues this emergency interim rule to amend an existing emergency interim rule concerning the Northeast Multispecies Fishery. This

rule specifies among other things, that allowable bycatch species have been added to the exempted fisheries as defined in the existing emergency interim rule, that a bycatch fishery for longhorn sculpin will be allowed in the Northern Shrimp Exemption Area, and that transitting through closed areas established by the existing emergency interim rule will be allowed for vessels seeking safe haven.

EFFECTIVE DATE: January 10, 1995, through March 12, 1995.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252 or Bridgette S. Davidson, NMFS, Fishery Management Specialist, 508–281–9347.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) submitted Amendment 5 to the Northeast Multispecies Fishery Management Plan on September 27, 1993. Amendment 5, with some exceptions, was approved on January 3, 1994. The final rule for Amendment 5 was published, and effective for the most part, on March 1, 1994 (59 FR 9872). On December 12, 1994, an emergency interim rule was published (59 FR 63926), and became effective. This action makes several modifications or clarifications to the December 12 emergency interim rule.

Section 651.20(a)(8) and (9) are revised to clarify that transit is allowed through the Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area, if nets that are not of proper configuration for trawling in this area are properly stowed. Net stowage requirements at § 651.20(c)(7) are revised to incorporate the SB/JL juvenile protection area transit provision.

Provisions at § 651.21(d)(1)(ii) and (d)(3)(ii) are modified to include, in Closed Area I and the Nantucket Lightship Closed Area, entry of vessels seeking safe haven from storm conditions. These sections are modified due to safety concerns.

Section 651.21(d)(2)(ii) is revised to include a reference to § 651.21(d)(1)(iii), which will define the stowage provision for scallop dredge gear. This definition of a stowed scallop dredge is added due to the inability of scallop dredge gear to be stowed in compliance with the net stowage requirements specified under § 651.21(c)(7).

Sections 651.20(a)(7)(i) and (iii) are revised to clarify that in the Northern Shrimp Exemption Area, a vessel fishing for northern shrimp may direct its fishing effort on northern shrimp only and may not possess or retain any other species with the exception of an allowable bycatch of longhorn sculpin.

Sections 651.20(c)(6)(ii) and (d)(5)(ii) are revised to specify additional bycatch species allowed to be retained in the exempted fisheries as defined by the December 12 emergency interim rule. The bycatch species allowed under this amendment meet the same criteria as those bycatch species allowed under the December 12 emergency interim rule. These species were not raised as potential bycatch species in time to be considered for the December 12 emergency interim rule. Specifically, these species are caught incidentally to the exempted fisheries as defined by the December 12 emergency interim rule. It is unlikely that there would be an incentive to direct on these bycatch species, or if a vessel did direct on them, it is unlikely that they would catch regulated multispecies. This addition preserves the original intent of the requirement without overly burdening the industry or creating unnecessary discards.

This action also adds scientific names for the other allowable bycatch to help in species identification.

All exempted small-mesh fisheries and species which are caught incidentally to them, are subject to any applicable fishery management plans and their implementing regulations contained within Title 50, CFR.

Classification

This emergency interim rule amends an existing emergency interim rule, for the remainder of its short duration, for safety considerations and to clarify an exemption to the existing emergency interim rule. Given the limited time of these rules' applicability and that these modifications serve to refine and broaden an existing exemption, prior notice and opportunity for public comment would be impracticable and unnecessary. As such, good cause exists to waive these requirements pursuant to authority at 5 U.S.C. section 553(b)(B). Further, because this emergency interim rule relieves a regulatory restriction and amends an existing rule for safety concerns there is good cause under 5 U.S.C. sections 553(d)(1) and (3) to waive the 30-day delay in effective date.

This action has been determined to be ''not significant'' for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 10, 1995.

Charles Karnella,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.9, paragraph (e)(36), which was temporarily added at 59 FR 63929, December 12, 1994, effective December 12, 1994, through March 12, 1995, is temporarily revised, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.9(e)(36) will expire.

§ 651.9 Prohibitions.

* * * * *

(e) * * *

(36) Fish with or possess within the areas described in

§ 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(6), unless the vessel is exempted under § 651.20(a)(7), (a)(9), (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

* * * * *

3. In § 651.20, paragraphs (a)(7)(i), (a)(7)(iii), (a)(8) introductory text, (a)(9), (c)(6)(ii), (c)(7) introductory text, and (d)(5)(ii), which were temporarily added at 59 FR 63929, December 12, 1994, effective December 12, 1994, through March 12, 1995, are temporarily revised, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.20(a)(7)(i), (a)(7)(iii), (a)(8) introductory text, (a)(9), (c)(6)(ii), (c)(7) introductory text and (d)(5) will expire.

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(7) * * *

(i) *Possession limit.* A vessel fishing under this exemption may not fish for, possess on board or land any species of fish other than shrimp. However, vessels may retain longhorn sculpin (*Myoxocephalus octodecimspinosus*) as an allowable bycatch species in the Northern Shrimp Exemption Area as described in this section.

* * * * *

(iii) A vessel may only fish for or harvest northern shrimp, with the exception that a vessel may retain longhorn sculpin as an allowable bycatch species, during the northern

shrimp season, as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC.

(8) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* Except as provided in paragraphs (a)(7), (a)(9), (e) and (f) of this section, the minimum mesh size for any trawl net or Scottish seine in use, or available for use as described under paragraph (c)(7) of this section, by a vessel fishing in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m).

* * * * *

(9) *Transitting.* (i) Vessels subject to the mesh requirements specified in paragraph (a)(6) of this section may transit through the Northern Shrimp Exemption Area defined in paragraph (a)(7) of this section with nets on board with mesh smaller than the minimum size specified in paragraph (a)(6) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(7) of this section, and provided the vessel has no fish on board; and

(ii) Vessels subject to the mesh requirements specified in paragraph (a)(6) of this section may transit through the SB/JL juvenile protection area defined in paragraph (a)(8) of this section with nets on board that do not conform to the requirements specified in paragraphs (a)(6) or (a)(8) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(7) of this section.

* * * * *

(c) * * *

(6) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (c)(5) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(5) of this section. Vessels may only fish for, or retain, butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting and/or weakfish, while fishing with nets of mesh smaller than the minimum size specified in paragraph (c)(5) of this section. Vessels fishing for these species under the exemption provided herein may also possess and retain the following species as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish)(*Tautoga onitis*); blowfish (puffer)(species in the family Tetraodontidae); cunner (*Tautogolabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemitripterus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); and swordfish (*Xiphias gladius*).

(7) *Net stowage requirements.* Any person on a fishing vessel or any fishing vessel subject to the net stowage or transitting requirements of this section may not have available for immediate use any net not meeting the regulated mesh requirements as specified in paragraphs (a)(7), (a)(8), (c)(5), and (d)(4) of this section and, as applicable, in the areas and for the times specified in § 651.32(c). A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not ''available for immediate use:''

* * * * *

(d) * * *

(5) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (d)(4) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(4) of this section. Vessels may only fish for, or retain, butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting weakfish, and/or scallops while fishing with nets of mesh smaller than the minimum size specified in paragraph (d)(4) of this section. Vessels fishing for these species under the exemption provided herein may also possess and retain the following species as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish)(*Tautoga onitis*); blowfish (puffer)(species in the family Tetraodontidae); cunner (*Tautogolabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemitripterus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); swordfish (*Xiphias gladius*); and skate (species in the family Rajidae).

* * * * *

4. In § 651.21, paragraphs (d)(1)(ii) and (d)(2)(ii)(B), which were temporarily added at 59 FR 63932, December 12, 1994, effective December 12, 1994, through March 12, 1995, are temporarily revised, and paragraphs (d)(1)(iii) and (d)(3)(ii)(C) are temporarily added, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.21(d)(1)(ii), (d)(1)(iii), (d)(2)(ii)(B) and (d)(3)(ii)(C) will expire.

§ 651.21 Closed areas.

* * * * *

(d) * * *

(1) * * *

(ii) Paragraph (d)(1)(i) of this section does not apply to persons on fishing vessels or fishing vessels:

(A) Fishing with or using pot gear designed and used to take lobsters, and which have no other gear on board capable of catching multispecies finfish;

(B) Seeking safe haven from storm conditions. Such fishing vessels may transit through the closed area providing that:

(*1*) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(*2*) Such vessels do not fish in the area;

(*3*) Fishing net gear is stowed in accordance with

§ 651.20(c)(7) and scallop dredge gear is stowed in accordance with paragraph (d)(1)(iii) of this section; and

(*4*) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or

vessel in the vicinity of Georges Bank by high frequency radio (2.182 kHz) of its intention of transitting the closed area, the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(iii) Scallop dredge vessels transitting the closed areas as specified under paragraphs (d)(1), (2), and (3) of this section may not have fishing gear available for immediate use and must detach the towing wire from the scallop dredge, reel the wire up onto the winch, and secure and cover the dredge so that it is rendered unusable for fishing.

(2) * * *

(ii) * * *

(B) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area in accordance with paragraph (d)(1)(ii)(B) of this section.

(3) * * *

(ii) * * *

(C) Seeking safe haven from storm conditions. Such fishing vessels may transit through the closed area in accordance with paragraph (d)(1)(ii)(B) of this section.

[FR Doc. 95–927 Filed 1–10–95; 3:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 9
Friday, January 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB10

General Administrative Regulations; Sanctions

AGENCY: Federal Crop Insurance Corporation, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend its regulations by setting out the additional sanctions made available under the Federal Crop Insurance Act as amended by the Federal Crop Insurance Reform Act of 1994 with respect to fines and disqualification for willfully and intentionally providing false or inaccurate information and ineligibility for the adoption of a material scheme or device to obtain benefits.

DATES: Written comments, data, and opinions on this rule must be submitted no later than March 14, 1995 to be sure of consideration.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to Suite 500, 2101 L Street NW., Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1999.

This rule has been determined to be ''not significant'' for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), no information collection or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The requirements and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601–612), this regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the insured producer or the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. This rule does not have retroactive effect and administrative appeals as established under 7 CFR part 400 subpart J or under regulations established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354) must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Federal Crop Insurance Act (FCI Act) was amended by the Federal Crop Insurance Reform Act of 1994 (''Reform Act'') on October 13, 1994. The Reform Act added a provision to the FCI Act providing that any participant in the program who knowingly adopts a material scheme or device should lose all benefits under the program for that crop year. This provision roughly parallels similar provisions found in USDA commodity programs. Eligibility for those programs are now linked to the crop insurance program. The Reform Act also amended the FCI Act to revise the penalty for giving false or inaccurate information. The penalty for those acts previously was administrative debarment from participation in the program for a period of up to ten years. However, administrative ineligibility for participation in the disaster assistance and other commodity programs had previously been two years. The Reform Act substituted Catastrophic Risk Protection for Disaster Assistance for insurable crops and reduced the maximum administrative debarment for Catastrophic Risk Protection to two years so as to conform to previous practice. The term for administrative debarment when the insured purchases other than catastrophic risk protection coverage remains at a maximum of ten years.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Claims, Crop insurance, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set out in the preamble, subpart R, part 400 of chapter IV of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart R—Sanctions

l. The authority citation for 7 CFR part 400, subpart R, is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Paragraph (a) of § 400.454 is revised to read as follows:

§ 400.454 Civil Penalties.

(a) Any person who willfully and intentionally provides any false or inaccurate information to FCIC or to any approved insurance provider reinsured by FCIC with respect to an insurance plan or policy issued under the authority of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501 et seq.) may be subject to a civil fine of up to $10,000 for each violation and disqualification from participation in:

(1) The catastrophic risk protection plan of insurance for a period not to exceed two (2) years; or

(2) Any plan of insurance providing protection in excess of that provided under the catastrophic risk protection plan of insurance for a period not to exceed ten (10) years.

* * * * *

3. A new § 400.458 is added to read as follows:

§ 400.458 Scheme or device.

In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or non-insured assistance benefits to which the person is not entitled, has evaded the Federal Crop Insurance Act, or has acted with the purpose of evading the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

Done in Washington, D.C. on January 5, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–617 Filed 1–12–95; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 1350–93]

RIN 1115–AD06

INS Immigration User Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of user fee account status.

SUMMARY: The Attorney General is required to submit a report to the Congress concerning the status of the Immigration User Fee Account (IUFA), and to recommend any adjustment in the prescribed fee. The report is to be submitted to the Congress following a public notice with opportunity for comment. This document publishes the status of the IUFA as of September 30, 1994, and presents the public the opportunity to comment and propose regulatory changes.

DATES: Written comments must be received on or before March 14, 1995.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5307, 425 I Street, NW., Washington, DC 20536–0002. To ensure proper handling, please reference INS No. 1350–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael Natchuras, Budget Analyst, Fee Analysis and Operations Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6240, Washington, DC 20036–0002, telephone 202–616–2754.

SUPPLEMENTARY INFORMATION: Section 286(d) of the Immigration and Nationality Act (Act) directs the Attorney General to charge and collect a user fee from each individual arriving in the United States aboard a commercial aircraft or commercial vessel from foreign locations effective December 1, 1986. Individuals arriving from Mexico, Canada, and the adjacent islands by means other than commercial aircraft are exempt from the fee. The 1994 Appropriations Act for the Department of Justice, Public Law 103–121, changed the Immigration User Fee from $5.00 to $6.00 per passenger inspected. Fee collections are used to provide immigration inspection services for commercial aircraft and commercial vessels; detect fraudulent documents used by air and sea passengers travelling to the United States; detain and deport excludable aliens arriving on commercial aircraft and commercial vessels; expand and operate information systems for non-immigrant control and debt collection; and provide necessary support for operations to ensure that the objectives of the program are achieved. The 1994 Appropriations Act authorized the use of the IUFA to provide detention and deportation services for excludable aliens who have attempted to enter the United States illegally through avoidance of inspectoin at air and sea ports-of-entry, and to provide exclusion and asylum proceedings at air and sea ports-of-entry for excludable aliens arriving on commercial aircraft and vessels and for any excludable aliens who have attempted to enter the United States illegally through avoidance of inspection at air and sea ports-of-entry.

Section 286(h) of the Act requires the Attorney General to submit a bi-yearly report to the Congress concerning the status of the IUFA. Before the report is submitted, the Attorney General must present a summary of the account's status for review and public comment.

As of September 30, 1994, the status of the account is as follows:

	Financial summary ($000)		
	Fiscal year 1993 actual	Fiscal year 1994 actual	Fiscal year 1995 estimate
Start of year balance	$7,321	$27,460	$40,387
Collections	228,298	270,090	295,900
Obligations	211,094	264,530	321,600
Recovery of prior year obligations	2,935	7,367	.....
End of year balance	27,460	40,387	14,667

On February 15, 1994, INS published proposed changes in regulations (59 FR 7227) to amend 8 CFR 286 to comply with 1991 and 1994 Department of Justice Appropriations Acts. In addition, the proposed rule included changes in

remittance and statement procedures and proposed other amendments and technical corrections. Public comments were received, evaluated, and considered, and a final rule was published on September 28, 1994 (59 FR 49347). The rule was effective on October 28, 1994. No other regulatory changes are contemplated.

By this notice, the public may provide any proposals to revise 8 CFR part 286 on matters which may be changed by regulation, and may provide comments on the status of the IUFA before a report is submitted to the Congress.

Dated: December 30, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–893 Filed 1–12–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–9]

Proposed Modification of the Roanoke Regional/Woodrum Field, VA, and Rochester-Monroe County Airport, NY, Class C Airspace Areas and Proposed Establishment of the Roanoke Regional/Woodrum Field, VA, Class E Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class C airspace areas at Roanoke Regional/Woodrum Field, VA, and Rochester-Monroe County Airport, NY. The effective hours of the Roanoke Regional/Woodrum Field, VA, Class C airspace area would be amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. In addition, this action proposes to establish Class E airspace at Roanoke Regional/Woodrum Field, VA, when the associated radar approach control facility is not in operation. This proposed action would also change the name of the Rochester-Monroe County Airport, NY, to Greater Rochester International Airport, NY. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas.

DATES: Comments must be received on or before January 26, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 94–AWA–9, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9295.

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. 94–AWA–9.'' 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 Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Rochester-Monroe County, Airport, NY, and Roanoke Regional/Woodrum Field, VA. This action proposes to change the name of the Rochester-Monroe County Airport, NY, to Greater Rochester International Airport, NY. In addition, this proposed action would modify the Roanoke Regional/Woodrum Field, VA, Class C airspace area by amending the area's effective hours to coincide with the associated radar approach control facility's hours of operation. This action also proposes to establish Class E airspace at Roanoke Regional/Woodrum Field, VA, when the associated radar approach control facility is not in operation. Establishing Class E airspace is necessary to provide controlled airspace for instrument approaches. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and Class E airspace designations listed in this document would be published subsequently in the Order.

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

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AEA NY C Greater Rochester International Airport, NY (Revised)

Greater Rochester International Airport, NY (Lat. 43°07′08″ N., long. 77°40′21″ W.)

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Greater Rochester International Airport; and that airspace extending upward from 2,100 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport.

* * * * *

AEA VA C Roanoke Regional/Woodrum Field, VA (Revised)

Roanoke Regional/Woodrum Field, VA (Lat. 37°19′31″ N., long. 79°58′31″ W.)

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Roanoke Regional/Woodrum Field; and that airspace extending upward from 3,800 feet MSL to and including 5,200 feet MSL within a 10-mile radius of the airport from the 004° bearing from the airport clockwise to the 104° bearing from the airport; and that airspace extending upward from 3,400 feet MSL to and including 5,200 feet MSL from the 104° bearing from the airport clockwise to a line formed by a point at the 274° bearing from the airport at 5 miles direct to a point at the 257° bearing from the airport at 10 miles. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AEA VA E2 Roanoke Regional/Woodrum Field, VA (New)

Roanoke Regional/Woodrum Field, VA (Lat. 37°19′31″ N., long. 79°58′31'' W.)

Within a 5-mile radius of the Roanoke Regional/Woodrum Field. 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 Washington, DC, on January 6, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–949 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AWA–6]

Proposed Modification of the Flint Bishop International, MI, Madison Dane County Regional-Traux Field, WI, Peoria Greater Peoria Regional, IL, Toledo Express Airport, OH, Columbus AFB, MS, and the Jackson International Airport, MS, Class C Airspace Areas and Proposed Establishment of the Madison Dane County Regional-Traux Field, WI, and Jackson International Airport, MS, Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Flint Bishop International, MI, Madison Dane County Regional-Traux Field, WI, Peoria Greater Peoria Regional, IL, Jackson International Airport, MS, Toledo Express Airport, OH, and the Columbus AFB, MS, Class C airspace areas. This proposed action would amend the effective hours to coincide with the associated radar approach control facility's hours of operation. The designated boundaries and altitudes of these Class C airspace areas would not change. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. In addition, this action proposes to establish Class E airspace at Madison Dane County Regional-Traux Field, WI, and Jackson International Airport, MS, when the associated radar approach control facility is not in operation.

DATES: Comments must be received on or before January 26, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 94–AWA–6, 800 Independence Avenue, SW, Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

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. 94–AWA–6.'' 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 Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. 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 modify the Flint Bishop International, MI, Madison Dane County Regional-Traux Field, WI, Peoria Greater Peoria Regional, IL, Toledo Express Airport, OH, Columbus AFB, MS, and the Jackson International Airport, MS, Class C airspace areas by amending the effective hours to coincide with the associated radar approach control facility's hours of operation. The designated boundaries and altitudes of these Class C airspace areas would not change. In addition, this action proposes to establish the Madison Dane County Regional-Traux Field, WI, and the Jackson International Airport, MS, Class E airspace areas to provide controlled airspace for instrument approaches. Class C and E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations 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 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 the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AGL MI C Flint Bishop International Airport, MI [Revised]

Bishop International Airport, MI
(Lat. 42°57′56″ N., long. 83°44′37″ W.)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop International Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the airport. This Class C 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.

* * * * *

AGL WI C Madison Dane County Regional Airport-Truax Field, WI [Revised]

Dane County Regional Airport-Truax Field, WI
(Lat. 43°08′22″ N., long. 89°20′ 13″ W.)
Waunakee Airport
(Lat. 43°11′ 00″ N., long 89°27′ 00″ W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Dane County Regional Airport-Truax Field excluding that airspace within a 1 1/2-mile radius of the Waunakee Airport; and that airspace extending upward from 2,300 feet MSL to and including 4,900 feet MSL within a 10-mile radius of the airport. This Class C 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.

* * * * *

AGL IL C Peoria Greater Peoria Regional Airport, IL [Revised]

Greater Peoria Regional Airport, IL
(Lat. 40°39′53″ N., long. 89°41′30″ W.)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Greater Peoria Regional Airport and that airspace within a 10-mile radius of the airport extending upward from 2,000 feet MSL to and including 4,700 feet MSL, from the 284° bearing from the airport clockwise to the 154° bearing from the airport, and that airspace within a 10-mile radius of the airport extending upward from 1,800 feet MSL to and including 4,700 feet MSL from the 154° bearing from the airport clockwise to the 284° bearing from the airport.

* * * * *

AGL IL C Toledo Express Airport, OH [Revised]

Toledo Express Airport, OH
(Lat. 41°35′12″ N., long. 83°48′28″ W.)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Toledo Express Airport; and that airspace extending upward from 2,000 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport.

* * * * *

ASO MS C Columbus AFB, MS [Revised]

Columbus AFB, MS
(Lat. 33°38′37″ N., long. 88°26′38″ W.)

That airspace within a 5-mile radius of Columbus AFB extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of Columbus AFB extending upward from 1,500 feet MSL to and including 4,200 feet MSL. This Class C 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.

* * * * *

ASO MS C Jackson International Airport, MS [Revised]

Jackson International Airport, MS
(Lat. 32°18′41″ N., long. 90°04′33″ W.)

That airspace within a 5-mile radius of the Jackson International Airport extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,700 feet MSL to and including 4,400 feet MSL. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time

will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL WI E2 Madison Dane County Regional Airport-Truax Field, WI [New]

Dane County Regional Airport-Truax Field, WI
(Lat. 43°08′22″ N., long. 89°20′13″ W.)
Waunakee Airport
(Lat. 43°11′00″ N., long 89°27′00″ W.)

Within a 4.4-mile radius of the Dane County Regional Airport-Truax Field, and within 2.4 miles each side of the 358° bearing from the airport extending from the 4.4 mile radius to 7 miles north of the airport and within 2.4 miles each side of the 320° bearing from the airport extending from the 4.4-mile radius to 7 miles northwest of the airport, and within 2.4 miles each side of the 134° bearing from the airport extending from 4.4-mile radius to 7 miles southeast if the airport excluding that airspace within 1 1/2-mile radius of the Waunakee 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.

* * * * *

ASO MS E2 Jackson International Airport, MS [New]

Jackson International Airport, MS
(Lat. 32°18′41″ N., long. 90°04′33″ W.)

Within a 5-mile radius of Jackson 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 Washington, DC, on January 6, 1995.

Nancy B. Kalinowski

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–950 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM95–3–000]

Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs; Notice of Proposed Rulemaking

Issued: December 16, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend part 154 of the Commission's regulations under the Natural Gas Act. The Commission proposes to reorganize, rewrite and update its regulations governing the form, composition and filing of rates and charges for the transportation of natural gas in interstate commerce. This proposal is part of the Commission's ongoing program to review its filing and reporting requirements and reduce unnecessary burdens by eliminating the collection of data that are not necessary to the performance of the Commission's regulatory responsibilities. The Commission also proposes to require that certain data, necessary to the analysis of a proposed rate, be filed at an earlier stage of the process.

DATES: Comments are due no later than April 13, 1995.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings must refer to Docket No. RM95–3–000 and be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0491.

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend part 154 of its regulations governing the form and composition of interstate natural gas pipeline tariffs and the filing of rates and charges for the transportation of natural gas in interstate commerce under sections 4 and 5 of the Natural Gas Act (NGA) and section 311 of the Natural Gas Policy Act. This notice of proposed rulemaking is a companion to the notice of proposed rulemaking, issued concurrently, titled ''Revisions to the Uniform System of Accounts and to Forms and Statements and Reporting Requirements for Natural Gas Companies'' which proposes to amend, among other things, the Uniform System of Accounts and FERC Form No. 2.

The Commission intends to make the filing and reporting requirements reflect recent regulatory changes, in particular the implementation of Order No. 636, and the realities of the process of a modern rate case.[1] The restructuring of the pipeline industry has rendered many of the current rate and tariff regulations superfluous or outdated. The Commission is proposing filing requirements that reflect the current part 284 service regulations that mandate unbundled pipeline sales and open-access transportation of natural gas. The current part 154 rate regulations are not designed for the type of rate changes that will occur in the restructured service environment. These filing requirements were originally designed to focus on pipeline sales activities. The revised regulations focus on transportation services.

Before the recent industry restructuring, natural gas pipelines primarily provided a merchant service. A typical pipeline company would purchase gas from producers or other suppliers, transport the gas from the supply area to storage fields or sales delivery points, and sell the gas on a bundled basis. Now, pipeline

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992), FERC Statutes and Regulations ¶ 30,939 (April 8, 1992); order on reh'g, Order No. 636–A, 57 FR 36128 (August 12, 1992), FERC Statutes and Regulations ¶ 30,950 (August 3, 1992); order on reh'g, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), reh'g denied, 62 FERC ¶ 61,007 (1993), appeal re-docketed sub nom. *Atlanta Gas Light Company and Chattanooga Gas Company, et al. versus FERC*, No. 94–1171 (D.C. Cir. May 27, 1994).

companies are primarily transporters of natural gas. However, in the Commission's view, the change in the primary role of the pipeline from merchant to transporter requires that the filing requirements be adapted to the change. Therefore, the Commission proposes to delete all of the current regulations in part 154 and replace them with new regulations that reflect the restructured industry.

The changes to the Commission's regulations are proposed to be effective 90 days after publication in the **Federal Register**.

II. Public Reporting Burden

Due to offsetting changes, the expected impact of the proposal is minimal.

The Commission estimates the public reporting burden for filing under the rule will decrease the existing reporting burden by an average of 69 hours per filing.

Interested persons may send comments regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Discussion

A. Overview and Objectives of the Proposed Rule

Section 4(a) of the Natural Gas Act (NGA) requires that any rate charged by a natural gas company must be ''just and reasonable.'' [2] In order to aid the Commission in establishing whether a change in a rate meets the statutory standard, section 4 of the NGA grants authority to the Commission to establish procedures for the review of proposed changes. Section 4(c) of the NGA requires that a natural gas company file proposed changes in rates with the Commission thirty days prior to the proposed effective date.[3] The Commission may suspend the effectiveness of the proposed changes to that rate for up to five months, permit the changed rates to take effect subject to refund, and may order a hearing to determine the lawfulness of the proposed rates.[4] At such hearing, the company bears the burden of proof that the proposed changed rates are just and reasonable. Part 154 currently imposes specific filing and reporting requirements on jurisdictional natural gas companies in order for the Commission to fulfill its statutory review functions.

In this proceeding, the Commission proposes a major overhaul of its regulations governing natural gas company filing and reporting requirements. The proposed new part 154 incorporates both basic ''housekeeping'' changes to eliminate obsolete language and sections, and substantive changes to update the regulations to reflect the many developments that have taken place in the natural gas industry since the regulations were first promulgated.

The proposed part 154 represents the reorganization, rewriting, updating, modification, consolidation, and pruning of the current regulations. The changes provide for more useful and less burdensome data filed in electronic format; a schedule by schedule revision of the current § 154.63 filing requirements for an NGA section 4(e) general rate case; and, new filing requirements for initial rates and various limited section 4 filings, miscellaneous tariff change filings, and cost tracking filings.

1. Organization and Editorial Changes

Proposed Part 154—Rate Schedules and Tariffs has been reorganized into subparts: Subpart A—General Provisions and Conditions; Subpart B—Form and Composition of Tariff; Subpart C—Procedures for Changing Tariffs; Subpart D—Material to be Filed With Changes; Subpart E—Limited Rate Changes; Subpart F—Refunds and Reports; Subpart G—Other Tariff Changes.

The revised part 154 is organized in such a way that the filing requirements are cumulative. That is, all filings must meet the requirements of Subpart A even if no other subpart applies. All tariff sheets or executed service agreements must conform to the requirements of Subpart B. Changes to tariff sheets or executed service agreements, whether additions or modifications, must conform to the requirements of Subpart B and comply with the filing requirements of Subpart C. Additional filing or reporting requirements applicable to specific types of filings fall under Subparts D through G.

The entire part 154 has been edited for clarity and to remove outdated references. For example all references to filing fees have been removed because fees are no longer required. Also, the current regulations contain some sections which have never been updated and refer to the Commission as the ''FPC'' or direct the applicant to comply with sections that have been removed. The Commission proposes appropriate editorial revisions to these sections.

Some current sections contain provisions on several different matters and, for the sake of clarity, have been broken out into several smaller sections. For example, the provisions of current § 154.63 are proposed to be redistributed throughout the proposed part 154. Current § 154.38(d)(5) and (6) deal with the substantive rules for obtaining rate treatment for research, development, and demonstration costs (RD&D) and annual charge adjustment (ACA) expenditures, respectively. These sections are proposed to be moved to a separate subpart and revised.

Many provisions the Commission proposes to redraft to reflect prevalent practice in the industry. For example, proposed § 154.207 formally adds to the regulations the requirement that the company must serve notice upon its customers. Proposed § 154.208 sets out a new form of notice to reflect current practice. Proposed § 154.107 formalizes the general practice of providing a detailed statement of rates and charges in a particular location in the tariff. Proposed § 154.107(b) requires rates to be stated in terms of thermal units instead of units of volume. Proposed § 154.4 provides that any filing must be on electronic media and proposed § 154.2(d) allows mailing to customers and state commissions to be accomplished either through electronic media or traditional methods.

2. Substantive Changes

The Commission is proposing changes to create filing requirements that reflect the current service regulations that mandate unbundled pipeline sales and open-access transportation of natural gas. The primary objectives of the substantive changes are to update the filing and reporting requirements to reflect restructured services and operations, streamline rate case processing by receiving important information earlier in the process, and remove outdated requirements. The Commission does not intend to propose changes in its substantive rate policies in this rulemaking, but rather to bring its filing requirements and procedures up to date to match its current substantive policies.

[2] 15 U.S.C. 717c(a).

[3] 15 U.S.C. 717c(d).

[4] 15 U.S.C. 717(c).

As a result of Order No. 636, virtually all of a pipeline's services are covered by a blanket certificate issued under section 7 of the NGA and pursuant to part 284 of this chapter. As a practical matter, this means that filings for changes in transportation services or new services generally will be treated as tariff filings under section 4 of the NGA; not certificate amendment applications under section 7. Therefore, the Commission must act within 30 days of filing and can suspend the changes for no more than five months. This usually does not leave sufficient time to complete a full hearing that involves extensive discovery. Therefore, it is important that filings contain as full an explanation of the rate or tariff change as possible.

Currently, when a pipeline proposes a rate increase its customers routinely ask for a hearing and the rates are routinely suspended. When the issues are clear and the parties committed to rapid closure, the hearing process need not take an inordinate length of time. The time required to complete a hearing and ready the case for decision is affected by a variety of factors including the scope of issues set for hearing, the scope of discovery needed, and the progress of settlement discussions. The proposed filing requirements would improve the support of a pipeline's filing, reduce discovery needs by all parties, and facilitate more rapid settlement or adjudication of pipeline rate proposals. More complete support of rate filings would enable the Commission to speed the processing of rate cases by resolving as many issues as possible in the suspension order.

The proposed filing requirements are intended to permit parties to address the important issues more quickly. For example, pipelines currently file their Statement P testimony 15 days after filing the rate proposal. The Commission's experience is that Statement P provides the most comprehensive description of the proposed change. The proposed rule would require Statement P to be filed concurrently with the rate case so as to make a more complete explanation of the rate proposal available at the outset. To achieve its intended purpose of expediting the hearing, Statement P must serve as the applicant's complete case-in-chief not a mere description of proposed rates.

One of the most time consuming aspects of the hearing process is discovery. Parties must often resort to discovery to obtain an adequate explanation of the pipeline's rate proposals. The Commission proposes to expand the filing requirements in certain areas so that discovery can be reduced, and eliminate other data that are not being used by the parties. Therefore, though the burden on filing companies to provide information in the first submittal is increased, the net burden remains relatively unaffected because the only change is in the timing of the submission.

The current approach to rate regulation sets an annual revenue requirement based on operating and capital costs occurring during a test period adjusted for known and measurable changes expected to occur by the time suspended rates take effect. Rates are generally designed to recover the required revenue based on contract capacity entitlements and projected annual volumes. The proposed filing requirements have been designed to obtain the information needed to justify rates under this cost-of-service method. However, the Commission has been receiving increasing numbers of rate filings in which the pipeline seeks to justify its rates on a basis other than the traditional cost-of-service method.

However, the Commission also recognizes that the significant changes in the industry over the last decade have also heightened interest in the industry in the prospect for non-cost-based rate proposals. In the past several years, the Commission has processed on a case-by-case basis proposals that are not necessarily confined to a traditional revenue requirement. For example, the Commission has approved market-based rates for storage services in several cases.[5] The Commission plans to continue the case-by-case evaluation of new filings. However, in the process of developing specific new filing requirements in this proceeding, the Commission has concluded that it should also begin a more comprehensive examination of different ratemaking standards and methodologies. These might include, for example, market-based rates or incentive rates. Among other things, the Commission must consider the appropriate criteria to evaluate such proposals, to ensure consistency with the just and reasonable standard, and to develop filing requirements for the information that would be needed to justify those rates. Such alternative rate designs may provide customers and pipelines with needed flexibility as the market continues to evolve. The Commission, therefore, will move forward with an initiative in the very near future in which it will explore the criteria and filing requirements that could be employed to achieve non-cost based rates that also meet the ''just and reasonable'' standard of the NGA. The Commission will not commence such a proceeding here since the instant rulemaking is limited to filing and reporting requirements for rates justified under the traditional cost-of-service method.

Certain regulations are, as a practical matter, no longer of general interest. The Commission proposes to remove them from the general regulations. The regulations concerning Research, Development, and Demonstration expenses (RD&D) for example, are currently a lengthy and cumbersome part of § 154.38. These regulations were originally developed to apply to all pipelines and to any number of RD&D organizations. However, in practice, there is one predominant and principal research organization, Gas Research Institute (GRI). Thus, the Commission proposes to streamline the regulations, recognizing that GRI is the principal research organization funded by the natural gas industry.

The Commission proposes to remove the regulations governing Purchase Gas Adjustments (PGAs) from the general regulations. As a result of the restructuring of the industry under Order No. 636, most pipelines have shed their traditional merchant function. Only two natural-gas companies, Eastern Shore Natural Gas Company and West Texas Gas, Inc., continue to pass through gas purchase costs under the PGA regulations.[6] The Commission proposes to require those two natural-gas companies to incorporate all of the existing PGA regulatory requirements applicable to them into their tariffs. The PGA regulations will be removed from part 154. The Commission also proposes to require the provisions governing PGAs in current § 154.111 to be incorporated into these companies' tariffs so that the section may also be removed.

The Commission is proposing to delete current § 154.201–213. Those regulations apply primarily to shippers seeking to recover charges incurred for the conditioning and transportation of Alaska natural gas through the Alaska Natural Gas System (ANGTS) for sale in the contiguous 48 states of the United States. Those provisions establish the terms and conditions for a permanent

[5] E.g., Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 (1994); Bay Gas Storage Co., Ltd., 66 FERC ¶ 61,354 (1994); Petal Gas Storage Co., 64 FERC ¶ 61,190 (1993); Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

[6] These pipelines do not provide open access transportation under part 284 of this chapter; and so, were not subject to restructuring under Order No. 636.

tariff provision that a shipper may propose to adjust its rates semiannually to flow through to its jurisdictional customers the jurisdictional portion of changes its ANGTS charges. Alternatively, a shipper may recover the jurisdictional portion of these charges through a cost-of-service tariff approved by the Commission.

The Commission proposes to delete these regulations because the ANGTS project has not been built as originally contemplated, and the regulations are obsolete in light of the post-Order No. 636 unbundled environment. Nonetheless, the Commission remains ready to facilitate the construction of ANGTS, which Congress has found to be in the public interest.[7] Hence, if action is warranted in the future to facilitate financing and progress on the ANGTS and the recovery of ANGTS costs, the Commission will act expeditiously. What was stated in Order No. 636–A applies here as well: ''nothing in the rule [Order No. 636] is intended to disturb the United States government's commitment to the ANGTS prebuild.''[8] Further, the Commission continues to view the Northern Border prebuild segment as remaining subject to the various agreements between the United States and Canadian governments and subsequent findings in Commission orders certificating Northern Border Pipeline Company's system.[9] Removing these regulations is not intended to have any effect on the ANGTS prebuild revenue stream.

3. Electronic Filing

The Commission recognizes that changes to these regulations and to the forms in the companion notice of proposed rulemaking titled ''Revisions to the Uniform System of Accounts and to Forms and Statements and Reporting Requirements for Natural Gas Companies'' necessitate modifications to the electronic formats for the affected filings and forms. To ensure the widest possible input, the Commission directs its staff to convene a technical conference to obtain the participation of the industry and other users of the filed information in designing the electronic filing requirements. By the time the Commission issues a final rule in these companion rulemakings, the Commission expects staff, with the participation of interested parties, to have developed the changes needed to make the electronic filings that would be required under the regulations proposed in these two notices of proposed rulemaking. The Commission intends to move toward a PC-based electronic filing system and away from mainframes. The Commission intends to employ user friendly form-fill, word processing, or spreadsheet application software as much as possible. If these revisions are not complete by the time the Commission issues the final rule, since the changes will make the current electronic formats obsolete upon the adoption of revised filing requirements and forms, the Commission would suspend collection of the formats for rate filings subject to proposed Subpart D in electronic form, until new electronic formats are devised.

The electronic tariff sheet formats will not be included in this effort. The Commission has derived substantial benefit from the electronic tariff sheet filings and proposes only modest changes to the electronic tariff filing requirements. Those changes are attached as an appendix and briefly discussed below.

B. The Revised Regulations

The proposed part 154 has a completely new organization from the current regulations, and virtually every section has been changed in some way. The text has been edited to remove outdated and incorrect references, and rewritten in a more concise style. Although many filing and reporting requirements have not been changed, they have been relocated. The proposed regulations may be best understood by a comparison to the current regulations they replace. Details of the proposed regulations are provided below.

a. Subpart A—General Provisions and Conditions

i. *Section 154.1 Application; obligation to file*—The Commission proposes to retain the description of the purpose of part 154 (current § 154.1(a)), which reflects the requirement of Section 4(c) of the NGA that every natural gas company must file with the Commission, and maintain for open inspection, its schedules and contracts.

The Commission proposes to delete outdated language (i.e., ''On or after December 1, 1948''). The Commission proposes to remove the electronic medium requirements from this paragraph and place them in proposed § 154.4.

The Commission proposes to require that any executed service agreement which deviates in a material aspect from the form of service agreement in the tariff must be filed with the Commission. (See also discussion of proposed § 154.112). This requirement conforms to current Commission policy as set forth in Tennessee Gas Pipeline Co.[10] In that order, the Commission recognized that parties may negotiate terms in their service agreements but indicated a preference for all part 284 services to be conducted under the same terms and conditions. The Commission clarified that if parties agree to terms that in any way materially differ from the form of service agreement on file, then the pipeline must file the agreement under NGA section 4.

b. Section 154.2 Definitions

The Commission proposes to define terms of general applicability in proposed § 154.2. The Commission is proposing stylistic changes only to definitions for: ''Rate Schedule,'' currently in § 154.11, ''Contract,'' currently in § 154.12, ''Service Agreement,'' currently in § 154.13, and ''Tariff or FERC Gas Tariff,'' currently in § 154.14. ''Posting,'' currently in § 154.16, has been defined to allow the parties to agree to alternative methods of ''mailing'' such as electronic mail.

c. Section 154.3 Effective Tariff

The Commission proposes to describe the term ''Effective tariff'' in § 154.3, currently § 154.21. The proposed description clarifies that a pipeline may not avoid filing for a rate change by making the rate subject to an exception or condition, such as a periodic rate change under a price index. At present this concept is found in § 154.38(d)(3).

d. Section 154.4 Electronic and Paper Media

Current § 154.26 calls for 6 paper copies to cover the Commission's internal distribution needs but allows electronic filing as an exception. Proposed § 154.4 requires electronic media filings in addition to paper copies.

The proposed section consolidates in one place the Commission's requirements with respect to electronic submittal of filings required by part 154. Currently, these requirements are strewn throughout part 154, often redundantly.

The appendix to this notice of proposed rulemaking includes updated electronic tariff filing formats as well as tariff pagination guidelines.[11] The

[7] Alaska Natural Gas Transportation System Act, 15 U.S.C. 719–719.

[8] Order No. 636–A, III FERC Stats. & Regs. Preambles ¶ 30,950 at p. 30,674 (1992).

[9] Northern Border Pipeline Co., 63 FERC ¶ 61,289 (1993).

[10] 65 FERC ¶ 61,356 (1993); reh'g denied, 67 FERC ¶ 61,196 (1994).

[11] The appendix will not appear in the Code of Federal Regulations. The formats for the electronic filing and paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, Washington, DC 20426.

revised formats take into consideration improvements in the FASTR software which reads the tariff ASCII files submitted by the companies to the Commission.[12] All companies that have not yet restated their paper tariffs electronically must do so on or before June 1, 1995.

e. Section 154.5 Incomplete Filings

Proposed § 154.5 replaces current § 154.15 with a description of filing date based on § 35.2(c) of the Commission's regulations for public utilities under the Federal Power Act (16 U.S.C. 797(b)). Proposed § 154.5 provides that a document will be considered filed on the date of receipt in the Office of the Secretary, if it is complete and is not rejected. The Commission proposes to allow the Director of the Office of Pipeline Regulation to notify a natural gas company that its filing is incomplete within 15 days of receipt of the document. Under this proposal, the date of receipt stamped by the Secretary may not be the officially recognized filing date.

f. Section 154.6 Acceptance for Filing Not Approval

Proposed § 154.6 would replace current §§ 154.23 and 24. The rejection language of § 154.24 is amended and the reference to fees is deleted.

g. Section 154.7 General Requirements for the Submission of a Tariff Filing or Executed Service Agreement

The Commission proposes § 154.7 as a new section setting forth the content of a tariff filing or executed service agreement. In part, proposed § 154.7 reflects current § 154.63(b)(1). Proposed § 154.7 concerns all filings of tariff sheets and executed service agreements. In light of the short time period in which the Commission and interested parties have to review the filing, several items have been added to speed processing of the filing and minimize additional requests for information. These include an expanded definition of the reference to the authority under which the filing is made, addition of the name and telephone number of an official able to respond to questions regarding the filing, and clarification of the contents of the statement of the nature, reasons, and basis for the filing.

h. Section 154.8 Informal Submission for Staff Suggestions

The Commission proposes § 154.8 to replace current § 154.25.

2. Subpart B—Form and Composition of Tariff

a. *Section 154.101 Form.* The Commission proposes § 154.101 as the replacement for current § 154.32. The Commission is proposing to eliminate the requirement that electronic media record format duplicate the page size, borders, and margins of the paper copy. The electronic filing requirements are in proposed § 154.4. In addition, the Commission proposes to eliminate the requirement of a binder.

b. *Section 154.102 Title Page and Arrangement.* The Commission proposes § 154.102 as the replacement for current § 154.33. The Commission proposes to eliminate the reference to § 154.52, as special exceptions are covered by proposed § 154.112. The Commission proposes to eliminate the requirement of a binder, and to require that the numbering of sheets be as provided in the Tariff Sheet Pagination Guidelines.[13]

Currently, compliance with these guidelines is optional although the Commission has required use of the pagination guidelines in individual cases. Many companies have already voluntarily adopted the use of the Commission's guidelines. The Commission proposes to make these guidelines mandatory. The guidelines provide the only means to ensure that tariff sheets are in the proper order in the Commission's electronic database. The guidelines also provide the basic knowledge necessary to create a sorting methodology for any party that wishes to create a database. Most importantly, the guidelines help to create a clear guide to the succession of tariff sheets.

c. *Section 154.103 Composition of Tariff.* The Commission proposes § 154.103 as the replacement for current § 154.34. In recognition of prevailing practice, the proposed section specifically requires that the tariff set forth all the currently effective rates. The Commission also proposes to delete the reference to special exceptions and change the examples of classes of service to reflect the current prevalent designations.

d. *Section 154.104 Table of Contents.* The Commission proposes § 154.104 as the replacement for current § 154.35 with the clarification that the table of contents must contain a list of the sections of the general terms and conditions.

e. *Section 154.105 Preliminary Statement.* The Commission proposes § 154.105 as the replacement for current § 154.36 with stylistic changes only.

f. *Section 154.106 Map.* The Commission proposes § 154.106 as the replacement for current § 154.37. The Commission proposes that maps must be submitted on paper and updated to reflect major changes. The proposed section states a preference for zones to be displayed on separate sheets.

g. *Section 154.107 Currently Effective Rates.* The Commission proposes new § 154.107 to govern the tariff sheets setting forth the natural gas company's currently effective rates. In part, this new section would replace § 154.38(d)(1) and (2) and would require rates to be stated in thermal units, as is the prevalent practice, rather than in units of volume.

h. *Section 154.108 Composition of Rate Schedules.* The Commission proposes § 154.108 as a replacement for current § 154.38. Current § 154.38(d)(4), Refunds, is moved to proposed § 154.501. Current § 154.38(d)(5), RD&D, is moved to proposed § 154.401. Current § 154.38(d)(6), ACA expenditures, is moved to § 154.402. Current §§ 154.38(d)(1) and (2) are revised and moved to proposed § 154.107. Current § 154.38(d)(3) is moved to § 154.3. Current § 154.38(e), minimum bill, is deleted.

i. *Section 154.109 General Terms and Conditions.* The Commission proposes § 154.109 as the replacement for current § 154.39. The company's discounting policies are added to the tariff.

j. *Section 154.110 Form of Service Agreement.* The Commission proposes § 154.110 as the replacement for current § 154.40 with the addition of receipt points as an item for insertion on the form when appropriate.

k. *Section 154.111 Index of Customers.* The Commission proposes § 154.111 as a replacement for current § 154.41, Index of Purchasers, but with applicability specifically limited to natural gas activities not subject to part 284 of this chapter. The Commission proposes to expand the index of customers to include all firm transportation services and contract demand for each customer for each rate schedule. In the order issued in Tennessee Gas Pipeline Company's restructuring proceeding,[14] the Commission clarified that § 154.41 is not limited to the requirement to file sales-related information. The changes proposed here make that interpretation explicit. Some pipelines have provided contract demand information on a

[12] On February 28, 1990, the Commission issued the ''Notice of Tariff Retrieval System Software Availability,'' otherwise referred to as the FASTR software package.

[13] The guidelines and electronic and filing instructions for tariff sheets may be obtained at the Federal Energy Regulatory Commission, Division of Public Information, Washington, DC 20426.

[14] Tennessee Gas Pipeline Company, 65 FERC ¶ 61,224 (1993).

voluntary basis before this. The information has proven valuable to the Commission in analyzing pipelines' filings and in eliminating additional requests for information.

The Commission proposes that pipelines that offer services under part 284 of this chapter, exclusively or in addition to services authorized under part 157 of this chapter, comply with the requirements proposed in the companion rulemaking instead of this provision. In the companion rulemaking, the Commission is proposing that pipelines providing service pursuant to part 284 of this chapter, provide an index of customers on the electronic bulletin board (EBB). The Commission proposes, as an interim measure, to require pipelines providing transportation service under part 284 to comply with the non-electronic index of customers requirements as set forth in § 154.111 until the electronic index is implemented.

l. *Section 154.112 Exception to Form and Composition of Tariff.* The Commission proposes § 154.112 as a replacement for current § 154.52 with the deletion of those paragraphs dealing with the sale of gas or purchased gas cost tracking. Because the requirements of proposed § 154.101 (Form) and § 154.102 (Title page and arrangements) are applicable, the proposed § 154.112 does not refer to those matters. Proposed § 154.112 specifies that special rate schedules for service under part 157 of this chapter would be included in Volume No. 2 and that non-conforming contracts for service under part 284 of this chapter would be included in Volume No. 1.

3. Subpart C—Procedures for Changing Tariffs

a. *Section 154.201 Filing Requirements.* The Commission proposes § 154.201 as a replacement for current § 154.63(b)(1)(v), Marked Versions of Tariff Changes, and current § 154.63(e)(4), Workpapers and Supporting Data. The intent of this proposed regulation is to ensure that any mathematical calculations are complete and logically follow from the first calculation to the last; so that, anyone attempting to recreate the calculations can do so, and to ensure that any numbers that are not directly from the company's source documents are explained.

Other parts of current § 154.63 are revised and distributed elsewhere in proposed part 154 (discussed supra).

b. *Section 154.202 Filings To Initiate a New Rate Schedule.* The Commission proposes § 154.202 as the replacement for current § 154.62. The proposed section does not apply to initial executed service agreements. Very little data is currently required to support an initial rate schedule or executed service agreement. Because many services are now provided under blanket authorizations, there is no review prior to the tariff filing. Thus, the current filing requirements are no longer consistent with the needs of the Commission for reviewing new rate schedules. The proposed section relates to the requirements for a new rate schedule under the blanket authority granted under part 284 of this chapter as well as to other initial filings.

c. *Section 154.203 Compliance Filings.* Section 154.203 is a proposed new section dealing with filings to comply with a Commission order. Filings made to comply with Commission orders must include only those changes required to comply with the order. Such compliance filings must not be combined with other rate or tariff change filings. A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.

d. *Section 154.204 Changes Related to Suspended Tariffs, Executed Service Agreements or Parts Thereof.* The Commission proposes § 154.204 as the replacement for current § 154.66. The proposed change adds two exceptions to the ban on tariff filings during a suspension period. The exceptions are ''changes made under previously accepted tariff provisions permitting periodic limited rate changes'' and ''accepted limited rate changes.'' Proposed § 154.204 recognizes that the Commission allows periodic limited rate changes pursuant to accepted tariff provisions and ACA and GRI surcharge changes to take place during the period of suspension. This reflects current Commission policy.

e. *Section 154.205 Motion To Place Suspended Rates Into Effect.* The Commission proposes § 154.205 as the replacement for current § 154.67. Current § 154.67(b), Reports, is deleted. The proposed section requires that, when rates have been suspended for more than a minimal period and the Commission has ordered changes or the rates include costs of facilities that are not in service, the motion to place suspended tariff sheets into effect must be filed not less than 30 days nor more than 60 days prior to the date the sheets are to take effect. This will allow the Commission sufficient time to ensure compliance with its orders and rules before the rates take effect at the end of the suspension period. A motion is not required in all circumstances; only where the Commission has ordered changes or the rates include facilities that are not in service. Further, if the rates have been suspended for a minimal period, they will go into effect without a motion, as has been the Commission practice.

f. *Section 154.206 Notice Requirements.* The Commission proposes § 154.206 as the replacement for current § 154.22 and § 154.51. The proposed section applies only to proposed changes. Reference to § 154.5, which is no longer in part 154, is removed.

g. *Section 154.207 Service on Customers and Other Parties.* The Commission proposes new § 154.207 to formally require the filing company to serve its customers and state regulatory commissions on or before the filing date. The Commission invites comments on whether the informational needs of customers and state regulatory commissions would be adequately fulfilled if the filing company was only required to serve the transmittal letter and provide the rest of the filing upon request. Some pipelines have used this procedure recently to minimize the costs of reproduction and mailing where their lists of shippers are quite large.

h. *Section 154.208 Form of Notice for Federal Register.* The Commission proposes § 154.208, as the replacement for current § 154.28. The modified form reflects current practice. The Commission invites comments on whether the **Federal Register** notice is useful and should be retained in addition to the Commission's electronic notice.

i. *Section 154.209 Protests, Interventions and Comments.* The Commission proposes § 154.209 as the replacement for current § 154.27. The intervention, comment, and protest periods are proposed to be standardized as has been the practice with oil pipeline tariff filings. Interventions, comments, and protests must be filed within 10 days of the filing date and comments must be filed at the same time as interventions and protests.

The Commission intends to continue the practice of liberally granting motions for late intervention in the early stages of a proceeding.

4. Subpart D—Material To Be Filed With Changes

a. *Section 154.301 Changes in Rate Schedules, Forms of Service Agreements, or the General Terms and Conditions.* Proposed § 154.301 provides distinct requirements for filings to change rate schedules, forms of service agreements, or the general terms and conditions of a tariff. Such

filings must explain the necessity for the change and the impact on existing customers.

b. *Section 154.302 Changes in Rates.* Proposed § 154.302 establishes that proposed subpart D pertains to rate change filings under the cost-of-service methodology; i.e., all rate change filings except those filed under subparts E, F, G, H, and I. The Commission proposes subpart D to be applicable to both rate increase and decrease filings and proposes to eliminate special filing requirements for ''minor pipelines.'' The Commission proposes § 154.302(c) as the replacement for current § 154.63(e)(1). Minor rate increase filings, as now covered by § 154.63(b)(4), and rate decreases have reduced filing requirements under proposed § 154.314. In addition, the Commission proposes that changes other than in rate level be made under subpart G, discussed supra.

c. *Section 154.303 Previously Submitted Material.* The Commission proposes § 154.303 as the replacement for current § 154.63(c)(1) and (2). A current FERC Form No. 2 must accompany the filing.

d. *Section 154.304 Test Periods.* The Commission proposes § 154.304 as a replacement for current § 154.63(e)(2)(i) and (ii). The section has been completely rewritten. The Commission proposes to clarify that the pipeline must remove from its rates moved into effect the cost of any facilities not certificated (where a certificate is required) and in service as of the end of the test period.

e. *Section 154.305 Format of Statements, Schedules, Workpapers, and Supporting Data.* The Commission proposes § 154.305 as the replacement for current § 154.63(c)(3) and § 154.63(e)(4). The Commission proposes to require a narrative explanation of each proposed adjustment to base period actual volumes and costs.

f. *Section 154.306 Tax Normalization.* The Commission proposes § 154.306 to replace current § 154.63a with revisions to clarify the section's applicability. Pipelines will continue to be required to use tax normalization to compute the income tax component of cost-of-service and to adjust rate base by accumulated deferred income taxes related to jurisdictional activities.

g. *Section 154.307 Cash Working Capital.* The Commission proposes § 154.307 to replace current § 154.63b.

h. *Section 154.308 Joint Facilities.* The Commission proposes § 154.308 as the replacement for current § 154.63(e)(3) with stylistic changes.

i. *Section 154.309 Representation of Chief Accounting Officer.* Proposed § 154.309 replaces current § 154.63(e)(5) with only stylistic changes.

j. *Section 154.310 Incremental Expansions.* Proposed § 154.310 requires separate statements and schedules for incremental facilities, including those with Commission imposed at-risk provisions. In some cases, pipelines maintain independent rate schedules (incremental rates) that are based on the costs of specific facilities. Separate statements and schedules for such facilities need to be provided to permit a proper evaluation of the rates based on the costs of those facilities. When pipelines have been unable to fully subscribe certain construction projects, the Commission has permitted construction to go forward with the pipeline placed at-risk for recovery of the unsubscribed capacity. Separate statements and schedules for at-risk facilities need to be provided so that the Commission can compare the revenue generated from the use of the facilities with the cost of the facilities, and determine whether to remove the at-risk condition.

k. *Section 154.311 Zones.* Proposed § 154.311 requires a cost breakdown by zone if the pipeline maintains records of costs by zone.

l. *Section 154.312 Updating of Statements.* The Commission proposes to require certain Statements and Schedules to be updated, quarterly, for each month of the test period. Under this provision, the last update would be one month after the end of the test period.

m. *Section 154.313 Composition of Statements.* The Commission proposes § 154.313 as the replacement for current § 154.63(f) with revisions to the statements and schedules as discussed below. Many changes are self explanatory or merely editorial and are not discussed here.

In proposed Schedule C–1, End of Base Period Plant Functionalized, the Commission proposes to (1) no longer list storage facilities as ''underground'' or ''local'' and (2) require the showing of plant in service by functional classifications.

Proposed Schedule C–2, Plant in Service as Adjusted, requires the test year adjusted plant in service to be set out by function.

Proposed Schedule C–3 shows, for Account Nos. 106 and 107, a list of work orders claimed in the rate base.

Proposed Schedule D–1 requires actual end of base period depreciation, depletion, and amortization by functional classifications.

Proposed Schedule D–2 requires projected end of test year depreciation, depletion, and amortization by functional classifications.

Proposed Statement F–2 revises and clarifies the information required with respect to the claimed overall rate of return.

The Commission proposes to remove current Statement F–5.

Proposed Statement G, Revenues, Credits, and Billing Determinants, replaces current Statement G (Gas operating revenues and sales volumes) to reflect the need for complete information on all jurisdictional services. The sixth paragraph of current Statement G(e), dealing with credits, would be moved to Statement G. The Commission proposes to require the allocated GSR component of IT rates to be unbundled and treated as a separate component for rate case filing purposes in order to better compare and reconcile the cost-of-service to revenues.

Proposed Schedule G–1, Base Period Revenues, requires actual revenues for all services and customers rather than solely sales revenues, as in present Schedule G(a), or solely aggregate transportation revenues, as in present Schedule G(c). The proposed Schedule G–1 also requires (1) identification of revenues by customer, by rate schedule, by contract, by month and by billing determinant (not adjusted for discounting) similar to present Schedule G(e) fifth paragraph, (2) separate identification of revenues for short-term firm transportation services, (3) capacity release information, (4) an identification of affiliated customers, and (5) an identification of rate schedules where revenues are credited as in present Schedule G(c).

The Commission proposes Schedule G–2, Adjustment Period Revenues, with information similar to that required in proposed Schedule G–1.

The Commission proposes Schedule G–3, a description of adjustments to the base period, as a replacement for current Schedule G(e) third paragraph. The Commission proposes Schedule G–3 in order to require a quantification of the impact of each proposed change rather than providing only the throughput and contract level differences. The Commission believes this requirement is necessary in order for a pipeline to meet its burden of proof.

The Commission proposes Schedule G–4, At-risk Revenue, to compare revenues generated by ''at-risk'' facilities to the cost of those facilities, as specified in § 154.310.

The Commission proposes Schedule G–5, Other Revenues, to collect revenue data regarding the sale of products

extracted from natural gas and other activities reported in Account Nos. 490–495. New requirements to quantify and explain changes to base period actuals and provide information about releases, penalties, cash outs, other imbalances, and exit fees are incorporated in this schedule. Revenues from miscellaneous services must be reflected in Account No. 495, as is currently required. Further, the pipeline must explain the circumstances relating to revenues from ''special'' types of ''X'' rate schedules. Revenues from the release of Account No. 858 capacity must be reflected as a credit to Account No. 858 in both Schedule G–5 and the proposed Schedule I–4.

The Commission proposes Schedule I–1, Functionalization of Cost of Service, to replace current Statement I (Allocation of overall cost of service). The jurisdictional and nonjurisdictional sales allocation is eliminated as no longer needed.

The Commission proposes Schedule I–2(i) and (ii) as a replacement for present Schedule I–2. Proposed Schedule I–2(iii) requires an explanation of changes in classification from the currently effective rates. This information is required by current Schedule K–2, but is often difficult to distinguish from other information.

The Commission proposes Schedule I–3, Allocation of Cost-of-Service, to replace current Schedule J. Schedule I–3(ii) bridges the gap between the cost of service and rates. The information required is now filed under current Schedule K–1. Proposed Schedule I–3(ii) follows a more logical order. It also recognizes that there are often several allocation steps before rates are actually calculated. Proposed Schedule I–3(iii) requires the formulae and allocation determinants. Proposed Schedule I–3(iv) requires an explanation of any changes from the current methodology as is required under current Schedule K–2.

The Commission proposes Schedule I–4, Transmission and Compression of Gas by Others (Account No. 858), to replace current Schedule I–4. The proposed revisions reflect current operations. Proposed Schedule I–4(i) requires information on the expiration date of each contract with an upstream pipeline. This will provide the Commission with information about the status of contracts. Proposed Schedule I–4(iii) requires the pipeline to report monthly usage volumes and monthly revenues. Proposed Schedule I–4(v) requires minimal information about capacity release. It does not request any information on the identity of the contracting party. The information on revenues for releases is necessary to ensure that the pipelines' customers that pay the Account No. 858 costs receive a credit for revenue from capacity releases made by the pipeline of this upstream capacity.

Current Schedule I–5, requiring information on meters, is deleted. Proposed Schedule I–5, Three-day peak deliveries, replaces current Schedule I–6 and clarifies that data on deliveries must be by customer by rate schedule. Proposed Schedule I–5 also requires a breakout by zone. Current Schedule I–6 requires information on deliveries to non-jurisdictional customers. Current Schedule I–6 requires information on storage withdrawals, line pack fluctuations and temperature. Proposed Schedules I–5 (iii), (iv), and (v) require the same information. However, proposed Schedule I–5(iii) requires that storage be broken out by field and between contract storage and system use. This information was not needed when pipelines were primarily in the sales business; however, since storage has been unbundled and the pipelines can only retain storage for operational purposes, more detail is necessary in order to examine how storage is used at peak times.

The Commission proposes Schedule I–6, Gas Balance, to replace current Schedule I–7 with the deletion of that schedule's last sentence.

The Commission proposes Statement J, Comparison and Reconciliation of Estimated Revenues With Cost-of-service, as a replacement for current Statement K. Proposed Statement J will provide the same type of comparison as the current schedule, except that it specifically states that Schedule G–2 must be compared to Statement I. It also requires surcharges to be reflected and recognizes that they are not derived from the cost of service, but are jurisdictional revenues.

The Commission proposes new Schedule J–1, Summary of Billing Determinants, to help correlate the volumes in proposed Schedule G to the volumes used to develop rates.

The Commission proposes Schedule J–2, Derivation of Rates, to replace current Schedule K–1. Proposed J–2 more clearly specifies what information is required and requires the costs and billing determinants to be cross-referenced. Proposed Schedule J–2(iii) requires the same information as current Schedule K–2.

xiii. Section 154.314 Schedules for Minor Rate Changes

The Commission proposes that the filing burden for minor rate increases and rate decreases be less than other rate changes. Minor rate increases usually relate to a few schedules and are designed to bring such schedules into harmony with general tariff policy, to eliminate inequities, and to achieve other formal adjustments, in cases where any increase in revenue is subordinate to some other purpose. They include changes that are not designed to provide general revenue increases such as to offset increased costs or otherwise achieve a fair return on the overall jurisdictional business. The Commission proposes that increases in rates or charges which, for the test period, do not exceed the smaller of $1,000,000 or 5 percent of the revenues under the jurisdiction of the Commission will be considered minor. A change in rate level, no part of which directly or indirectly results in any increased charge to a customer or class of customers, will also be considered a minor rate change.

xiv. Section 154.315 Other Support for a Filing

Proposed § 154.315 provides that any company filing for a rate change is responsible for preparing prior to filing, and maintaining, workpapers sufficient to support the filing. In addition to the workpapers, certain other material, related to the test period, must be provided such as copies of monthly financial reports prepared for management purposes and copies of accounting analyses of balance sheet accounts.

6. Subpart E—Limited Rate Changes

i. *Section 154.401 RD&D Expenditures.* The Commission proposes § 154.401 to replace current § 154.38(d)(5).

ii. *Section 154.402 ACA Expenditures.* The Commission proposes § 154.402 to replace current § 154.38(d)(6).

iii. *Section 154.403 Periodic Rate Adjustments.* The Commission proposes new § 154.403 to govern the passthrough on a periodic basis of a single cost item or revenue item not otherwise covered by subpart E, such as remaining purchased gas adjustment mechanisms, Fuel Loss and Unaccounted-For, and transition cost filings. These new regulations are consistent with current Commission policy governing these filings and generally reflect currently effective tariff provisions.

The requirements of this section are subdivided into two parts. The initial part sets forth the minimum general requirements the Commission proposes a pipeline to meet if it proposes, or the Commission requires, a periodic

passthrough mechanism in the future. Significant among the proposed requirements of this section is the requirement to include a sample calculation in the tariff provision governing the periodic rate change methodology. This sample calculation will assist the Commission and interested parties in understanding the proposal and ensure that the tariff language adequately explains the calculation steps. Further, it will provide a template for future filings under the tariff provision.

The general requirements portion of section 154.503 also includes the requirement that all periodic rate change mechanisms include a description of the timing and methodology of the adjustments, including a description of all mathematical calculations. No steps should be excluded. Given the numbers from the source documents, anyone reading the tariff should be able to arrive at the rate component by following the steps described in the tariff.

The second portion of proposed section 154.503 is devoted to the information to be submitted with each filing. The filings should contain working papers which show the calculations described by the tariff. The Commission proposes to collect sufficient supporting calculations to show a clear path from the source data to the rate component.

7. Subpart F—Refunds and Reports

i. *Section 154.501 Refunds.* The Commission proposes § 154.501 to replace current § 154.67(c). The refund carrying charge rule, currently § 154.38(d)(4), is proposed to apply to all refunds. The proposed section reflects current Commission policy.

The Commission proposes to add a requirement for refunds of the pipeline to be made within 60 days to ensure refunds are disbursed on a timely basis. Refunds received by the pipeline must be disbursed within 30 days of receipt. This period of time should be adequate to disburse a refund.

Proposed § 154.501(c) is added to reflect current Commission policy with respect to supplier refunds which apply to the period during which the company had a purchased gas adjustment clause in its tariff. Instructions regarding the contents of a refund report are added to provide guidance.

ii. *Section 154.502 Reports.* The Commission proposes new § 154.502 to require that the tariff include information about reports required by the Commission.

8. Subpart G—Other Tariff Changes

i. *Section 154.601 Change in Executed Service Agreement.* The Commission proposes § 154.601 to replace current § 154.63(d)(2). The proposed section concerns executed service agreements ''on file with the Commission'' and does not refer to ''well names.''

ii. *Section 154.602 Cancellation or Termination of a Tariff, Executed Service Agreement or Part Thereof.* The Commission proposes § 154.602 as the replacement for current § 154.64. The proposed section does not require sales information. It does require a list of the affected customers and the contract demand under the service to be canceled.

iii. *Section 154.603 Adopting of a Tariff by a Successor.* The Commission proposes § 154.603 as the replacement for current § 154.65. The proposed section concerns adopted tariffs or contracts ''on file with the Commission'' as opposed to any tariff or contracts.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [15] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule will have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[16] Further, the filing requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Statement

The Commission has excluded certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[17] No environmental consideration is raised by the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[18] The instant rule changes the information to be filed, and the manner by which that information is filed, with the Commission but does not substantially change the effect of the underlying legislation or the regulations being replaced or revised. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [19] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in the following:

FERC Form 542 ''Gas Pipeline Rates: Initial Rates, Rate Change and Rate Tracking'' (1902–0070); FERC Form 542A Tracking and Recovery of Alaska Natural Gas Transportation System'' (1902–0129); FERC Form 543 ''Gas Pipeline Rates: Rate Tracking, Formal Rates'' (1902–0152); FERC Form 544 ''Gas Pipeline Rates: Rate Change, Formal Rates'' (1902–0153); FERC Form 545 ''Gas Pipeline Rates: Rate Change, Nonformal Rates'' (1902–0154); FERC Form 546 ''Certificated Rate Filings: Gas Pipeline Rates'' (1902–0155); and, FERC Form 547 Gas Pipeline Rates: Refund Report Requirements'' (1902–0084).

The Commission, in this proposed, rule intends to modernize its regulations to reflect the current regulatory environment that it instituted with Order No. 636 and the restructuring of the natural gas industry. Specifically, the Commission intends to replace its regulations in part 154 to focus on transportation services instead of pipeline sales activities. The proposed filing requirements will improve the internal support of a pipeline's filing, reduce the discovery process in rate hearings for all parties and facilitate more rapid settlement or adjudication of pipeline rate proposals. The Commission's Office of Pipeline Regulation uses the data in its various rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas and for general industry oversight under the Natural Gas Act. The Commission's Office of Economic Policy also uses these data in its analysis of interstate natural gas pipelines.

The Commission is submitting to the Office of Management and Budget a notification of these proposed collections of information. Interested persons may obtain information on

[15] 5 U.S.C. 601–612.

[16] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[17] 18 CFR 380.4.

[18] 18 CFR 380.4(a)(2)(ii).

[19] 5 CFR 1320.13.

these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission) FAX: (202)395–5167.

VII. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this proposal. An original and 14 copies must be filed with the Commission by April 13, 1995. Comments must refer to Docket No. RM95–3–000 and be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426.

All written submissions will be placed in the Commission's public file and will be available for public inspection, during regular business hours, at the Commission's Public Reference Section, Room 3104, 941 North Capitol Street, NE., Washington DC 20426.

List of Subjects in 18 CFR Part 154

Natural gas companies, Rate schedules and tariffs.

By direction of the Commission.

Lois D. Cashell,

Secretary.

For the reasons set out in the preamble, 18 CFR part 154 is proposed to be revised to read as follows.

PART 154—RATE SCHEDULES AND TARIFFS

Subpart A—General Provisions and Conditions

Sec.
154.1 Application; obligation to file.
154.2 Definitions.
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Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

Subpart A—General Provisions and Conditions

§ 154.1 Application; Obligation to file.

(a) The provisions of this part apply to filings pursuant to section 4 of the Natural Gas Act.

(b) Every natural gas company must file with the Commission and post in conformity with the requirements of this part, schedules showing all rates and charges for any transportation or sale of natural gas subject to the jurisdiction of the Commission, and the classifications, practices, rules, and regulations affecting such rates, charges, and services.

(c) No natural gas company may file, under this part, any new or changed rate schedule or contract for the performance of any service for which a certificate of public convenience and necessity or certificate amendment must be obtained pursuant to section 7(c) of the Natural Gas Act, until such certificate has been issued.

(d) For the purposes of paragraph (b) of this section, any contract that conforms to the form of service agreement that is part of the pipeline's tariff pursuant to § 154.110 does not have to be filed. Any contract or executed service agreement which deviates in any material aspect from the form of service agreement in the tariff is subject to the filing requirements of this part.

§ 154.2 Definitions.

(a) *Contract* means any agreement which in any manner affects or relates to rates, charges, classifications, practices, rules, regulations, or services for any transportation or sale of natural gas subject to the jurisdiction of the Commission. This term includes an executed service agreement.

(b) *FERC Gas Tariff* or *tariff* means a compilation, either in book form or on electronic media, of all of the effective rate schedules of a particular natural gas company, and a copy of each form of service agreement.

(c) *Form of service agreement* means an unexecuted agreement for service included as an example in the tariff.

(d) *Post* means: to make a copy of a natural gas company's tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural gas company's offices where business is conducted with affected customers; and, to mail to each affected customer and interested state commission a copy of the tariff, or part thereof. Mailing must be accomplished by U.S. Mail, unless some other method is agreed to by the parties.

(e) *Rate schedule* means a statement of a rate or charge for a particular classification of transportation or sale of natural gas subject to the jurisdiction of the Commission, and all terms, conditions, classifications, practices,

rules, and regulations affecting such rate or charge.

§ 154.3 Effective tariff.

(a) The effective tariff of a natural gas company is the tariff filed pursuant to the requirements of this part, and permitted by the Commission to become effective. A natural gas company must not directly or indirectly, demand, charge, or collect any rate or charge for, or in connection with, the transportation or sale of natural gas subject to the jurisdiction of the Commission, or impose any classifications, practices, rules, or regulations, different from those prescribed in its effective tariff and executed service agreements on file with the Commission, unless otherwise specifically permitted by order of the Commission.

(b) No tariff provision may purport to change an effective rate or charge except in the manner provided in section 4 of the Natural Gas Act, and the regulations in this part. The tariff may not provide for any rate or charge to be automatically changed by an index or other periodic adjustment, without filing for a rate change pursuant to these regulations.

§ 154.4 Electronic and paper media.

(a) *General rule.* All statements filed pursuant to subpart D of this part, and all workpapers in spreadsheet format, and tariff sheets other than those in Volume No. 2, must be submitted on electronic media. Filings pursuant to part 154 of this chapter must also include the prescribed number of paper copies. Tariffs, rate schedules and contracts, or parts thereof, and material related thereto, including any change in rates, notice of cancellation or termination, and certificates of adoption, must be submitted to the Commission in an original and 6 paper copies, except that filings pursuant to subpart D of this part must be submitted in an original and 12 paper copies.

(b) All filings must be signed in compliance with the following.

(1) The signature on a filing constitutes a certification that: the signer has read the filing signed and knows the contents of the paper copies and electronic media; the paper copies contain the same information as contained on the electronic media; the contents as stated in the copies and on the electronic media are true to the best knowledge and belief of the signer; and, the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) the person on behalf of whom the filing is made;

(ii) an officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) a representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(c) Electronic media suitable for Commission filings are listed in the instructions for each form and filing. Lists of suitable electronic media are available upon request from the Commission. The formats for the electronic filing and paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426.

(d) *Where to file.* The electronic media, the paper copies and accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, D.C. 20426.

(e) *Waiver.* A natural gas company may request a waiver of the requirement to submit filings by electronic media, by filing an original and 6 copies of a request for waiver. The request must demonstrate that the natural gas company does not have, and is unable to acquire, the technical capability to file the information on electronic media.

§ 154.5 Incomplete filings.

Incomplete filings will not be accepted for filing. If the material submitted is incomplete, the Director of the Office of Pipeline Regulation will so notify the submitter within 15 days of receipt of the material by the Commission. A filing is complete and will be accepted for filing, when all supporting cost or other data required to be filed by this part is received by the Office of the Secretary. The date of receipt stamped on the material by the Secretary is not necessarily the filing date and does not fix the date upon which the 30-day notice requirement of section 4(c) of the NGA begins. The 30-day notice period will begin when the filing is complete. The affixing of a date stamp is not a determination that the document is in compliance with the rules and regulations of the Commission.

§ 154.6 Acceptance for filing not approval.

The acceptance for filing of any tariff, contract or part thereof does not constitute approval by the Commission. Any filing which does not comply with any applicable statute, rule, or order, may be rejected.

§ 154.7 General requirements for the submission of a tariff filing or executed service agreement.

The following must be included with the filing of any tariff, executed service agreement, or part thereof, or change thereto.

(a) A letter of transmittal containing:

(1) A list of the material enclosed,

(2) The name of a responsible company official to whom questions regarding the filing may be addressed, with a telephone number at which the official may be reached,

(3) The date on which such filing is proposed to become effective,

(4) Reference to the authority under which the filing is made, including the specific section of a statute, subpart of these regulations, order of the Commission, provision of the company's tariff, or any other appropriate authority. If an order is referenced, the letter must include the citation to the FERC Reports, the date of issuance, and the lead docket number of the proceeding in which the order was issued.

(5) A list of the tariff sheets enclosed,

(6) A statement of the nature, the reasons, and the basis for the filing. The statement must include a summary of the changes or additions made to the tariff or executed service agreement, as appropriate. A detailed explanation of the need for each change or addition to the tariff or executed service agreement must be included. The natural gas company also must note all relevant precedents relied upon to prepare its filing.

(7) Any requests for waiver. A request for waiver must include a reference to the specific section of the statute, regulations, or the company's tariff from which waiver is sought, and a justification for the waiver.

(b) a certification of service to all affected customers and interested state commissions.

§ 154.8 Informal submission for staff suggestions.

Any natural gas company may informally submit a proposed tariff or any part thereof or material relating thereto for the suggestions of the Commission staff prior to filing. Opinions of the Commission staff are not binding upon the Commission.

Subpart B—Form and Composition of Tariff

§ 154.101 Form.

The paper copies of the tariff must be printed, typewritten, or otherwise reproduced on 8½ by 11 inch sheets of a durable paper so as to result in a clear

and permanent record. The sheets of the tariff must be ruled to set off borders of 1¼ inches on top, bottom, and left sides and ½ inch on the right side, and punched (3 holes) on the left side.

§ 154.102 Title page and arrangement.

(a) The title page must show on the front cover:

FERC Gas Tariff
[Volume number. For example: ''Original Volume No. 1''] of [Name of Natural-Gas Company]
Filed with The Federal Energy Regulatory Commission

(b) If the tariff consists of two or more volumes, the volumes must be identified by ''(Original) Volume No. (1)'', directly below the words ''FERC Gas Tariff.''

(c) When any volume of a tariff is to be superseded or replaced in its entirety, the replacing volume must show prominently on the title page the volume number being superseded or replaced. For example:

FERC Gas Tariff
First Revised Volume No. 1
(Supersedes Original Volume No. 1)

(d) The first page must be a title page which must carry the information shown in paragraph (b) of this section and, in addition, the name, title, and address of the person to whom communications concerning the tariff should be sent.

(e) All sheets must have the following information placed in the margins:

(1) *Identification.* At the left, above the top marginal ruling, the exact name of the company must be shown, under which must be set forth the words ''FERC Gas Tariff,'' together with volume identification.

(2) *Numbering of sheets.* Except for the title page, at the right above the top marginal ruling, the sheet number must appear after the words ''(Original) Sheet No. (number).'' All sheets must be numbered in the manner set forth in the Tariff Sheet Pagination Guidelines contained in the instructions for filing natural gas company tariffs on electronic media.

(3) *Issuing officer and issue date.* On the left below the lower marginal ruling, must be placed ''Issued by'': followed by the name and title of the person authorized to issue the sheet. Immediately below must be placed ''Issued on'' followed by the date of issue.

(4) *Effective date.* On the right below the lower marginal ruling must be placed ''Effective'': followed by the specific effective date proposed by the company.

(5) *Tariff Sheets filed to comply with Commission orders.* Tariff sheets which are filed to comply with Commission orders must carry the following notation in the bottom margin: ''Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. (number), issued (date), (FERC Reports citation).''

§ 154.103 Composition of tariff.

(a) The tariff must contain sections, in the following order: a table of contents, a preliminary statement, a map of the system, currently effective rates, composition of rate schedules, general terms and conditions, form of service agreement, and an index of customers.

(b) Rate schedules must be grouped according to class and numbered serially within each group, using letters before the serial number to indicate the class of service. For example: FT–1, FT–2 may be used for firm transportation service; IT–1, IT–2 may be used for interruptible transportation service; X–1, X–2 may be used for schedules for which special exception has been obtained.

§ 154.104 Table of contents.

The table of contents must contain a list of the rate schedules, sections of the general terms and conditions, and other sections in the order in which they appear, showing the sheet number of the first page of each section. The list of rate schedules must consist of: the alphanumeric designation of each rate schedule, a very brief description of the service, and the sheet number of the first page of each rate schedule.

§ 154.105 Preliminary statement.

The preliminary statement must contain a brief general description of the company's operations and may also contain a general explanation of its policies and practices. General rules and regulations, and any material necessary for the interpretation or application of the rate schedules, may not be included in the preliminary statement.

§ 154.106 Map.

(a) The map must show the general geographic location of the company's principal pipeline facilities and of the points at which service is rendered under the tariff. The boundaries of any rate zones or rate areas must be shown and the areas or zones identified. The entire system should be displayed on a single map. In addition, a separate map should be provided for each zone.

(b) The map must be provided on paper only.

(c) The map must be revised to reflect any major changes. The revised map must be filed no later than April 30 of the calendar year after the major change.

§ 154.107 Currently effective rates.

(a) This section of the tariff must present the currently effective rates and charges under each rate schedule.

(b) All rates must be clearly stated in cents or in dollars and cents per thermal unit. The unit of measure must be stated for each component of a rate.

(c) A rate having more than one part must have each component set out separately under appropriate headings (e.g., ''Reservation Charge,'' ''Usage Charge.'')

(d) Where a component of a rate is adjusted by a limited rate change, the adjustment must be stated in a separate column on the rate sheet.

(e) A total rate, indicating the sum of the rate components under paragraph (c) of this section plus the adjustments under paragraph (d) of this section, must be shown in the last column at the end of a line for a rate, so that a reader can readily determine the separate components comprising the total rate for a service.

§ 154.108 Composition of rate schedules.

The rate schedule must contain a statement of the rate or charge and all terms and conditions governing its application, arranged as follows:

(a) *Title.* Each rate schedule must have a title consisting of a designation of the type or classification of service (see § 154.103(b)), and a statement of the type or classification of service to which the rate is applicable.

(b) *Availability.* This paragraph must describe the conditions under which the rate is offered, including any geographic zone limitations.

(c) *Applicability and character of service.* This paragraph must fully describe the kind or classification of service to be rendered.

(d) *Summary of rates.* This paragraph must briefly set forth all components of the rates, refer to the location of the rates in the Currently Effective Rates, and provide a description of the calculation of the monthly charges for each rate component.

(e) *Other provisions.* All other major provisions governing the application of the rate schedule, such as determination of billing demand, contract demand, heat content, and measurement base, must be set forth with appropriate headings or incorporated by reference to the applicable general terms and conditions.

(f) *Applicable terms and conditions.* This paragraph either states that all of the general terms and conditions set forth in the tariff apply to the rate schedule, or specifies which of the general terms and conditions do not apply.

§ 154.109 General terms and conditions.

(a) This section of the tariff contains terms and conditions of service applicable to all or any of the rate schedules. Subsections and paragraphs must be numbered for convenient reference.

(b) The general terms and conditions of the tariff must contain a statement of the company's policy with respect to the financing or construction of laterals including when the pipeline will pay for or contribute to the construction cost. The term ''lateral'' means any pipeline extension (other than a mainline extension) built from an existing pipeline facility to deliver gas to one or more customers, including new delivery points and enlargements or replacements of existing laterals.

(c) The general terms and conditions of the tariff must contain a statement of the manner in which the company discounts its rates and charges. The statement, specifying the order in which each rate component will be discounted, must be in accordance with Commission policy.

§ 154.110 Form of service agreement.

The tariff must contain an unexecuted pro forma copy of each form of service agreement. The form for each service must refer to the service to be rendered and the applicable rate schedule of the tariff; and, provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction as appropriate.

§ 154.111 Index of customers.

(a) If a pipeline is in compliance with the reporting requirements of § 284.106 or § 284.223 of this chapter, then an index of customers need not be provided in the tariff.

(b) If all of a pipeline's jurisdictional transportation and sales are pursuant to part 157 of this chapter, then an index of customers must be provided that contains an alphabetical list of all firm transportation, storage, and sales customers under the tariff, and show, for each rate schedule or schedules: the execution date, effective date, expiration date, and the term of the contract, and the contract units (in Mcf, MMBtu, therm, or Dth).

(c) The index of customers must be kept current by filing new or revised sheets semi-annually. The filings must coincide with the filings of the company's FERC Form No. 2 or 2–A and FERC Form No. 11.

§ 154.112 Exception to form and composition of tariff.

(a) The Commission may permit a special rate schedule to be filed in the form of an agreement in the case of a special operating arrangement, previously certificated pursuant to part 157 of this chapter, such as for the exchange of natural gas. The special rate schedule must contain a title page showing the parties to the agreement, the date of the agreement, a brief description of services to be rendered, and the designation: ''Rate Schedule X–[number].'' Special rate schedules may not contain any supplements. Modifications must be by revised or insert sheets. Special rate schedules must be included in Volume No. 2 of the tariff. Volume No. 2 must contain a table of contents which is incorporated with the table of contents of Volume No. 1.

(b) Contracts for service pursuant to part 284 of this chapter that do not conform to the form of service agreement must be filed. Such non-conforming agreements must be referenced in Volume No. 1.

Subpart C—Procedures for Changing Tariffs

§ 154.201 Filing requirements.

In addition to the requirements of subparts A and B of this part, the following must be included with the filing of any tariff, executed service agreement, or part thereof, that changes or supersedes any tariff, contract, or part thereof, on file with the Commission.

(a) A marked version of the pages to be changed or superseded showing additions and deletions. All new language must be marked by either highlight, background shading, bold text, or underlined text. Deleted language must be indicated by strike-through. A marked version of the pages to be changed must be included in each copy of the filing required by these regulations.

(b) Documentation whether in the form of worksheets, or otherwise, sufficiently detailed to support the company's proposed change.

(1) The documentation must include but is not limited to the schedules, workpapers, and supporting documentation required by these rules and regulations and the Commission's orders.

(2) All rate changes in the filing must be supported by step-by-step mathematical calculations and sufficient written narrative to allow the Commission and interested parties to duplicate the company's calculations.

(3) Any data or summaries included in the filing purporting to reflect the books of account must be supported by accounting workpapers setting forth all necessary particulars from which an auditor may readily verify that such data are in agreement with the company's books of account. All statements, schedules, and workpapers must be prepared in accordance with the classifications of the Commission's Uniform System of Accounts. Workpapers in support of all adjustments, computations, and other information, properly indexed and cross-referenced to the filing and other workpapers, must be available for Commission examination.

(4) Where a rate, cost, or volume is derived from another rate, cost, or volume, the derivation must be shown mathematically and be accompanied by a written narrative sufficient to allow the Commission and interested parties to duplicate the calculations. If the derivation is due to a load factor adjustment, application of a percentage, or other adjusting factor, the pipeline must also note or explain the origin of the adjusting factor.

(5) Where workpapers show progressive calculations, any discontinuity between one working paper and another must be explained.

§ 154.202 Filings to initiate a new rate schedule.

(a) When the filing is to initiate a new service authorized under a blanket authority in part 284 of this chapter, the filing must comply with the requirements of this paragraph.

(1) Filings under this paragraph must:

(i) Adhere to the requirements of subparts A, B, and C of this part;

(ii) Contain a description of the new service, including, but not limited to, the proposed effective date for commencement of service, applicability, whether the service is interruptible or firm, and the necessity for the service;

(iii) Explain how the new service will differ from existing services, including a concise description of the natural gas company's existing operations;

(iv) Explain the impact of the new service on existing firm and interruptible customers, including but not limited to:

(A) The adequacy of existing capacity, if the proposed service is a firm service, and

(B) The effect on receipt and delivery point flexibility, nominating and scheduling priorities, allocation of capacity, operating conditions, and curtailment, for any new service;

(v) Include workpapers that detail the computations underlying the proposed

rate under the new rate schedule; or, if the rate is a currently effective rate, include the appropriate reference and an explanation of why the rate is appropriate;

(vi) Give a justification, similar in form to filed testimony in a general section 4 rate case, explaining why the proposed rate design and proposed allocation of costs are just and reasonable;

(vii) If the costs relating to existing services are reallocated to new services, explain the method for allocating the costs and the impact on the existing customers;

(viii) Include workpapers showing the estimated effect on revenue and costs over the twelve-month period commencing on the proposed effective date of the filing.

(ix) List other filings pending before the Commission at the time of the filing which may significantly affect the filing. Explain how the instant filing would be affected by the outcome of each related pending filing;

(2) Any interdependent filings must be filed concurrently and contain a notice of the interdependence.

(b) If a new service, facility, or rate is specifically authorized by a Commission order pursuant to section 7 of the Natural Gas Act, with the filing of tariff sheets to implement the new rate schedule, the natural gas company must:

(1) Comply with the requirements of § 154.203; and

(2) Where the rate or charge proposed differs from the rate or charge approved in the certificate order, the natural gas company must: show that the change is due to a rate adjustment under a periodic rate change mechanism previously accepted under § 154.505 which has taken effect since the certificate order was issued; or, show that the rate change is in accordance with the terms of the certificate, and provide workpapers justifying the change.

§ 154.203 Compliance filings.

(a) In addition to the requirements of subpart A, B, and C of this part, filings made to comply with orders issued by the Commission, including those issued under delegated authority, must contain the following:

(1) A list of the directives with which the company is complying;

(2) Revised workpapers, data, or summaries with cross-references to the originally filed workpapers, data, or summaries;

(b) Filings made to comply with Commission orders must include only those changes required to comply with the order. Such compliance filings may not be combined with other rate or tariff change filings. A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.

§ 154.204 Changes related to suspended tariffs, executed service agreements, or parts thereof.

(a) *Changes in suspended tariffs, executed service agreements, or parts thereof.* A natural gas company may not, within the period of suspension, file any change in a proposed tariff, executed service agreement, or part thereof, that has been suspended by order of the Commission, except by special permission of the Commission granted upon application therefor and for good cause shown.

(b) *Changes in tariffs, executed service agreements, or parts thereof continued in effect, and which were to be changed by the suspended filing.* A natural gas company may not, within the period of suspension, file any change in a tariff, executed service agreement, or part thereof, that is continued in effect by operation of the order of suspension, and that was proposed to be changed by the suspended filing, except:

(1) Under a previously approved tariff provision permitting a limited rate change, or

(2) By special permission of the Commission.

§ 154.205 Motion to place suspended rates into effect.

(a) If a rate proceeding initiated under section 4(e) of the Natural Gas Act has not been concluded and an order issued by the Commission before the expiration of the suspension period, the filed change of rate, charge, classification, or service will go into effect upon motion of the pipeline company.

(b) If, prior to the end of the suspension period, the Commission has issued an order requiring changes in the filed rates, or the filed rates recover costs for facilities not certificated and in service as of the proposed effective date, the pipeline must file a motion to place the suspended rates into effect not less than 30 days nor more than 60 days prior to the end of the suspension period, or such later effective date requested by the pipeline. The motion must be accompanied by revised tariff sheets reflecting any changes ordered by the Commission or modifications approved by the Commission during the suspension period under § 154.204. The filing of the revised tariff sheets must:

(1) Comply with the requirements of subparts A, B, and C of this part;

(2) Identify the Commission order directing the revision;

(3) List the modifications made to the currently effective rate during the suspension period, the docket number in which the modifications were filed, and identify the order permitting the modifications.

(c) Where the Commission has suspended the effective date of a change of rate, charge, classification, or service for less than one day, the proposed change of rate, charge, classification, or service will go into effect without a motion, subject to refund, on the authorized effective date.

§ 154.206 Notice requirements.

All proposed changes in tariffs, contracts, or any parts thereof must be filed with the Commission and posted not less than 30 days nor more than 60 days prior to the proposed effective date thereof, unless a waiver of the time periods is granted by the Commission.

§ 154.207 Service on customers and other parties.

The company must serve copies of the filing upon the company's customers and state regulatory commissions on or before the filing date.

§ 154.208 Form of notice for Federal Register.

The company must file a form of notice suitable for publication in the **Federal Register**. The company must also submit a copy of the notice on a separate 3½'' diskette in ASCII format. Each diskette must be labelled with the name of the company and the words ''notice of filing.'' The notice must be in the following form:

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION
(Name of Company)
Docket No.
Notice of Proposed Changes in FERC Gas Tariff

Take notice that on (date), (name of company) tendered for filing as part of its FERC Gas Tariff, Volume No. (number), the following tariff sheets, to become effective (insert effective date). (List tariff sheets) [The following language in the first paragraph applies only to rate change filings.] The proposed changes would (increase/decrease) revenues from jurisdictional service by (dollar amount) based on the 12-month period ending (date), as adjusted. [For proposed changes other than changed rates and charges, the company must state concisely the nature of these changes.]

[The company must briefly describe the reasons for the proposed changes in the second paragraph.]

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, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests

must be filed on or before (insert date 10 days after filing 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 in the Public Reference Room.

§ 154.209 Protests, interventions, and comments.

(a) Unless the notice issued by the Commission provides otherwise, any protest, intervention or comment to a tariff filing made pursuant to this part must be filed in accordance with § 385.211 of this chapter, not later than 10 days after the subject tariff filing. A protest must state the basis for the objection. A protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. A person wishing to become a party to the proceeding must file a motion to intervene.

(b) Any motion to intervene must be filed in accordance with § 385.214 of this chapter.

Subpart D—Material To Be Filed With Changes

§ 154.301 Changes in rate schedules, forms of service agreements, or the general terms and conditions.

A filing to revise rate schedules, forms of service agreements, or the general terms and conditions, must:

(a) Adhere to the requirements of subparts A, B, and C, of this part;

(b) Contain a description of the change in service, including, but not limited to, applicability, necessity for the change, identification of services and types of customers that will be affected by the change;

(c) Explain how the proposed tariff provisions differ from those currently in effect, including an example showing how the existing and proposed tariff provisions operate. Explain why the change is being proposed at this time;

(d) Explain the impact of the proposed revision on firm and interruptible customers, including any changes in a customer's rights to capacity in the manner in which a customer is able to use such capacity, receipt or delivery point flexibility, nominating and scheduling, curtailment, capacity release.

(e) Include workpapers showing the estimated effect on revenues and costs over the 12-month period commencing on the proposed effective date of the filing. If the filing proposes to change an existing penalty provision, provide workpapers showing the penalty revenues and associated quantities under the existing penalty provision during the latest 12-month period.

(f) List other filings pending before the Commission which may significantly affect the filing.

§ 154.302 Changes in rates.

(a) Except for changes in rates pursuant to subparts E, F, G, and H, of this part, any natural gas company filing for a change in rates or charges, except for a minor rate change, must submit, in addition to the material required by subparts A, B, and C of this part, the Statements and Schedules described in § 154.313.

(b) A natural gas company filing for a minor rate change must file the Statements and Schedules described in § 154.314.

(c) A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's complete case-in-chief in the event that the change is suspended and the matter is set for hearing.

§ 154.303 Previously submitted material.

(a) If all, or any portion, of the information called for by this part has already been submitted to the Commission within six months of the filing date of this application, or is included in other data filed pursuant to this part, specific reference thereto may be made in lieu of resubmission.

(b) If a new FERC Form No. 2 or 2–A is required to be filed within 60 days from the end of the base period, the new FERC Form No. 2 or 2–A must be filed concurrently with the rate change filing. There must be furnished to the Director, Office of Pipeline Regulation, with the rate change filing, one copy of the FERC Form No. 2 or 2–A.

§ 154.304 Test periods.

Statements A through M, O, P, and supporting schedules, in § 154.313 and § 154.314, must be based upon a test period.

(a) If the natural gas company has been in operation for 12 months on the filing date, then the test period consists of a base period followed by an adjustment period.

(1) The base period consists of 12 consecutive months of the most recently available actual experience. The last day of the base period may not be more than 4 months prior to the filing date. The rate factors (volumes, costs, and billing determinants) established during the base period may be adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of the filing and which will become effective within 9 months after the base period. The base period factors must be adjusted to eliminate nonrecurring items. The company may adjust its base period factors to normalize items eliminated as nonrecurring.

(2) The period of up to 9 months after the base period is the adjustment period.

(3) The test period may not extend more than 9 months beyond the filing date.

(b) If the natural gas company has not been in operation for 12 months on the filing date, then the test period must consist of 12 consecutive months ending not more than one year after the filing date. Rate factors may be adjusted as above but must not be adjusted for occurrences anticipated after the 12-month period.

(c)(1) Adjustments to base period experience, or to estimates where 12 months' experience is not available, may include the costs for facilities for which either a permanent or temporary certificate has been granted, provided such facilities will be in service within the test period; or a certificate application is pending. The filing must identify facilities, related costs and the docket number of each such outstanding certificate. Adjustments to base period experience, or to estimates where 12 months' experience is not available, may not include any amounts for facilities that require a certificate of public convenience and necessity, if a certificate has not been issued by the filing date.

(2) When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities not in service as of the earlier of the effective date or the end of the test period.

(d) The Commission may allow reasonable deviation from the prescribed test period.

§ 154.305 Format of statements, schedules, workpapers and supporting data.

(a) All statements, schedules, and workpapers must be prepared in accordance with the Commission's Uniform System of Accounts.

(b) The data in support of the proposed rate change must include the required particulars of book data, adjustments, and other computations and information on which the company

relies, including a detailed narrative explanation of each proposed adjustment to base period actual volumes and costs.

(c) Book data included in statements and schedules required to be prepared or submitted as part of the filing must be reported in a separate column or columns. All adjustments to book data must also be reported in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed. All adjustments must be supported by a narrative explanation.

(d) Certain of the statements and schedules of § 154.313 are workpapers. Any data or summaries reflecting the books of account must be supported by accounting workpapers setting forth all necessary particulars from which an auditor may readily identify the book data included in the filing and verify that such data are in agreement with the company's books of account.

§ 154.306 Tax normalization.

(a) *Applicability.* (1) An interstate pipeline must compute the income tax component of its cost-of-service by using tax normalization for all transactions. This section applies, with respect to rate schedules filed under this part, to the ratemaking treatment of the tax effects of all transactions for which there are timing differences.

(2) Except as provided in paragraph (d) of this section, application of tax normalization to compute the income tax component of the cost-of-service will not be subject to case-by-case adjudication.

(b) *Definitions.*

(1) *Tax normalization* means computing the income tax component as if the amounts of timing difference transactions recognized in each period for ratemaking purposes were also recognized in the same amount in each such period for income tax purposes.

(2) *Timing differences* means differences between amounts of expenses or revenues recognized for income tax purposes and amounts of expenses or revenues recognized for ratemaking purposes, which differences arise in one time period and reverse in one or more other time periods so that the total amounts of expenses or revenues recognized for income tax purposes and for ratemaking purposes are equal.

(3) *Commission-approved ratemaking* method means a ratemaking method approved by the Commission in a final decision. This includes a ratemaking method that is part of an approved settlement providing that the ratemaking method is to be effective beyond the term of the settlement.

(4) *Income tax purposes* means for the purpose of computing income tax under the provisions of the Internal Revenue Code or the income tax provisions of the laws of a State or political subdivision of a State (including franchise taxes).

(5) *Income tax component* means that part of the cost-of-service that covers income tax expenses allowable by the Commission.

(6) *Ratemaking purposes* means for the purpose of fixing, modifying, accepting, approving, disapproving or rejecting rates under the Federal Power Act or the Natural Gas Act.

(7) *Tax effect* means the tax reduction or addition associated with a specific expense or revenue transaction.

(8) *Transaction* means an activity or event that gives rise to an accounting entry that is used in determining revenues or expenses.

(c) *Reduction of, and Addition to, Rate Base.* (1) The rate base of an interstate pipeline using tax normalization under this section must be reduced by the balances that are properly recordable in Account No. 281, ''Accumulated deferred income taxes—accelerated amortization property''; Account No. 282, ''Accumulated deferred income taxes—other property'': and Account No. 283, ''Accumulated deferred income taxes—other.'' Balances that are properly recordable in Account No. 190, ''Accumulated deferred income taxes,'' must be treated as an addition to rate base.

(2) Such rate base reductions or additions must be limited to deferred taxes related to rate base, construction, or any revenue or expense item that affects the jurisdictional cost-of-service.

(3) If an interstate pipeline uses an approved cost tracking mechanism, the rate base reductions or additions required under this paragraph apply only to the extent that the balances referenced in paragraph (c)(1) of this section are not used in calculations of carrying charges on amounts subject to the cost tracking mechanism.

(d) *Special rules.* (1) This paragraph applies:

(i) If the rate applicant has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for the tax effects of timing difference transactions originating at any time prior to the test period; or

(ii) If, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in or in excess of amounts necessary to meet future tax liabilities as determined by application of the current tax rate to all timing difference transactions originating in the test period and prior to the test period.

(2) The interstate pipeline must compute the income tax component in its cost-of-service by making provision for any excess or deficiency in deferred taxes.

(3) The interstate pipeline must apply a Commission-approved ratemaking method made specifically applicable to the interstate pipeline for determining the cost-of-service provision described in paragraph (d)(2) of this section. If no Commission-approved ratemaking method has been made specifically applicable to the interstate pipeline, then the interstate pipeline must use some ratemaking method for making such provision, and the appropriateness of such method will be subject to case-by-case determination.

(4) An interstate pipeline must continue to include, as an addition or reduction to rate base, any deficiency or excess attributable to prior flow-through or changes in tax rates (paragraphs (d)(1)(i) and (d)(1)(ii) of this section), until such deficiency or excess is fully amortized in accordance with a Commission approved ratemaking method.

§ 154.307 Cash working capital.

A natural gas company that files a tariff change under this part may not receive a cash working capital adjustment to its rate base unless the company or other participant in a rate proceeding under this part demonstrates, with a fully developed and reliable lead-lag study, a net revenue receipt lag or a net expense payment lag (revenue lead). Any demonstrated net revenue receipt lag will be credited to rate base; and, any demonstrated net expense payment lag will be deducted from rate base.

§ 154.308 Joint facilities.

The Statements required by § 154.313 must show all costs (investment, operation, maintenance, depreciation, taxes) that have been allocated to the natural gas operations involved in the subject rate change and are associated with joint facilities. The methods used in making such allocations must be provided.

§ 154.309 Representation of chief accounting officer.

The filing must include a statement executed by the chief accounting officer or other authorized accounting representative of the filing company representing that the cost statements, supporting data, and workpapers, that purport to reflect the books of the

company do, in fact, set forth the results shown by such books.

§ 154.310 Incremental expansions.

(a) For every expansion for which incremental rates are charged and for every major expansion since the pipeline's last rate case, the company must show, on separate statements and schedules under § 154.313 and § 154.314, the costs associated with the expansion, until the Commission authorizes the costs of the incremental facilities to be rolled-in to the pipeline's rates. For every expansion that has an at-risk provision in the certificate authorization, the costs associated with the facility must be shown on separate statements and schedules under § 154.313 and § 154.314, until the Commission removes the at-risk condition.

(b) The statements and schedules must provide the formulae and explain the bases used in the allocation of common costs to each incremental facility.

§ 154.311 Zones.

If the company maintains records of costs by zone, and proposes a zone rate methodology based on these costs, the statements and schedules in § 154.313 and § 154.314 must reflect costs detailed by zone.

§ 154.312 Updating of statements.

(a) Certain statements and schedules in § 154.313, that include test period data, must be updated with actual data by month and must be resubmitted in the same format and with consecutive 12 month running totals, for each month of the adjustment period. The first updated statement or schedule must be submitted to the Commission one month after the filing date or one month after the quarter following the base period, whichever is later. Subsequent updated statements or schedules must be filed, quarterly, one month after the end of the quarter for each month of the test period. The updated filings must reference the associated docket number and must be filed in the same format, form, and number as the original filing.

(b) The statements and schedules to be updated are: Statements C, D and H–4; Schedules B–1, B–2, C–3, D–2, E–2, E–4, G–1, G–4, G–5, G–6, H–1(1)(a), H–1(1)(b), H–1(1)(c), H–1(3)(a) through H–1(3)(l), H–2(1), H–3(3), I–4, and I–6.

§ 154.313 Composition of Statements.

(a) *Statement A.* Cost-of-service Summary. Summarize the overall gas utility cost-of-service: operation and maintenance expenses, depreciation, taxes, credits to cost-of-service, and return as developed in other statements and schedules.

(b) *Statement B.* Rate Base and Return Summary. Summarize the overall gas utility rate base shown in Statements C, D, and E and Schedules B–1 and B–2. Show the application of the claimed rate of return to the overall rate base.

(1) *Schedule B–1.* Accumulated Deferred Income Taxes (Account Nos. 190, 282, and 283). Show monthly book balances of accumulated deferred income taxes for each of the 12 months during the base period. List all items for which the accumulated deferred income taxes are calculated. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance. Separately identify the individual components and the amounts in these accounts that the company seeks to include in its rate base.

(2) *Schedule B–2.* Regulatory Asset and Liability. Show monthly book balances of regulatory assets (Account No. 182.3) and liabilities (Account No. 254) for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance. Separately identify the individual components and the amounts in these accounts that the company seeks to include in its rate base. Identify any specific Commission authority that required the establishment of these amounts.

(c) *Statement C.* Cost of Plant Summary. Show the amounts of gas utility plant classified by Account Nos. 101, 102, 103, 104, 105, 106, 107, 117.1, 117.2, and 117.3 as of the beginning of the 12 months of actual experience, the book additions and reductions (in separate columns) during the 12 months, and the book balances at the end of the 12-month period. In adjoining columns, show the claimed adjustments, if any, to the book balances and the total cost of plant to be included in rate base. Explain all adjustments in the following schedules.

(1) *Schedule C–1.* End of Base Period Plant Functionalized. Demonstrate the ending base period balance for Plant in Service, in columnar form, by detailed plant account prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies (part 201 of this chapter) with subtotals by functional classifications, e.g., Intangible Plant, Manufactured Gas Production Plant, Natural Gas Production and Gathering Plant, Products Extraction Plant, Storage Plant, Transmission Plant, Distribution Plant, and General Plant. Show zones, to the extent required by § 154.311, and expansions, to the extent required by § 154.310.

(2) *Schedule C–2.* Plant in Service as Adjusted. Show the proposed test period Adjusted Plant in Service by function as in Schedule C–1. Separately identify those facilities and associated costs claimed for the test period that require certificate authority but such authority has not been obtained at the time of filing. Give the docket number of the certificate proceeding.

(3) *Schedule C–3.* Show, for Accounts 106 and 107, a list of work orders claimed in the rate base. Give the work order number, docket number, description, amount of each work order, and the amounts of each type of undistributed construction overhead.

(4) *Schedule C–4.* Give details of each storage project owned, showing cost by major functions. Show storage gas quantities and associated costs by account for the test period and for the 12 months of actual experience.

(5) *Schedule C–5.* This schedule is part of the workpapers. State the methods and procedures followed in capitalizing the allowance for funds used during construction and other construction overheads.

(6) Schedule C–6. This schedule is part of the workpapers. Set forth the cost of Plant in Service carried on the company's books as gas utility plant which was not being used in rendering gas service. Describe the plant. This schedule must be provided only if there is a significant change in such amounts since the end of the year reported in the company's last FERC Form No. 2 or 2–A.

(d) *Statement D.* Accumulated Provisions for Depreciation, Depletion, and Amortization. Show the accumulated provisions for depreciation, depletion, amortization, and abandonment (Account No. 108, detailed by functional plant classification, and Account No. 111), as of the beginning of the 12 months of actual experience, the book additions and reductions during the 12 months, and the balances at the end of the 12-month period. In adjoining columns, show adjustments to these ending book balances and the total adjusted balances. All adjustments must be explained in the supporting material. Any authorized negative salvage must be reflected as a separate part of Account 108. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately. The following schedules and additional material must be submitted as part of Statement D:

(1) *Schedule D–1.* This schedule is part of the work papers. Show the

depreciation reserve book balance applicable to that portion of the depreciation rate not yet approved by the Commission, the depreciation rates, the docket number of the order approving such rate, and an explanation of any difference. Reflect actual end of base period depreciation reserve functionalized. Show accumulated depreciation and amortization, in columnar form, for the ending base period balances by functional classifications. (Examples are provided in Schedule C–1). For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately.

(2) *Schedule D–2.* Projected End of Test Period Depreciation Reserve Functionalized. Show the ending test period balance of Accumulated Depreciation Reserve, in columnar form. Show the balance by functional classifications. (Examples are provided in Schedule C–1). For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately.

(3) *Schedule D–3.* This schedule is part of the workpapers. Give a description of the methods and procedures used in depreciating, depleting, and amortizing plant and recording abandonments. This schedule must be filed only if a policy change has been made effective since the period covered by the last annual report on FERC Form No. 2 or 2–A was filed with the Commission.

(e) *Statement E.* Working Capital. Show the components of working capital in sufficient detail to explain how the amount of each component was computed. Components of working capital, other than cash working capital, may include an allowance for the average of 13 monthly balances of materials and supplies and prepayments actually expended. To the extent the applicant files to adjust the average of any 13 monthly balances, workpapers must be submitted that support the adjustment(s). The following schedules and material must be submitted as part of Statement E:

(1) *Schedule E–1.* Show the computation of cash working capital claimed as an adjustment to the gas company's rate base. Any adjustment to rate base requested must be based on a fully-developed and reliable lead-lag study. The components of the lead-lag study must include actual total company revenues, purchased gas costs, storage expense, transportation and compression of gas by others, salaries and wages, administrative and general expenses, income taxes payable, taxes other than income taxes, and any other operating and maintenance expenses for the base period. Cash working capital allowances in the form of additions to rate base may not exceed one-eighth of the annual operating expenses, as adjusted, net of non-cash items.

(2) *Schedule E–2.* Set forth monthly balances for materials, supplies and prepayments in such detail as to disclose, either by subaccounts regularly maintained on the books or by analysis of the principal items included in the main account, the nature of such charges.

(3) *Schedule E–3.* This schedule must be submitted only by applicants utilizing an authorized PGA mechanism. Show the quantities and the respective costs of natural gas stored at the beginning of the test period; the input, output, and balance remaining in storage (on a Dth basis); and, associated costs, by months, method of pricing the input, output and balance. Any claimed adjustments must be explained.

(4) *Schedule E–4.* If gas is priced in and out of storage through FERC Account Nos. 164.1, 164.2, and 164.3, the base period's storage activity must be reconciled with amounts charged to such accounts and any difference must be explained. Companies using the last-in-first-out (LIFO) method of storage inventory accounting, must provide the data required by this schedule by LIFO ''layers.''

(5) *Schedule E–5.* Show the computations, cross-references, and sources from which the data used in computing claimed working capital are derived.

(f) *Statement F–1.* Rate of Return Claimed. Show the percentage rate of return claimed and the general reasons therefor. Where any component of the capital of the filing company is not primarily obtained through its own financing, but is primarily obtained from a company by which the filing company is controlled, as defined in the Commission's Uniform System of Accounts, then the data required by these statements must be submitted with respect to the debt capital, preferred stock capital, and common stock capital of such controlling company or any intermediate company through which such funds have been secured. Furnish the Commission staff a copy of the latest prospectus issued by the filing natural gas company, any superimposed holding company, or subsidiary companies.

(g) *Statement F–2.* Show.

(1) The capitalization, capital structure, cost of debt capital, preferred stock capital, and the claimed return on stockholders' equity;

(2) The weighted cost of each capital class based on the capital structure; and,

(3) The overall rate of return claimed.

(h) *Statement F–3.* Debt Capital. Show the weighted average cost of debt capital based upon the following data for each class and series of long-term debt outstanding according to the balance sheet, as of the end of the 12-month base period of actual experience and as of the end of the 9-month test period.

(1) Title.

(2) Date of issuance and date of maturity.

(3) Interest rate.

(4) Principal amount of issue: Gross proceeds; Underwriters' discount or commission: Amount; Percent gross proceeds; Issuance expense: Amount; Percent gross proceeds; Net proceeds; Net proceeds per unit.

(5) Cost of money: Yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields. The yield to maturity is to be expressed as a nominal annual interest rate. For example, for bonds having semiannual payments, the yield to maturity is twice the semiannual rate.

(6) If the issue is owned by an affiliate, state the name and relationship of the owner.

(7) If the filing company has acquired, at a discount or premium, some part of the outstanding debt which could be used in meeting sinking fund requirements, or for other reasons, separately show: the annual amortization of the discount or premium for each series of debt from the date of reacquisition over the remaining life of the debt being retired; and, the total discount and premium, as a result of such amortization, applicable to the test period.

(i) *Statement F–4.* Preferred Stock Capital. Show the weighted average cost of preferred stock capital based upon the following data for each class and series of preferred stock outstanding according to the balance sheet, as of the end of the 12-month base period of actual experience and as of the end of the nine-month test period.

(1) Title.

(2) Date of issuance.

(3) If callable, call price.

(4) If convertible, terms of conversion.

(5) Dividend rate.

(6) Par or stated amount of issue: Gross proceeds; Underwriters' discount or commission: Amount; Percent gross proceeds; Issuance expenses: Amount; Percent gross proceeds; Net proceeds; Net proceeds per unit.

(7) Cost of money: Annual dividend rate divided by net proceeds per unit.

(8) State whether the issue was offered to stockholders through subscription rights or to the public.

(9) If the issue is owned by an affiliate, state the name and relationship of owner.

(j) *Statement G.* Revenues, Credits and Billing Determinants. Show the total revenues, from jurisdictional and non-jurisdictional services, classified in accordance with the Commission's Uniform System of Accounts for the base period and for the base period as adjusted. Separate operating revenues (e.g., reservation charges, demand charges, usage charges, commodity charges, injection charges, withdrawal charges, etc.) from revenues received from penalties, surcharges or other sources (e.g., ACA, GRI, transition costs). Show each service separately. Show separately the information for firm services under contracts with a primary term of less than one year. Show the principal components comprising each of the various items which are reflected as credits to the cost-of-service in preparing Statement A, Overall Cost-of-service. Any transition cost component of interruptible transportation revenue must not be treated as operating revenues as defined above. The following schedules must be submitted as part of Statement G:

(1) *Schedule G–1.* Base Period Revenues. For the base period, show total actual revenues for each customer by rate schedule, by contract, by month, by billing determinant and totals. Billing determinants must not be adjusted for discounting. Provide actual throughput (i.e., usage or commodity quantities, unadjusted for discounting) and actual contract demand levels (unadjusted for discounting). Provide this information separately for firm service under contracts with a primary term of less than one year. For each customer that released capacity during the base period, show separately the released usage quantities and associated revenues by rate schedule, by contract, by month and totals for the base period. Separate operating revenues from revenues received from surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are affiliates. Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the base period with cross-references to the other filed statements and schedules.

(2) *Schedule G–2.* Adjustment Period Revenues. Show comparative revenues for each customer by rate schedule, by contract, by month, by billing determinant, and totals for the base period adjusted for known and measurable changes which are expected to occur within the adjustment period computed under the rates charged during the base period; and computed under the rates expected to be charged. Billing determinants must not be adjusted for discounting. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting). Provide this information separately for firm service under contracts with a primary term of less than one year. For each customer that is expected to release capacity, show separately the projected released usage quantities (unadjusted for discounting) and associated revenues by rate schedule, by contract, by month, and totals for the projected period. Separate operating revenues from revenues received from surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are affiliates. Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the adjustment period with cross-references to the other filed statements and schedules.

(3) *Schedule G–3.* Specify, quantify, and justify each proposed adjustment (discounting, capacity release, plant closure, contract termination, etc.) to base period actual billing determinants, and provide a detailed explanation for each factor contributing to the adjustment. Include references to any certificate docket authorizing changes. Submit workpapers with all formulae.

(4) *Schedule G–4.* At-Risk Revenue. For each instance where there is a separate cost-of-service associated with facilities for which the applicant is ''at risk,'' show the base period and adjustment period revenue by customer, by rate schedule, by contract, by billing determinant and as 12-month totals. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting).

(5) *Schedule G–5.* Other Revenues.

(i) Describe and quantify, by month, the types of revenue included in Account Nos. 490–495 for the base and test periods. Show revenues applicable to the sale of products. Show the principal components comprising each of the various items which are reflected as credits to cost-of-service in Statement A.

(ii) To the extent the credits to the cost-of-service reflected in Statement A differ from the amounts shown on Schedule G–5, compare and reconcile the two statements. Quantify and explain each proposed adjustment to base period actuals. For Account No. 490, show the name and location of each product extraction plant processing gas for the applicant, and the inlet and outlet monthly dth of the pipeline's gas at each plant. Show the revenues received by the applicant by product by month for each extraction plant for the base period and proposed for the test period.

(iii) Separately state each item and revenue received for the transportation of liquids, liquefiable hydrocarbon, or nonhydrocarbon constituents owned by shippers. For both the base and test periods, indicate by shipper contract: the quantity transported and the revenues received.

(iv) Separately state the revenues received from the release by the pipeline of transportation and compression capacity it holds on other pipeline systems. The revenues must equal the revenues reflected on Schedule I–4(iv).

(6) *Schedule G–6.* Miscellaneous Revenues.

(i) Separately state by month the base and adjustment period revenues and the associated quantities received as penalties from jurisdictional customers; the revenues received from cash outs and other imbalance adjustments; and, the revenues received from exit fees.

(ii) Statement G must be submitted to all affected customers and State commissions having jurisdiction over the affected customers. The submittal to each of the affected customers may exclude the above details by months (Schedules G–1 and G–2) with respect to service for all other customers. Provided, however, that a copy of Statement G, including details by months with respect to service for a particular customer, must be promptly submitted to that customer upon request.

(k) *Statement H–1.* Operation and Maintenance Expenses. Show the gas operation and maintenance expenses according to each applicable account of the Commission's Uniform System of Accounts for Natural Gas Companies. Show the expenses under columnar headings, with subtotals for each functional classification, as follows: Operation and maintenance expense by months, as booked, for the 12 months of actual experience, and the 12-month total; adjustments, if any, to expenses as booked; and, total adjusted operation and maintenance expenses. Provide a detailed narrative explanation of, and the basis and supporting workpapers for, each adjustment. Specify the month or months during which the

adjustments would be applied. The following schedules and additional material must be submitted as part of Statement H–1:

(1) *Schedule H–1(1).* This schedule is part of the workpapers. Show the labor costs, materials and other charges (excluding purchased gas costs) and expenses associated with Account Nos. 810, 811, and 812 recorded in each gas operation and maintenance expense account of the Uniform System of Accounts. Show these expenses, under the columnar headings, with subtotals for each functional classification, as follows: operation and maintenance expenses by months, as booked, for the 12 months of actual experience, and the 12-month total; adjustments, if any, to expenses as booked; and total adjusted operation and maintenance expenses. Disclose and explain any special accrual or other normalizing accounting entries for internal purposes reflected in the monthly expenses presented per book. Explain any amounts not currently payable, except depreciation charged through clearing accounts, included in operation and maintenance expenses.

(2) *Schedule H–1(1)(a).* Labor Costs.

(3) *Schedule H–1(1)(b).* Materials and Other Charges (Excluding Purchased Gas Costs and items shown in Schedule H–1 (1)(c)).

(4) *Schedule H–1(1)(c).* Expenses and Associated Quantities Applicable to Accounts Nos. 810, 811, and 812. Show the expenses and quantities for each of the contra-accounts for both base and test periods.

(5) *Schedule H–1(2)(a).*

(i) This schedule is to be filed only by a pipeline which has a Commission approved PGA clause in its tariff.

(ii) Show total system weighted average current unit cost of purchased gas reflected in the pipeline's latest effective PGA rate adjustment. Explain any adjustments to the volumes of gas taken from any source during the 12 months of actual experience. No adjustments are to be made to reflect the attachment of new gas supplies unless the facilities of the filing company and the supplier are or will have been in operation during the test period.

(iii) In the event adjustments to the volume of gas purchased aggregate more than 10 percent of the total volume of gas purchased during the 12 months of actual experience, and are due to changes in gas purchasing patterns or additional gas supply, show the minimum take-or-pay-for quantities for each source of supply applicable at the end of the test year period and explain the adjustments.

(6) *Schedule H–1(2)(b).*

(i) This schedule is to be filed only by a pipeline that has a Commission approved PGA clause in its tariff.

(ii) Show the development of the purchased gas costs for the test period including volumes, the PGA rate utilized, the filing date, the docket number and date of Commission order underlying such unit rate. If the company purchases and sells gas under exchange agreements, show the methods of recording on the books, total gross volumes exchanged, net dollar amounts involved and details of each major exchange.

(7) *Schedule H–1(3).* This schedule is part of the workpapers. Show, for the 12 months of actual experience and claimed adjustments: a classification of principal charges, credits and volumes; particulars of supporting computations and accounting bases; a description of services and related dollar amounts for which liability is incurred or accrued; and, the name of the firm or individual rendering such services. Expenses reported in Schedules H–1(3)(a) through H–1(3)(k) of $100,000 or less per type of service may be grouped.

(8) *Schedule H–1(3)(a).* Account Nos. 806, 808.1, 808.2, 809.1, 809.2, 823, and any other account used to record fuel use or gas losses.

(9) *Schedule H–1(3)(b).* Account No. 813. Other Gas Supply Expenses. Provide details of each type of expense.

(10) *Schedule H–1(3)(c).* Account Nos. 913 and 930.1. Advertising Expenses. Disclose principal types of advertising such as TV, newspaper, etc.

(11) *Schedule H–1(3)(d).* Account No. 921. Office Supplies and Expenses.

(12) *Schedule H–1(3)(e).* Account No. 922. Administrative Expenses Transferred Credit.

(13) *Schedule H–1(3)(f).* Account No. 923. Outside Services Employed.

(14) *Schedule H–1(3)(g).* Account No. 926. Employee Pensions and Benefits.

(15) *Schedule H–1(3)(h).* Account No. 928. Regulatory Commission Expenses.

(16) *Schedule H–1(3)(i).* Account No. 929. Duplicate Charges. Credit.

(17) *Schedule H–1(3)(j).* Account No. 930.2. Miscellaneous General Expenses.

(18) *Schedule H–1(3)(k).* Intercompany and Interdepartmental Transactions. If the expense accounts contain charges or credits to and from associated or affiliated companies or nonutility departments of the company, submit a schedule, or schedules, as to each associated or affiliated company or nonutility department showing:

(i) The amount of the charges, or credits, during each month and in total for the base period and the adjustment period.

(ii) The FERC Account No. charged (or credited).

(iii) Descriptions of the specific services performed for, or by, the associated/affiliated company or nonutility department.

(iv) The bases used in determining the amounts of the charges (credits) and an explanation for the bases.

(19) *Schedule H–1 (3)(l).* Show all lease payments contained in the operation and maintenance accounts. Leases of $500,000 or less may be grouped by type of lease.

(l) *Statement H–2.* Depreciation, Depletion, Amortization and Negative Salvage Expenses. Show, separately, the gas plant depreciation, depletion, amortization, and negative salvage expenses by functional classifications. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately. Show, in separate columns: expenses for the 12 months of actual experience; adjustments, if any, to such expense; and, the total adjusted expense claimed. Explain the bases, methods, essential computations, and derivation of unit rates for the calculation of depreciation, depletion, and amortization expense for the 12 months of actual experience and for the adjustments. The amounts of depreciable plant must be shown by the functions specified in paragraph C of Account No. 108, Accumulated Provisions for Depreciation of Gas Utility Plant, and Account No. 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant, of the Commission's Uniform System of Accounts for Natural Gas Companies, and, if available, for each detailed plant account (300 Series) together with the rates used in computing such expenses. Explain any deviation from the rates determined to be just and reasonable by the Commission. Show the rate or rates previously used together with supporting data for the new rate or rates used for this filing. The following schedule and additional material must be submitted as a part of Statement H–2:

(1) *Schedule H–2 (1).* Depreciable Plant.

(i) Reconcile the depreciable plant shown in Statement H–2 with the aggregate investment in gas plant shown in Statement C, and the expense charged to other than prescribed depreciation, depletion, amortization, and negative salvage expense accounts. Identify the amounts of plant costs and associated plant accounts used as the bases for depreciation expense charged to clearing accounts. For each functional

plant classification, show depreciation reserve associated with offshore and onshore plant separately.

(ii) Schedule H–2(1) must be updated, as set forth in § 154.312, with actual depreciable plant and reconciled with updated Statement C.

(m) *Statement H–3.* Income Taxes. Show the computation of allowances for Federal and State income taxes for the test period based on the claimed return applied to the overall gas utility rate base. To indicate the accounting classification applicable to the amount claimed, the computation of the Federal income tax allowance must show, separately, the amounts designated as current tax and deferred tax. The following schedules and additional material must be submitted as a part of Statement H–3:

(1) *Schedule H–3(1).* This schedule is part of the work papers. Reconcile the book net income with taxable net income as reported to the Internal Revenue Service for the most recent year for which a tax return was filed. Explain any items appearing in either the reconciliation or the tax return but not both.

(2) *Schedule H–3(2).* This schedule is a part of the workpapers. If tax depreciation differs from book depreciation, show the computation of the tax depreciation indicating differences between book and tax depreciation on a straight-line basis; and the excess of liberalized depreciation over straight-line depreciation for tax purposes for the taxable year or years.

(3) *Schedule H–3(3).* This schedule is part of the workpapers. Show the income tax paid each State in the current and/or previous year covered by the test period.

(4) *Schedule H–3(4).* This schedule is part of the workpapers. Show the computation of an updated reconciliation between book depreciable plant and tax depreciable plant and accumulated provision for deferred income taxes, for the base period or latest calendar or fiscal year (depending on the company's reporting period).

(n) *Statement H–4.* Other Taxes. Show the gas utility taxes, other than Federal or state income taxes, in separate columns, as follows: Tax expense per books for the 12 months of actual experience (separately identify the amounts expensed or accrued during the period); adjustments, if any, to amounts booked; and, the total adjusted taxes claimed. Show the kind and amount of taxes paid under protest or in connection with taxes under litigation. Show taxes by state and by type of tax. The following schedules and additional material must be submitted as a part of Statement H–4:

(1) *Schedule H–4(1).* This schedule is part of the workpapers. Show the computations of adjusted taxes claimed in Statement H(4).

(o) *Statement I.* Statement I consists of the following Schedules:

(1) *Schedule I–1.* Functionalization of Cost-of-service. Show the overall cost-of-service contained in Statement A as supported by Statements B, C, D, E, G (revenue credits) and H:

(i) Separate overall cost-of-service by function of facility.

(ii) Separate the transmission, storage and gathering facilities between incremental and non-incremental facilities. If the pipeline proposes to directly assign the costs of specific facilities, it must provide a separate cost-of-service for every directly assigned facility (e.g., lateral or storage field).

(iii) For each zone, separately state transmission, storage, and gathering costs.

(iv) Show the method used to allocate common and joint costs to various functions. Provide the factors underlying the allocation of general costs (e.g., miles of pipe, cost of plant, labor). Show the formulae used and explain the bases for the allocation of common and joint costs.

(2) *Schedule I–2.* Classification of Costs-of-service.

(i) For each functionalized cost-of-service provided in Schedule I–1 (i), (ii), and (iii), show the classification of costs between fixed costs and variable costs and between reservation costs and usage costs. The classification must be for each element of the cost-of-service (e.g., depreciation expenses, state income taxes). For operation and maintenance expenses and general and administrative expenses, the classification must be provided by account and by total.

(ii) Explain the basis for the classification of costs.

(iii) Explain any difference between the method for classifying costs and the classification method underlying the pipeline's currently effective rates.

(3) *Schedule I–3.* Allocation of Cost-of-service.

(i) If the company provides gas sales and transportation as a bundled service, show the allocation of costs between direct sales or distribution sales and the other services. If the company provides unbundled transportation, show the allocation of costs between services with cost-of-service rates and services with market-based rates, including products extraction, sales, and company-owned production. If the cost-of-service is allocated among rate zones, show how the classified cost-of-service is allocated among rate zones by function. If the pipeline proposes to establish rate zones for the first time, or to change existing rate zone boundaries, explain how the rate zone boundaries are established.

(ii) Show how the classified costs of service provided in Schedule I–2 or Schedule I–3 (i) are allocated among the pipeline's services and rate schedules.

(iii) Provide the formulae used in the allocation of the cost-of-service. Provide the factors underlying the allocation of the cost-of-service (e.g., contract demand, annual billing determinants, three-day peak). Provide the load factor or other basis for any imputed demand quantities.

(iv) Explain any changes in the basis for the allocation of the cost-of-service from the allocation methodologies underlying the currently effective rates.

(4) *Schedule I–4.* Transmission and Compression of Gas by Others (Account No. 858). Provide the following information for each transaction for the base and adjustment period:

(i) The name of the transporter.

(ii) The name of the rate schedule under which service is provided, and the expiration date of the contract.

(iii) Monthly usage volumes.

(iv) Monthly revenues.

(v) The monthly revenues for volumes flowing under released capacity. The revenues in Schedule I–4(iv) must also be reflected, separately, as a credit in Schedule G–5.

(5) *Schedule* I–5. Three-day Peak Deliveries. Provide the following data for the three continuous days of maximum transmission system deliveries during the winter heating season within the 12 months of actual experience:

(i) Deliveries by customer by rate schedule by zone;

(ii) Deliveries to direct sale and distribution customers;

(iii) Withdrawals from storage for contract storage customers;

(iv) Withdrawals from storage for no-notice service;

(v) Withdrawals from storage for system use including balancing;

(vi) Fluctuations in line pack or gas stored in the pipeline;

(vii) Dates and average temperatures;

(viii) If three-day peak deliveries are used for allocation purposes, explain any adjustments to the actual three-day peak deliveries.

(6) *Schedule I–6.* Gas Balance. Show by months and total, for the 12 months of actual experience, the company's Gas Account, in the form required by FERC Form No. 2 pages 520 and 521. Show

corresponding estimated data, if claimed to be different from actual experience. Provide the basis for any variation between estimated and actual base period data.

(p) *Statement J.* Comparison and Reconciliation of Estimated Operating Revenues With Cost-of-service. Compare the total revenues by rate schedule (Schedule G–2) to the allocated cost-of-service (Statement I). Identify any surcharges that are reflected in Statement G but not in Statement I.

(1) *Schedule J–1.* Summary of Billing Determinants. Provide a summary of all billing determinants used to derive rates. Provide a reconciliation of customers' total billing determinants as shown on Schedule G–2 with those used to derive rates in Schedule J–2. Provide an explanation of how any discount adjustment is developed. If billing determinants are imputed for interruptible service, explain the method for calculating the billing determinants.

(2) *Schedule J–2.* Derivation of Rates. Show the derivation of each rate component of each rate. For each rate component of each rate schedule, include:

(i) A reference (by page, line, and column) to the allocated cost-of-service in Statement I;

(ii) A reference to the appropriate billing determinants in Schedule J–1.

(iii) Explain any changes in the method used for the derivation of rates from the method used in developing the underlying rates.

(q) *Statement K.* [Reserved]

(r) *Statement L.* Balance Sheet. Provide a balance sheet in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies as of the beginning and end of the base period. Include any notes. If the natural gas company is a member of a group of companies, also provide a balance sheet on a consolidated basis.

(s) *Statement M.* Income Statement. Provide an income statement, including a section on earnings, in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies for the base period. Include any notes. If the natural gas company is a member of a system group of companies, provide an income statement on a consolidated basis.

(t) *Statement N.* [Reserved]

(u) *Statement O.* Description of Company Operations. Provide a description of the company's service area and diversity of operations. Include the following:

(1) Only if significant changes have occurred since the filing of the last FERC Form No. 2 or 2–A, provide a detailed system map.

(2) A list of each major expansion and abandonment since the company's last general rate case. Provide brief descriptions, approximate dates of operation or retirement from service, and costs classified by functions.

(3) A detailed description of how the company designs and operates its systems. Include design temperature.

(v) *Statement P.* Explanatory Text and Prepared Testimony. Provide copies of prepared testimony indicating the line of proof which the company would offer for its case-in-chief in the event that the rates are suspended and the matter set for hearing. Name the sponsoring witness of all text and testimony. Statement P must be filed concurrently with the other schedules.

§ 154.314 Schedules for minor rate changes.

(a) A change in a rate or charge that, for the test period, does not increase the company's revenues by the smaller of $1,000,000 or 5 percent is a minor rate change. A change in a rate level that does not directly or indirectly result in an increased rate or charge to any customer or class of customers is a minor rate change.

(b) In addition to the schedules in this section, filings for minor rate changes must include Statements L, M, O, P, I–1 through I–4, and J of § 154.313.

(c) The schedules of this section must contain the principal determinants essential to test the reasonableness of the proposed minor rate change. Any adjustments to book figures must be separately stated and the basis for the adjustment must be explained.

(d) Schedules B–1, B–2, C, D, E, H, H–2, and H–4 of this section must be updated with actual data by month and must be resubmitted in the same format and with consecutive 12 month running totals, for each month of the adjustment period. The first updated statement or schedule must be submitted to the Commission one month after the filing date or one month after the quarter, whichever is later. Subsequent updated statements or schedules must be made, quarterly, one month after the end of the quarter being updated. The updated filings must reference the associated docket number.

(e) Composition of schedules for a minor rate changes.

(1) *Schedule A.* Overall Cost-of-service by Function. Summarize the overall cost-of-service (operation and maintenance expenses, depreciation, taxes, return, and credits to cost-of-service) developed from the supporting schedules below.

(2) *Schedule B.* Overall Rate Base and Return. Summarize the overall gas utility rate base by function. Include the claimed rate of return and show the application of the claimed rate of return to the overall rate base.

(3) *Schedule B–1.* Accumulated Deferred Income Taxes (Account Nos. 190, 281, 282, and 283). Show monthly book balances of accumulated deferred income taxes for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance.

(4) *Schedule B–2.* Regulatory Asset and Liability. Show monthly book balances of regulatory asset (Account No. 182.3) and liability (Account No. 254) for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance. Only include these accounts if recovery of these balances are reflected in the company's costs. Identify the specific Commission authority which required the establishment of these accounts.

(5) *Schedule C.* Cost of Plant by Functional Classification as of the End of the Base and Adjustment Periods.

(6) *Schedule D.* Accumulated Provisions for Depreciation, Depletion, Amortization, and Abandonment by Functional Classifications as of the Beginning and as of the End of the Test Period.

(7) *Schedule E.* Working Capital. Show the various components provided for in § 154.313, Statement E.

(8) *Schedule F.* Show the rate of return claimed with a brief explanation of the basis.

(9) *Schedule G.* (i) Show actual throughput and revenues for the base period at rates charged during that period classified in accordance with the Commission's Uniform System of Accounts and by jurisdictional rate schedule.

(ii) Show total comparative operating revenues by month, by rate schedule, by customer, for the base period as adjusted for known and measurable changes which are expected to occur within the test period computed under the rates charged during the base period and computed under the rates expected to be charged. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting). Separate operating revenues from revenues received from penalties, surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are replacement shippers under capacity

release. Identify customers who are affiliates.

(iii) Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the test period with cross-references to the other filed statements and schedules.

(10) *Schedule H.* Operation and Maintenance Expenses. Show the gas operation and maintenance expenses according to each applicable account of the Commission's Uniform System of Accounts for Natural Gas Companies. The expenses must be shown under appropriate columnar-headings, by labor, materials and other charges, and purchased gas costs, with subtotals for each functional classification: Operation and maintenance expense by months, as booked, for the 12 months of actual experience, and the total thereof; adjustments, if any, to expenses as booked; and, total adjusted operation and maintenance expenses claimed. Explain all adjustments. Specify the month or months during which the adjustments would be applicable.

(11) *Schedule H–1.* Workpapers for Expense Accounts. Furnish workpapers for the 12 months of actual experience and claimed adjustments and analytical details as set forth in § 154.313, Schedule H–1(3).

(12) *Schedule H–2.* Depreciation, Depletion, Amortization and Negative Salvage Expenses. Show, separately, the gas plant depreciation, depletion, amortization and negative salvage expenses by functional classifications. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately. The bases, methods, essential computations and derivation of unit rates for the calculation of depreciation, depletion, amortization and negative salvage expenses for actual experience must be explained.

(13) *Schedule H–3.* Income Tax Allowances Computed on the Basis of the Rate of Return Claimed. Show the computation of allowances for Federal and State income taxes based on the claimed return applied to the overall gas utility rate base.

(14) *Schedule H–3(1).* This schedule is part of the workpapers. Show the computation of an updated reconciliation between book depreciable plant and tax depreciable plant and accumulated provision for deferred income taxes, for the base period or latest calendar or fiscal year (depending on the company's reporting period).

(15) *Schedule H–4.* Other Taxes. Show the gas utility taxes, other than Federal or state income taxes in separate columns, as follows: Tax expense per books for the 12 months of actual experience;) adjustments, if any, to amounts booked; and, the total adjusted taxes claimed. Provide the details of the kind and amount of taxes paid under protest or in connection with taxes under litigation. The taxes must be shown by states and by kind of taxes. Explain all adjustments.

§ 154.315 Other support for a filing.

(a) Any company filing for a rate change is responsible for preparing prior to filing, and maintaining, workpapers sufficient to support the filing. In addition to the workpapers accompanying the filing, the following material, related to the test period, must be provided to the Commission on request:

(1) Copies of monthly financial reports prepared for management purposes.

(2) Copies of accounting analyses of balance sheet accounts.

(3) Complete trial balances of all the balance sheet accounts, and revenue and expense accounts for each month of actual experience used for the base period with updates for the subsequent months of the adjustment period.

(4) Analyses of the miscellaneous revenues (Account No. 495) and related expenses included in the submitted cost-of-service.

(5) Copies of all Office of the Chief Accountant orders, instructions, letters, findings, and settlements since the pipeline's last rate change.

(b) If the natural gas company has relied upon data other than those in Statements A through P in § 154.313 in support of its general rate change, such other data must be identified and submitted.

Subpart E—Limited Rate Changes

§ 154.400 Additional requirements.

In addition to the requirements of subparts A, B, and C of this part, any proposal to implement a limited rate change must comply with this subpart.

§ 154.401 RD&D expenditures.

(a) *Requirements.* Upon approval by the Commission, a natural gas company may file to recover research, development, and demonstration (RD&D) expenditures in its rates under this subpart.

(b) *Applications for Rate Treatment Approval.* (1) An application for advance approval of rate treatment may be filed by a natural gas company for RD&D expenditures related to a project or group of projects undertaken by the company or as part of a project undertaken by others. When more than one company supports an RD&D organization, the RD&D organization may submit an application that covers the organization's RD&D program. Approval by the Commission of such an RD&D application and program will constitute approval of the individual companies' contributions to the RD&D organization.

(2) An application for advance approval of rate treatment must include a 5-year program plan and must be filed at least 180 days prior to the commencement of the 5-year period of the plan.

(3) A 5-year program plan must include at a minimum:

(i) A statement of the objectives for the 5-year period that relates the objectives to the interests of ratepayers, the public, and the industry and to the objectives of other major research organizations.

(ii) Budget, technical, and schedule information in sufficient detail to explain the work to be performed and allow an assessment of the probability of success and a comparison with other organizations' research plans.

(iii) The commencement date, expected termination date, and expected annual costs for individual RD&D projects to be initiated during the first year of the plan.

(iv) A discussion of the RD&D efforts and progress since the preparation of the program plan submitted the previous year and an explanation of any changes that have been made in objectives, priorities, or budgets since the plan of the previous year.

(v) A statement identifying all jurisdictional natural gas companies that will support the program and specifying the amounts of their budgeted support.

(vi) A statement identifying those persons involved in the development, review, and approval of the plan and specifying the amount of effort contributed and the degree of control exercised by each.

(c) Applications must describe the RD&D projects in such detail as to satisfy the Commission that the RD&D expenditures qualify as valid, justifiable, and reasonable.

(d) Within 120 days of the filing of an application for rate treatment approval and a 5-year program plan, the Commission will state its decision with respect to acceptance, partial acceptance, or rejection of the plan, or, when the complexity of issues in the plan so requires, will set a date certain by which a final decision will be made, or will order the matter set for hearing. Partial rejection of a plan by the Commission will be accompanied by a

decision as to the partial level of acceptance which will be proportionally applied to all contributions listed for jurisdictional companies in the plan. Approval by the Commission of a 5-year plan constitutes approval for rate treatment of all projects identified as starting during the first year of the approved plan. Continued rate treatment will depend upon review and evaluation of subsequent annual applications and 5-year program plans.

§ 154.402 ACA expenditures.

(a) *Requirements.* Upon approval by the Commission, a natural gas pipeline company may adjust its rates, annually, to recover from its customers annual charges assessed by the Commission under part 382 of this chapter pursuant to an annual charge adjustment clause (ACA clause). The ACA clause must be filed with the Commission and indicate the amount of annual charges to be flowed through per unit of energy sold or transported (ACA unit charge). The ACA unit charge will be specified by the Commission at the time the Commission calculates the annual charge bills. A company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the usage component of rate schedules with two-part rates. A company may recover annual charges through an ACA unit charge only if its rates do not otherwise reflect the costs of annual charges assessed by the Commission under § 382.106(a) of this chapter. The applicable annual charge, required by § 382.103 of this chapter, must be paid before the company applies the ACA unit charge.

(b) *Application for Rate Treatment Approval.* A company seeking authorization to use an ACA unit charge must file with the Commission a separate ACA tariff sheet containing:

(1) A statement that the company is collecting an ACA per unit charge, as approved by the Commission, applicable to all the pipeline's sales and transportation schedules,

(2) The per unit charge of the ACA,

(3) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested in a waiver petition and approved), and

(4) A statement that the pipeline will not recover any annual charges recorded in FERC Account No. 928 in a proceeding under subpart D of this part.

(c) Changes to the ACA unit charge must be filed annually, to reflect the annual charge unit rate authorized by the Commission each fiscal year.

§ 154.403 Periodic rate adjustments.

(a) This section applies to the passthrough, on a periodic basis, of a single cost item or revenue item for which passthrough is not regulated under another section of this subpart, and to revisions on a periodic basis of a gas reimbursement percentage.

(b) Where a pipeline recovers fuel use and unaccounted-for natural gas in kind, the fuel reimbursement percentage must be stated in the tariff either on the tariff sheet stating the currently effective rate or on a separate tariff sheet in such a way that it is clear what amount of natural gas must be tendered in kind for each service rendered.

(c) A natural gas company that passes through a cost or revenue item or adjusts its fuel reimbursement percentage under this section, must state within the general terms and conditions of its tariff, the methodology and timing of any adjustments. The following must be included in the general terms and conditions:

(1) A statement of the nature of the revenue or costs to be flowed through to the customer;

(2) A statement of the manner in which the cost or revenue will be collected or returned, whether through a surcharge, offset, or otherwise;

(3) A statement of which customers are recipients of the revenue credit and which rate schedules are subject to the cost or fuel reimbursement percentage;

(4) A statement of the frequency of the adjustment and the dates on which the adjustment will become effective;

(5) A step-by-step description of the manner in which the amount to be flowed through is calculated and a step-by-step description of the flowthrough mechanism, including how the costs are classified and allocated. Where the adjustment modifies a rate established under subpart D of this part, the methodology must be consistent with the methodology used in the proceeding under subpart D of this part;

(6) Where costs or revenue credits are accumulated over a past period for periodic recovery or return, the past period must be defined and the mechanism for the recovery or return must be detailed on a step-by-step basis. Where the natural gas company proposes to use a surcharge to clear an account in which the difference between costs or revenues, recovered through rates, and actual costs and revenues accumulate, a statement must be included detailing, on a step-by-step basis, the mechanism for calculating the entries to the account and for passing through the account balance.

(7) Where carrying charges are computed, the calculations must be consistent with the methodology and reporting requirements set forth in § 154.501 using the carrying charge rate required by that section. A natural gas company must normalize all income tax timing differences which are the result of differences between the period in which expense or revenue enters into the determination of taxable income and the period in which the expense or revenue enters into the determination of pre-tax book income. Any balance upon which the natural gas company calculates carrying charges must be adjusted for any recorded deferred income taxes.

(8) Where the natural gas company discounts the rate component calculated pursuant to this section, explain on a step by-step basis how the natural gas company will adjust for rate discounts in its methodology to reflect changes in costs under this section.

(9) If the costs passed through under a mechanism approved under this section are billed by an upstream natural gas company, explain how refunds received from upstream natural gas companies will be passed through to the natural gas company's customers, including the allocation and classification of such refunds;

(10) A step-by-step explanation of the methodology used to reflect changes in the fuel reimbursement percentage, including the allocation and classification of the fuel use and unaccounted for natural gas. Where the adjustment modifies a fuel reimbursement percentage established under subpart D of this part, the methodology must be consistent with the methodology used in the proceeding under subpart D of this part;

(11) A statement of whether the difference between quantities actually used or lost and the quantities retained from the customers for fuel use and loss will be recovered or returned in a future surcharge. Include a step-by-step explanation of the methodology used to calculate such surcharge. Any period during which these differences accumulate must be defined;

(d) *Filing Requirements.*

(1) Filings under this section must include:

(i) A summary statement showing the rate component added to each rate schedule with workpapers showing all mathematical calculations.

(ii) If the filing establishes a new fuel reimbursement percentage or surcharge, include computations for each fuel reimbursement or surcharge calculated, broken out by service, classification, area, zone, or other subcategory.

(iii) Workpapers showing the allocation of costs or revenue credits by

rate schedule and step-by-step computations supporting the allocation, segregated into reservation and usage amounts, where appropriate.

(iv) Where the costs, revenues, rates, quantities, indices, load factors, percentages, or other numbers used in the calculations are publicly available, include references by source.

(v) Where a rate or quantity underlying the costs or revenue credits is supported by publicly available data (such as another natural gas company's tariff or EBB), the source must be referenced to allow the Commission and interested parties to review the source. If the rate or quantity does not match the rate or quantity from the source referenced, provide step-by-step instructions to tie the rate in the referenced source to the rate in the filing.

(vi) Where a number is derived from another number by applying a load factor, percentage, or other adjusting factor not referenced in paragraph (d)(1)(i) of this section, include workpapers and a narrative to explain the calculation of the adjusting factor.

(2) If the natural gas company is adjusting its rates to reflect changes in transportation and compression costs paid to others:

(i) The changes in transportation and compression costs must be based on the rate on file with the Commission. If the rate is not on file with the Commission or a discounted rate is paid, the rate reflected in the filing must be the rate the natural gas company is contractually obligated to pay;

(ii) The filing must include appropriate credits for capacity released under § 284.243 of this chapter with workpapers showing the quantity released, the revenues received from the release, the time period of the release, and the natural gas pipeline on which the release took place; and,

(iii) The filing must include a statement of the refunds received from each upstream natural gas company which are included in the rate adjustment. The statement must conform to the requirements set forth in § 154.501.

(3) If the natural gas company is reflecting changes in its fuel reimbursement percentage, the filing must include:

(i) A summary statement of actual gas inflows and outflows for each month used to calculate the fuel reimbursement percentage or surcharge. For purposes of establishing the surcharge, the summary statement must be included for each month of the period over which the differences defined in paragraph (c) of this section accumulate.

(ii) Where the fuel reimbursement percentage is calculated based on estimated activity over a future period, the period must be defined and the estimates used in the calculation must be justified. If any of the estimates are publicly available, include a reference to the source.

(4) The natural gas company must not recover costs and is not obligated to return revenues which are applicable to the period pre-dating the effectiveness of the tariff language setting forth the periodic rate change mechanism, unless permitted or required to do so by the Commission.

Subpart F—Refunds and Reports

§ 154.501 Refunds.

(a) *Refund Obligation.* (1) Any natural gas company that collects rates or charges pursuant to this chapter must refund that portion of any increased rates or charges either found by the Commission not to be justified, or approved for refund by the Commission as part of a settlement, together with interest as required in paragraph (d) of this section. The refund plus interest must be distributed as specified in the Commission order requiring or approving the refund, or if no date is specified, within 60 days of the order.

(2) Any natural gas company must refund to its jurisdictional customers the jurisdictional portion of any refund it receives within 30 days of receipt.

(b) *Costs of Refunding.* Any natural gas company required to make refunds pursuant to this section must bear all costs of such refunding.

(c) *Supplier Refunds.* The jurisdictional portion of supplier refunds (including interest received), applicable to periods in which a purchased gas adjustment clause was in effect, must be flowed through to the natural gas company's jurisdictional gas sales customers during that period with interest as computed in paragraph (d) of this section.

(d) *Interest on Refunds.* Interest on the refund balance must be computed from the date of collection from the customer until the date refunds are made as follows:

(1) At a rate of seven percent simple interest per annum on all excessive rates or charges held prior to October 10, 1974;

(2) At a rate of nine percent simple interest per annum on all excessive rates or charges held between October 10, 1974 and September 30, 1979; and

(3)(i) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates and charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter must be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's ''Selected Interest Rates'' (Statistical Release G, 13), for the fourth, third, and second months preceding the first month of the calendar quarter.

(ii) The interest required to be paid under paragraph (d)(3)(i) of this section must be compounded quarterly.

(4) The refund balance must be either:

(i) The revenues resulting from the collection of the portion of any increased rates or charges found by the Commission not to be justified; or

(ii) An amount agreed upon in a settlement approved by the Commission; or

(iii) The jurisdictional portion of a refund the natural gas company receives.

(e) Unless otherwise provided by the order, settlement or tariff provision requiring the refund, the natural gas company must file a report of refunds, within 30 days of the date the refund was made, which complies with § 154.502 and includes the following:

(1) Workpapers and a narrative sufficient to show how the refunds for jurisdictional services were calculated;

(2) Workpapers and a narrative sufficient to determine the origin of the refund, including step-by-step calculations showing the derivation of the refund amount described in paragraphs (d)(4)(i) or (d)(4)(ii) of this section, if necessary;

(3) References to any publicly available sources which confirm the rates, quantities, or costs, which are used to calculate the refund balance or which confirm the refund amount itself. If the rate, quantity, cost or refund does not directly tie to the source, a workpaper must be included to show the reconciliation between the rate, quantity, cost, or refund in the natural gas company's report and the corresponding rate, quantity, cost or refund in the source document;

(4) Workpapers showing the calculation of interest on a monthly basis, including how the carrying charges were compounded quarterly;

(5) Workpapers and a narrative explaining how the refund was allocated to each jurisdictional customer. Where the numbers used to support the allocation are publicly available, a reference to the source must be included. Where the allocation methodology has been approved

previously, a reference to the order or tariff provision approving the allocation methodology must be included.

(6) A letter of transmittal containing:

(i) A list of the material enclosed;

(ii) The name and telephone number of a company official who can answer questions regarding the filing;

(iii) A statement of the date the refund was disbursed;

(iv) A reference to the authority by which the refund is made, including the specific subpart of these regulations, an order of the Commission, a provision of the company's tariff, or any other appropriate authority. If a Commission order is referenced, include the citation to the FERC Reports, the date of issuance, and the docket number;

(v) Any requests for waiver. Requests must include a reference to the specific section of the statute, regulations, or the company's tariff from which waiver is sought, and a justification for the waiver.

(7) A certification of service to all affected customers and interested state commissions.

(f) Each report filed under paragraph (e) of this section must be posted no later than the date of filing.

§ 154.502 Reports.

(a) When the natural gas company is required to make a report on a periodic basis, either by Commission order or as a part of a settlement, details about the nature and contents of the report must be provided in an appropriate section of the general terms and conditions of its tariff.

(b) The details in the general terms and conditions of the tariff must include the frequency and timing of the report. Explain whether the report is filed annually, semi-annually, monthly, or is triggered by an event. If triggered by an event, explain how soon after the event the report must be filed. If the report is periodic, state the dates on which the report must be filed.

(c) Each report must include:

(1) A letter of transmittal containing:

(i) A list of the material enclosed;

(ii) The name and telephone number of a company official who can answer questions regarding the filing;

(iii) A reference to the authority by which the report is made, including the specific subpart of these regulations, an order of the Commission, a provision of the company's tariff, or any other appropriate authority. If a Commission order is referenced, include the citation to the FERC Reports, the date of issuance, and the docket number;

(iv) Any requests for waiver. Requests must include a reference to the specific section of the statute, regulations, or the company's tariff from which waiver is sought, and a justification for the waiver.

(2) A certification of service to all affected customers and interested state commissions.

(d) Each report filed under paragraph (b) of this section must be posted no later than the date of filing.

Subpart G—Other Tariff Changes

§ 154.600 Compliance with other subparts.

Any proposal to implement a tariff change other than in rate level must comply with subparts A, B, and C of this part.

§ 154.601 Change in executed service agreement.

Agreements intended to effect a change or revision of an executed service agreement on file with the Commission must be in the form of a superseding executed service agreement only. Service agreements may not contain any supplements, but may contain exhibits which may be separately superseded. The exhibits may show, among other things, contract demand delivery points, delivery pressures, names of industrial customers of the distributor-customer, or names of distributors (with one distributor named as agent where delivery to several distributors is effected at the same delivery points).

§ 154.602 Cancellation or termination of a tariff, executed service agreement or part thereof.

When an effective tariff, contract, or part thereof on file with the Commission, is proposed to be canceled or is to terminate by its own terms and no new tariff, executed service agreement, or part thereof, is to be filed in its place, the natural gas company must notify the Commission of the proposed cancellation or termination on the form indicated in § 250.2 or § 250.3 of this chapter, whichever is applicable, at least 30 days prior to the proposed effective date of such cancellation or termination. With such notice, the company must submit a statement showing the reasons for the cancellation or termination, a list of the affected customers and the contract demand provided to the customers under the service to be canceled. A copy of the notice must be duly posted.

§ 154.603 Adoption of the tariff by a successor.

Whenever the tariff or contracts of a natural gas company on file with the Commission are to be adopted by another company or person as a result of an acquisition, or merger, authorized by a certificate of public convenience and necessity, or for any other reason, the succeeding company must file with the Commission, and post within 30 days after such succession, a certificate of adoption on the form prescribed in § 250.4 of this chapter. Within 90 days after such notice is filed, the succeeding company must file a revised tariff with the sheets bearing the name of the successor company.

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

Appendix

Natural Gas Pipeline Company Tariff Filings

Revised

Docket No. RM95–3–000

This document replaces the Tariff Filing Record Formats issued August 31, 1989.

General Information

I. Purpose

All companies which maintain a gas tariff with the Federal Energy Regulatory Commission (FERC) are required to submit, along with the paper copies, an electronic version of all tariff filings pursuant to section 385.2011 of the Commission's regulations. Companies are required to have an electronic version of their entire gas tariff (excluding Volume No. 2 contractual rate schedules) on file with FERC on or before June 1, 1995. This form does not modify the existing tariff sheet format required in section 154.102 or section 385.2003 for tariff sheets filed on paper. Nor does it modify the requirement in section 154.201(a) to file a marked paper version of the pages to be changed by showing additions and deletions using highlighting, background shading, bold text, or underlined text.

II. Who Must File

All companies who are required to maintain a FERC Gas Tariff on file with the Commission.

III. What To Submit

All proposed revisions to the FERC Gas Tariff will be submitted in conformance with this form. Such proposed revisions include, but are not limited to, rate changes pursuant to a section 4 filing or changes in service pursuant to a certificate issued as a result of a section 7 proceeding. Upon request of the Secretary of the Commission, companies must submit such additional supporting and clarifying data and information as may be specified.

All data will be submitted on diskette(s), preferably 3.5'' High Density diskettes, and must conform to the specific instructions provided in Exhibit A. The diskette(s) must be accompanied by paper copies of the information submitted on the diskette. The paper copies must conform in all respects to the requirements of parts 154 and 157 and will consist of the required number of copies of the transmittal letter, the tariff sheets, the certification of service, and a form of notice suitable for publication in the **Federal Register**.

The letter of transmittal and the service list will be submitted on paper only. The letter of transmittal must include the subscription provided in section 385.2005(a). The subscription provided must state, in addition to the requirement in section 385.2005(a), that the paper copies contain the same information as the diskette(s) and that the signer has read and knows the contents of the paper copies and that the contents as stated in the paper copies are true to the best knowledge and belief of the signer.

Respondents claiming that information is privileged must file in accordance with section 385.1112; otherwise, all data submitted will be considered non-privileged and will be made available to the public upon request.

IV. When To Submit

The tariff sheets should be filed with the Commission at the time the company proposes a change in service or rate. The notice period should be consistent with the Commission's regulations.

V. Where To Submit

(1) Submit this report to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 N. Capitol Street, NE, Washington, DC 20426.

(2) Hand deliveries may be made to the same address.

General Instructions

(1) Schedule TF. Records TF01 through TF06 and the text line records are intended to capture all of the tariff elements which the pipeline has historically filed as part of its FERC Gas Tariff. Record TF01 identifies the company and the filing date. Record TF02 captures information about the tariff volume; and Records TF03, TF04, TF05, and TF06 contain requisite marginal information for an individual tariff sheet. The actual tariff sheet text will follow Record TF06.

Each tariff sheet should be identified by the nature of the sheet, and assigned the appropriate ''Text ID'' from among those listed in the layout for Record TF03. For example, a tariff sheet which includes the table of contents must be assigned Text ID = ''1''. The text of a tariff sheet should include any footnotes applicable to the individual tariff sheet. When filing the tariff sheet on paper, footnotes should appear inside the ruled borders required by section 154.101.

All of the marginal information required under 18 CFR 154.102(d) is to be included only in the tariff sheet header records. These header records will be utilized to print a hard copy with the appropriate marginal information.

If a tariff sheet is filed to be read vertically in hard copy, this is referred to hereinafter as ''Portrait'' orientation. If the sheet will be read horizontally, the orientation is referred to as ''Landscape''. The requirements of section 154.102(d) imply that the length of a line of actual text is 6.75 inches in Portrait orientation, and 10.0 inches in Landscape. The pitch, the number of print characters per horizontal inch (cpi); the number of lines per vertical inch (lpi); and the page orientation for printing the tariff sheet must be given in the first Tariff Sheet Header Record, (Record TF03). The number of characters per horizontal inch (cpi) must not exceed 17. The acceptable lines per vertical inch are 6 or 8. The maximum line length and lines per page for Portrait and Landscape orientation are as follows:

Page orientation	Maximum line length (characters)				Maximum lines per page	
	10cpi	12cpi	15cpi	17cpi	6lpi	8lpi
Vertical (Portrait)	65	79	98	112	50	70
Horizontal (Landscape)	98	118	148	168	31	44

(2) Record Types. Records must be filed in the following order:

Company Header Record (TF01): One record per dataset.

Volume Header Record (TF02): One record per volume. All pages for the same volume will be grouped together. If more than one dataset is required for the filing of a volume, this record must appear in each dataset. Note: When more than one dataset is needed to accommodate a filing, name the datasets in accordance with the instructions in Exhibit A.

Note: The appropriate tariff sheet header records must precede each tariff sheet!

Sheet Header Record (TF03): One record per sheet.

Superseded Sheet Header Record (TF04): This record pertains to the superseded sheet information. One record per sheet unless there is no superseded sheet (e.g., Original and Substitute Original sheets). In that case, this record may be omitted.

Issuing Officer Header Record (TF05): One record per filing, unless the filing contains sheets that reference more than one issuing officer or the tariff sheets are submitted in more than one dataset. Optionally, this record may precede every tariff sheet filed.

Date and Docket Header Record (TF06): One record per filing, unless the effective date or other information in this record changes from sheet to sheet or the tariff sheets are submitted in more than one dataset. Optionally, this record may precede every tariff sheet filed.

Text Line Records: The actual tariff sheet text. Note: any special codes placed in the text (such as bold, italic, underline, etc.) are removed when converting to ASCII format.

(3) Numeric Fields. All numeric fields in Records TF01 through TF06 must not be left blank, and must be right justified unless indicated otherwise. The following conventions should be followed in preparing each header record in the filing:

(A) If a numeric data item is not applicable to the respondent, enter the numeric value ''0'' in the field provided for this data item.

(B) Do not include commas in reporting any numeric value.

(C) Report all dates as six digit numerics (month, day, year, MMDDYY).

(4) Pipeline Company ID. Use the code for the pipeline as contained in the Buyer Seller Code List, U.S. Department of Energy's publication DOE/EIA–0176. A code may be obtained by calling EIA at (202) 586–8841.

(5) Record Lengths. Do not pad the end of data records with blanks.

Specific Instructions

(1) Effective Date. The date, given as month, day, and year, on which the respondent expects the filing to be put into effect subject to the concurrence of the Commission.

(2) Tariff Volume Number. The number of the volume to which the tariff sheets belong. For example, if the volume is labeled ''First Revised Volume No. 1'', report a ''1'' in this field.

(3) Tariff Volume Revision Number. Report the number of the revision. For example, if the tariff volume is labelled ''Second Revised Volume No. 1'', report a ''2'' in this field. If the tariff volume is an original volume, report a zero in this field.

(4) Tariff Volume ID. Report the full tariff volume name in this field. For example, if the volume is labelled ''First Revised Volume No. 1'', report ''First Revised Volume No. 1'' in this field.

(5) Sheet Number. Report the number of the tariff sheet being filed. For example, if the sheet is numbered ''First Revised Sheet No. 3 superseding Original Sheet No. 3'', report a ''3'' in this field.

(6) Sheet Revision Number. Report the number of the revision. For example, if the tariff sheet is numbered ''Second Substitute Third Revised Sheet No. 4 superseding Second Revised Sheet No. 4'', report a ''3'' in this field. If this is an original tariff sheet, report a ''0'' in this field.

(7) Sheet ID. Report the full designation for the tariff sheet being reported. For example, if the sheet is designated ''First Revised Sheet No. 3 superseding Original Sheet No. 3'', report ''First Revised Sheet No. 3'' in this field. If the Sheet ID exceeds the allowed 40 character positions for this item, use the ''Abbreviation Conventions List'' at Exhibit C.

(8) Superseded Sheet ID. Report the full designation for the tariff sheet being superseded. For example, if the tariff sheet being filed is designated ''First Revised Sheet No. 3 superseding Original Sheet No. 3'', report ''Original Sheet No. 3'' in this field. If the Superseded Sheet ID exceeds the allowed 40 character positions for this item, use the

''Abbreviation Conventions List'' at Exhibit C.

(9) First Superseded Sheet Number. When a single sheet supersedes a range of sheets (such as canceling a rate schedule or reserving sheets for future use), report the number of the first sheet in the range. Otherwise this field may be left blank.

(10) Last Superseded Sheet Number. When a single sheet supersedes a range of sheets (such as canceling a rate schedule or reserving sheets for future use), report the number of the last sheet in the range. Otherwise this field may be left blank.

(11) Alternate Sheet ID. When filing primary and alternative tariff sheets, the sheets are uniquely identified by reporting ''00'' in this field for the primary sheet, ''01'' for the first alternate, ''02'' for the second alternate, and so on.

(12) Issuing Officer. Report the name and title of the person authorized to issue the tariff sheet.

(13) Issue Date. The date given as month, day, and year when the tariff sheet is issued.

(14) Order Reference. For tariff sheets which are filed to make rate schedules or provisions ordered by the Commission effective, report the Docket Number and the date of such order. (If more than one docket applies, report the lead docket relating to the filing company in the proceeding.)

ELECTRONIC TARIFF FILE LAYOUT—SCHEDULE TF

Item	Character Position	Data Type	Comments
(1) Company Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 01.
Company ID	5–10	Numeric	Company code from buyer/seller code list, see general instruction 4.
Date Submitted	11–16	Numeric	Month, day and year report is filed (mmddyy).
Company Name	17–65	Character	Name of filing company.
(2) Volume Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 02.
Tariff Volume Number	5–8	Character	See specific instruction 2.
Tariff Volume Revision Number	9–11	Numeric	See specific instruction 3.
Tariff Volume ID	12–51	Character	See specific instruction 4.
(3) Sheet Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 03.
Sheet Number	5–12	Character	See specific instruction 5.
Sheet Revision Number	13–15	Numeric	See specific instruction 6.
Alternate Sheet ID	16–17	Numeric	See specific instruction 11.
Text ID	18–19	Numeric	0 = Title Page.
			1 = Table of Contents.
			2 = Preliminary Statement.
			3 = Rate Sheets.
			4 = Rate Schedule Text.
			5 = General Terms and Conditions.
			6 = Form of Service Agreements.
			7 = Index of Customers.
			8 = Other Indices.
			9 = Other Tariff Sheets.
			10 = Sheets Reserved for Future Use.
Orientation	20	Character	P = Portrait.
			L = Landscape.
Pitch	21–22	Numeric	Characters per Horizontal Inch = 10, 12, 15, or 17.
Lines Per Inch	23	Numeric	Lines per Vertical Inch = 6 or 8.
Sheet ID	24–63	Character	See specific instruction 7.
(4) Superseded Sheet Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 04.
First Superseded Sheet Number	5–12	Character	See specific instruction 9.
Last Superseded Sheet Number	13–20	Character	See specific instruction 10.
Superseded Sheet ID	21–60	Character	See specific instruction 8.
(5) Issuing Officer Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 05.
Issued By	5–58	Character	Name and title of issuing official; see specific instruction 12.

ELECTRONIC TARIFF FILE LAYOUT—SCHEDULE TF—Continued

Item	Character Position	Data Type	Comments
(6) Date and Docket Header Record			
Schedule ID	1–2	Character	Sch = TF.
Record ID	3–4	Numeric	Code = 06.
Date Issued	5–10	Numeric	(mmddyy); see specific instruction 13.
Order Date	11–16	Numeric	(mmddyy); see specific instruction 14.
Docket Number	17–36	Character	See specific instruction 14.
Effective Date	37–42	Numeric	(mmddyy); see specific instruction 1.

(7) Sheet Text Line Records.

Each entire record consists of the text of the corresponding line of the tariff sheet, without prefix of any kind.

Exhibit A—Diskette Filing Procedures

Diskette(s) containing the information specified for each record ID of the tariff filing filed with the Commission must conform with the following requirements:

(1) The character code for representing all data should be the American National Standard Code for Information Interchange (ASCII) as defined in FIPS PUB 1–2. An exception will be made for the cents (¢) symbol, which should be coded as hexadecimal 8B, or decimal 155, as defined in the IBM–US (PC–8) symbol set. Note that there are symbol sets which define it differently.

(2) The definitions, instructions, and schedule ID/record ID data layouts for this form specify explicitly the data items to be reported and the sequence for recording the information on the diskette(s). The information required for a tariff filing should be recorded on the diskette(s) exactly as specified in the data layout for each schedule/record and in accordance with the general instructions.

(3) All tariff sheets filed under a given docket number should all be included in the same ''file'' or data set, if possible. (Large files may be split as a matter of convenience or diskette size limitation). The file should be named: ''TFMMDDYY.ASC'' where ''TF'' stands for ''Tariff Filing'', and ''MMDDYY'' is the two digit month, day, and year the tariff filing is submitted. If more than one tariff filing is made on the same day, the subsequent filings should be given file names ''TFMMDDYY.BSC'', ''TFMMDDYY.CSC'', etc., where ''BSC'' indicates the second filing of the day, ''CSC'' the third filing, etc. The file name for each submission should be included in the transmittal letter accompanying the respondent's filing.

(4) Each logical record must be terminated by a CR (ASCII carriage return—13 decimal, OD hexadecimal). An ASCII line feed (LF) following a CR is accepted but not required as part of termination. Do Not pad the end of data records with spaces.

(5) Do not omit any numeric item. Numeric items do not require leading zeros unless specifically noted in the description of the data item. See the General Instructions of this form for detailed instructions for recording numeric data on the diskette(s).

(6) When refiling a diskette only to correct an electronic data error on the electronic version of a tariff sheet and not in the paper version, use the same file name, pagination and submittal date.

(7) Each diskette must state on the label that tariff sheets are enclosed. If more than one diskette is necessary to accommodate a filing, the diskettes should be numbered 1 of N, 2 of N, *etc.*, where N is the total number of diskettes.

Exhibit B—Tariff Sheet Pagination Guidelines

Section 154.102(d)(2) of the Commission's regulations requires companies to number their tariff sheets as provided below.

(1) Original Sheets. Paginate a sheet as ''Original Sheet No. _____'' when the sheet number has not been used previously in the tariff volume. When filing an entire original or revised tariff volume, all sheets should be paginated as ''Original Sheet No. _____'' unless the sheet falls within the exception under Guideline (11).

(2) Revised Sheets. Designate a sheet as ''Revised'' if it is (a) filed in a different proceeding than the sheet it is superseding or (b) filed in the same proceeding but given a new proposed effective date. Each subsequent ''Revised'' pagination should be numbered sequentially. (See Examples 1 and 2.)

(3) Substitute Sheets. Designate a sheet as ''Substitute _____ Revised Sheet No. _____'' if it is filed to replace a sheet filed in the same proceeding with the same effective date. If a substitute sheet needs to be replaced, paginate the new sheet as ''Second Substitute,'' and so on. (See Example 1.)

(4) Superseded Sheets. Designate as the superseded sheet the most recent sheet filed in a different proceeding effective or proposed to be effective on the same day or on a day prior to the new sheet. This means when filing a substitute sheet the designated superseded sheet stays the same. Provided that the sheet does not fall under the exception in guideline (9). Never designate a rejected or suspended sheet as the superseded sheet. However, if a sheet designated as superseded is subsequently rejected, it is not necessary to refile solely to correct the superseded sheet designation. (See Example 1.)

(5) Rejected Sheets. If a sheet is rejected by order of the Commission, do not reuse the pagination of the rejected sheets. Designate a sheet ''Substitute'' if it is filed to replace a rejected sheet in the same proceeding, but do not designate a rejected sheet as the superseded sheet. Refer to Guidelines (3) and (4).

(6) Alternate Sheets. When filing two versions of a proposed tariff sheet, designate the sheets ''_____ Revised Sheet No. _____'' and ''Alternate _____ Revised Sheet No. _____.'' Paginate a replacement alternate sheet ''Sub Alternate.''

(7) Inserted Sheets. Designate sheets inserted between two consecutively numbered sheets using an uppercase letter following the first sheet number (*e.g.*, sheets inserted between sheets 8 and 9 would be 8A, 8B, etc.). For sheets inserted between two consecutively lettered sheets, add a ''.'' followed by a two digit number (*e.g.*, sheets inserted between sheets 8A and 8B would be 8A.01 through 8A.99). For further insertions, add a lowercase letter (*e.g.*, between sheets 8A.01 and 8A.02 would be 8A.01a, 8A.01b, etc.).

(8) Pre-dated Sheets. When a sheet is filed with a proposed effective date which pre-dates the effective date of a suspended or effective sheet with the same number filed in a different proceeding, designate the new sheet ''_____ Rev _____ Revised Sheet No. _____'' where the second and third blanks are numbered the same as the sheet with the later effective date and the first blank contains ''1st,'' ''2nd,'' *etc.* Commonly, this situation occurs when a sheet is suspended for five months and subsequent sheets need to be made effective prior to the date the suspended sheet becomes effective. (See Example 3.) Note: When using the ''1st Rev'' pagination, drop extraneous words if the superseded sheet provides the same information. (See Example 4.)

(9) Retroactive Sheets. When filing a retroactive change back to a certain date, all sheets which are or were in effect from that date forward need to be changed. The first sheet should be designated either as ''Substitute'' in accordance with Guideline (3) above or ''_____ Rev'' in accordance with Guideline (8), depending on whether the retroactive filing is in the same docket as or a different docket from the sheet being replaced. The rest of the sheets should be designated as a ''Substitute'' of each sheet already on file. For the first new sheet in the series of sheets, the superseded sheet shall be designated in accordance with Guideline (4) above. However, the remainder of the sheets in the series should supersede each other in order, even though they are all filed in the same docket. In this way, the ''superseded'' designation will reflect the last sheet in effect on each given effective date. (See Examples 5 and 6.)

(10) Canceled Sheets. When filing to cancel a rate schedule, file one sheet with a new

revision number and the sheet number of the first canceled sheet. Designate as superseded ''Sheet Nos. _____–_____'' where the blanks refer to the first and last canceled sheet numbers in a series. The specific pagination of each individual canceled sheet should be included in the body of the tariff sheet. When using the formerly canceled sheet numbers, refer to the pagination of the sheets listed in the body of the canceling sheet, and paginate each sheet with the next higher revision number. See Example 8.

(11) Sheets Reserved For Future Use. When reserving a number of sheets for future use, file one sheet paginated ''Sheet Nos. _____–_____'', where the blanks refer to the first and last reserved sheet numbers in series. In the body of the sheet state ''Reserved for Future Use.'' (See Example 9.) Note: in the electronic tariff sheet records, report the first sheet number in the series in the ''Sheet No.'' field and the full pagination in the ''Sheet ID'' field.

(12) Abbreviations. *Pagination cannot exceed 40 characters.* Abbreviate from left to right using the Abbreviation Conventions List in Exhibit C. *Abbreviate only as needed* to reduce the pagination to 40 characters or less. (See Example 7.) Electronic and paper versions of a tariff sheet must be paginated *exactly* alike, including abbreviations.

Example 1

''Original Sheet No. 4'' is filed in Docket No. CP94–44–000 to be effective January 1, 1994. Subsequently, a sheet filed in Docket RP94–1–000 is to be effective February 1, 1994. Paginate that sheet ''First Revised Sheet No. 4 superseding Original Sheet No. 4.'' A mistake is discovered and a corrected sheet needs to be filed in Docket No. RP94–1–001. Paginate that sheet ''Substitute First Revised Sheet No. 4 superseding Original Sheet No. 4.'' Note the superseded sheet is from the prior proceeding.

Docket	Filed	Effective	Pagination	Superseded sheet
CP94–44–000	11/30/93	1/1/94	Original.	
RP94–1–000	12/31/93	2/1/94	First Revised	Original.
RP94–1–001	2/15/94	2/1/94	Sub First Revised	Original.

Example 2

''Second Revised Sheet No. 4'' is filed in Docket No. TM94–1–77–000 to be effective April 1, 1994. Subsequently, a sheet is filed in Docket No. RS94–1–50–000 to be effective on the same date. Paginate that sheet with the next revision number, ''Third Revised Sheet No. 4'' even though it is to be effective on the same date.

Docket	Filed	Effective	Pagination	Superseded sheet
TM94–1–77–000	2/28/94	4/1/94	Second Revised	Sub First Revised.
RS94–1–50–000	3/31/94	4/1/94	Third Revised	Second Revised.

Example No. 3

''Fourth Revised Sheet No. 4'' is filed July 31, 1994, in Docket No. RP94–134–000 to be effective September 1, 1994. An order suspends this sheet until February 1, 1995. Subsequently two filings are to be made effective prior to February 1, 1995. Paginate these sheets as ''1st Rev Third Revised Sheet No. 4'' and ''2nd Rev Third Revised Sheet No. 4.'' When filing to move the suspended tariff sheet into effect, paginate the revised tariff sheet as ''Sub Fourth Revised Sheet No. 4''. Note: using the alpha-numeric ''1st, 2nd'' for the additional revision number assists in keeping the pagination clear.

Docket	Filed	Effective	Pagination	Superseded sheet
RP94–134–000	7/31/94	2/1/95	Fourth Revised	Third Revised.
TM94–2–77–000	8/31/94	10/1/94	1st Rev Third Revised	Third Revised.
TM94–3–77–000	10/31/94	11/1/94	2nd Rev Third	1st Rev Third.
RP94–134–001	1/31/95	2/1/95	Sub Fourth Revised	2nd Rev Third.

Example 4

When needing to insert a sheet between ''Third Revised'' and ''Sub Alt Second Revised'' with the designation 1st Rev Sub Alt Second Revised, paginate the new sheet ''1st Rev Second Revised'' (dropping ''Sub Alt'' from the name), and designate the superseded sheet ''Sub Alt Second Revised.'' In the alternative, the abbreviations in Exhibit C may be used.

Example No. 5

The sheet given in Example No. 1, ''Sub First Revised Sheet No. 4'' filed in Docket No. RP94–1–001 is in effect February 1, 1994, subject to the resolution of issues. A year later, settlement is reached resulting in a restatement of base rates back to that date. The revised sheets filed under Docket No. RP94–1–002 (using prior examples):

Docket	Filed	Effective	Pagination	Superseded sheet
RP94–1–002	4/15/95	2/1/94	2nd Sub First Revised	Original.
		4/1/94	Sub Second Revised	2nd Sub First.
		4/1/94	Sub Third Revised	Sub Second.
		10/1/94	Sub 1st Rev Third Revised	Sub Third.
		11/1/94	Sub 2nd Rev Third	1st Rev Third.
		2/1/95	2nd Sub Fourth Revised	2nd Rev Third.

Example No. 6

Continuing from Example 5, a subsequent tracker filing retroactive to November 1, 1994:

Docket	Filed	Effective	Pagination	Superseded sheet
TM96–1–77–000	4/30/95	11/1/94 2/1/95	3rd Rev Third Revised 3rd Sub Fourth Revised	Sub 2nd Rev Third. 3rd Rev Third.

Example No. 7

Abbreviate ''Fourth Revised Twenty-Third Revised Sheet No. 4'' as ''4th Rev Twenty-Third Revised Sheet No. 4.''

Example No. 8

To cancel Rate Schedule X–26 which consists of Original Sheet No. 10, First Revised Sheet Nos. 11 through 36, Substitute First Revised Sheet No. 37, and Second Revised Sheet Nos. 38 and 39, file ''First Revised Sheet No. 10:''

My Pipeline Company
FERC Gas Tariff
Original Volume No. 1
First Revised Sheet No. 10 Superseding
Sheet Nos. 10 Through 39

Notice of Cancellation

Rate Schedule X–26
Exchange Agreement with YOUR Pipeline Company
Dated January 1, 1980

The following tariff sheets have been superseded:

Original Sheet No. 10
First Revised Sheet Nos. 11 through 36
Substitute First Revised Sheet No. 37
Second Revised Sheet Nos. 38 and 39

Example No. 9

Your general terms and conditions end on page 75 and you want to reserve sheets 76 through 99 for future use:

My Pipeline Company
FERC Gas Tariff
Original Volume No. 1
Sheet Nos. 76 through 99

Sheet Nos. 76 through 99 are reserved for future use.

Exhibit C—Abbreviation Conventions List

Substitute: Sub
Alternate: Alt
Revised: /
First, Second, etc.: 1st, 2nd, etc.
Sheet No.: (omit these words)

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18 CFR Parts 158, 201, 250, 260, and 284

[Docket No. RM95–4–000]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Proposed Rulemaking

December 16, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its Uniform System of Accounts, its forms, and its reports and statements for natural gas companies. The proposed revisions reflect the current regulatory environment of unbundled pipeline sales for resale at market-based prices and open-access transportation of natural gas. The Commission seeks to simplify and streamline its requirements to reduce the burden of respondents.

DATES: Comments are due no later than April 13, 1995.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM95–4–000 and should be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document, excluding Appendices A (FERC Form No. 2), B (FERC Form No. 2–A), and C (FERC Form No. 11), in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its Uniform System of Accounts,[1] its forms, and its reports and statements for natural gas companies.[2] This Notice of Proposed Rulemaking (NOPR) is a companion to the Commission's Notice of Proposed Rulemaking ''Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs'', which proposes to amend Part 154 of the Commission's regulations and is issued contemporaneously with this NOPR. In brief, the Commission proposes, in this NOPR, changes to the Uniform System of Accounts' treatment of gas stored underground,[3] revenues,[4] gas supply expenses,[5] and to eliminate all accounts for Nonmajor respondents and to redesignate accounts used only by Major respondents for use by all respondents. The Commission also proposes to change or eliminate various forms, reports, and statements. This includes changes to, and deletions from, FERC Form No. 2 (Form No. 2), Annual report

[1] Section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g (1988), authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged, or credited.

[2] Section 10 of the NGA, 15 U.S.C. 717i (1988), authorizes the Commission to prescribe rules and regulations concerning annual and other periodic or special reports, as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe the manner and form in which such reports are to be made, and require from natural gas companies specific answers to all questions on which the Commission may need information. The reports must be made under oath unless the Commission otherwise specifies.

[3] The Commission proposes to amend Account 117, Account 164.1, and other accounts that refer to Account 117.

[4] The Commission proposes to amend Account 489 and Account 495.

[5] The Commission proposes to amend Account 806.

for Major natural gas companies, and Form No. 2–A (Form No. 2–A), Annual report for Nonmajor natural gas companies.[6]

The Commission is proposing the changes in order to create forms, reports, and statements that reflect the current regulatory environment of unbundled pipeline sales for resale at market-based prices and open-access transportation of natural gas. In doing that, the Commission seeks to simplify and streamline its requirements to reduce the burden on respondents. Hence, the Commission is proposing to eliminate reporting requirements (as well as a few non-reporting requirements) that are outdated or nonessential in light of current regulation, or are duplicative of other reporting requirements. At the same time, the proposed revisions, especially of Form No. 2, will provide financial, rate, and statistical information on transactions that is more useful than what is currently available to regulatory agencies and other users of the financial statements and reports of natural gas companies. The Commission believes the proposed changes to Form No. 2 are needed because companies are giving different accounting treatment to similar transactions, and the characteristics of certain balance sheet and income statement items for the restructured industry are different from what they were when the current accounting regulations were adopted.

In Part III, A of this NOPR, the Commission will discuss the proposed changes to the Uniform System of Accounts with respect to storage gas. In Part III, B the Commission will address the other proposed revisions to the Uniform System of Accounts. In Part IV, the Commission will discuss the changes to Part 250 of the Commission's regulations, ''Approved Forms, Natural Gas Act.'' In Part V, the Commission will discuss the proposed changes to Part 260 of the Commission's regulations, ''Statements and Reports (Schedules).'' That discussion will include the proposed changes to Forms No. 2[7] and No. 2–A.[8] In Part VI, the Commission will discuss the proposed changes to Part 284 of the Commission's regulations, ''Certain Sales and Transportation of Natural Gas Under the Natural Gas Policy Act of 1978 and Related Authorities.''

The Commission recognizes that the changes to these regulations and forms and to the regulations in the companion notice of proposed rulemaking titled, ''Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs,'' will necessitate modifications to the electronic formats for the affected filings and forms. To ensure the widest possible input, the Commission is directing its staff here, and in the companion NOPR, to convene a single technical conference to obtain the participation of the industry and other users of the filed information in designing the electronic filing requirements. By the time the Commission issues final rules in these companion rulemakings, the Commission expects staff, with the participation of interested parties, to have developed the changes needed to make the electronic filings that would be required under the regulations proposed in both of the rulemaking proceedings. The Commission intends to move toward a PC-based electronic filing system and away from mainframes. The Commission intends to use user friendly form-fill, word processing, and spreadsheet application software as much as possible.

The changes to the Uniform of System of Accounts and Form Nos. 2 and 2–A in this NOPR are proposed to be effective January 1, 1995. The remainder of the proposed rule is proposed to be effective 30 days after publication in the **Federal Register**.

II. Public Reporting Burden

The proposed rule, if adopted, would establish new reporting requirements, modify existing reporting requirements and eliminate those requirements that are now obsolete. The Commission seeks to simplify and streamline its requirements to reduce the burden on pipelines. The current public reporting burden for these information collections is estimated to average the following number of hours per response: FERC Form No. 2—2,475 hours for the 46 gas companies that complete a filing; FERC Form No. 2–A—30 hours for the 87 gas companies that complete a filing; FERC Form No. 11—5.7 hours for the 50 gas companies that complete a filing; FERC Form No. 549—2.7 hours for the 294 companies that complete a filing; FERC Form No. 549B—6,770 hours for the 78 gas companies that complete a filing; FERC Form No. 576—3 hours for the 8 gas companies that complete filing; FERC Form No. 8—3.6 hours for the 30 gas companies that complete a filing; and FPC–14 (redesignated herein as FERC Form No. 14)—3.1 hours for the 46 gas companies that complete a filing. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the gas companies filing the FERC Form No. 2, the Commission believes that there will be an average burden decrease due to the elimination of several schedules and significant increases in the thresholds for the reporting of information on other schedules. There will be some additional information required, but there should be a minimal burden increase as a result, because much of the information is already collected by the industry in other contexts.

Also, those natural gas companies filing the FERC Form No. 2–A, and previously designated as ''Nonmajor'' who do not presently use the accounts formerly reserved for Major natural gas companies, may experience a one-time increase in burden associated with the conversion of their books and records. It is anticipated that this one-time burden will not be significant.

The Commission estimates the public reporting burden for other filing requirements under the proposed rule will reduce the existing reporting burden. With respect to FERC Form No. 11, the semi-annual Form No. 11 will contain monthly details of data required annually on an aggregate basis in FERC Form No. 2. The semi-annual filing of FERC Form No. 11 on April 30 and October 31 of each year, rather than monthly, will reduce the number of reports from 600 to 100. In addition, data are primarily required by rate schedule or Uniform System of Accounts entries. These consistencies in reporting will simplify the filing burden. The revised reporting schedule will reduce the existing reporting burden by a total of 2,500 hours, or approximately 50 hours per respondent each year.

The proposed elimination of initial, subsequent, termination, and annual reports, FERC Form No. 549, for interstate pipelines, and the retention of only the annual reports for intrastate pipelinesm, will reduce the reporting burden by a total of 13,295 hours. The Commission estimates that the annual report for the 75 remaining respondents

[6] Form No. 2 consists of approximately 162 non-consecutively numbered pages and a four-page index. See 18 CFR 260.1. The current version bears OMB approval No. 1902–0028. Form No. 2–A consists of approximately 22 consecutively numbered pages, 1–22, and 32 non-consecutively numbered substitute pages from the Form No. 2 that may be used in lieu of the comparable pages in the first section. See 18 CFR 260.2. The current version bears OMB approval No. 1902–0030.

[7] Appendix A consists of the proposed revised Form No. 2. Appendix A is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

[8] Appendix B consists of the proposed revised Form No. 2–A. Appendix B is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

will require an average of ten hours to complete.

The proposed Index of Customers requirement will add approximately 11,700 hours to the total burden under FERC Form No. 549B. However, the Commission proposes to delete the paper filing requirement and require that the index be available through a pipelines electronic bulletin board. The average burden of approximately 25 hours per respondent consists of 135 hours for pipelines to establish the initial index, and three hours per filing to compile an average of six monthly updates.

Allowing reporting of service interruptions in FERC Form No. 576 by any electronic means, including facsimile or telegraph, as proposed, will expedite the notice process, and reduce the burden to one hour per response. This report is required only in the event of an interruption to normal service lasting three hours or longer.

The Commission is not proposing any substantive changes to FERC Form Nos. 8 and 14, but requests comment on whether data from other sources makes these forms unnecessary.

On balance, therefore, the Commission believes the overall burden on the industry will be lessened over time by the proposed changes. To consider the impact of the persons affected by this rulemaking, the Commission would like specific comments on the impact of this rule on individual natural gas companies. Both estimates of current burden and impact should be in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

Comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Revisions to Uniform System of Accounts

A. Storage Accounting

Before the recent industry restructuring, natural gas companies primarily provided a merchant service. A typical pipeline company would purchase gas from producers or other suppliers, transport the gas from the supply area to storage fields or sales delivery points, and sell its gas on a bundled basis. Now, pipeline companies are primarily transporters of gas. The physical operation of a pipeline used for open-access transportation, however, is much the same as when it was used for bundled merchant service. A transportation pipeline continues to need gas for compressor fuel, gas losses, line pack, and base storage gas. In addition, in order for the system to operate efficiently, it must have sufficient gas volumes and/or storage capacity available to provide for transportation imbalances and no-notice transportation. Although these resource needs are not new ones, in the Commission's view, the mandate to unbundle and the changed primary role of pipelines from merchants to transporters require recognition, measurement, and reporting of these resources differently than presently required.

One might argue that the present accounting requirements contained in the Uniform System of Accounts are adequate and appropriate for accounting for gas costs of a transportation pipeline. Under this view, it could be argued that the loss of the sales function does not change the economic character of the transportation function. Physically, the pipeline must operate essentially as it always has in performing a transportation function, and that the loss of the sales function does not change the economic character of the transactions that must be accounted for. Our analysis, however, indicates otherwise. We find that the financial and regulatory accounting needs for a transporter are sufficiently different from those of a merchant to warrant changes to our Uniform System of Accounts.

To meet regulatory needs, the Commission's regulations should provide recognition and measurement criteria for accounting elements (e.g. revenues, expenses, assets, liabilities, equity capital) that not only represent their economic characteristics but also provide useful financial information relating to services provided. Further, the regulations should provide for uniform accounting. It is indisputable that regulation is improved when similar economic events are accounted for consistently between periods, and uniformly between companies. In the Commission's view, uniformity in accounting is essential for developing just and reasonable rates, for compliance review purposes, and for the preparation of meaningful intra- and inter-company statistics.

The Commission believes that the financial statement treatment most consistent with the economic character of the accounting transactions, and the treatment that produces the most useful regulatory information, can be obtained if we require that: (1) Volumes maintained for system balancing purposes, including those needed for no-notice transportation service, be accounted for as fixed assets rather than as inventory held for sale, which is the current practice; and (2) gas furnished by transportation customers for compressor fuel, line losses, or other operational purposes be viewed as additional compensation for services, and an appropriate amount of expense be recognized concurrent with the use of such volumes by the pipeline. With respect to the second item, the current practice is, in general, not to recognize either the gas consideration received as revenues or to recognize an expense when the gas is consumed in system operations.

1. System Gas

The Commission's existing accounting regulations for gas transactions (purchases, storage, exchanges, sales, system use, etc.) were developed when a typical natural gas pipeline company offered bundled sales service. Gas used in providing unbundled transportation service has characteristics that are different from gas used in providing bundled sales service. A transportation pipeline is a dynamic system where there are constant imbalances between what has been delivered to the system by customers or gas suppliers, on one hand, and what has been delivered to customers or used to operate the pipeline, on the other. Although a transportation pipeline has an obligation to transport and deliver gas provided to it by a shipper, gas is a fungible commodity. There is no specific identification of the molecules of gas that a transportation customer (shipper) delivers into the system with the volumes that it receives at the delivery point. The pipeline's obligation to the customer is satisfied when the customer either receives at the appropriate delivery point sufficient volumes, from whatever source, to meet the quantity, quality, and heat content called for by the tariff's terms and conditions or it is otherwise settled through cash-out provisions or balancing arrangements entered into between two or more customers.

In order to meet its obligation to shippers, the pipeline must have available sufficient volumes to meet the operational dynamics of its system (after consideration of imbalance agreements between customers). For purposes of

this discussion these volumes will be referred to collectively as system gas. In our view, the character of the accounting for system gas needs falls into three categories: (1) A fixed asset for those volumes needed to provide for pressure maintenance, (2) a fixed asset for those volumes needed to meet imbalances, including no-notice transportation, and (3) operating expenses for volumes used for compression, line losses, and other operational uses.

The first fixed asset category includes line pack gas,[9] LNG ''heel'',[10] and gas held in underground or other natural gas storage facilities for purposes of pressure maintenance.[11] The cost to the pipeline of these volumes, taken collectively, represents its fixed investment in the gas necessary to operate the pipeline transportation system. Under the current Uniform System of Accounts, the investment cost of these volumes is recorded as gas plant in service except for recoverable base storage gas which is recorded in Account 117, Gas Stored Underground-Noncurrent.

Aside from these volumes, however, pipelines as merchants have also traditionally maintained ''investments'' in additional volumes of gas that were needed for system balancing[12] or to provide gas sales service at the city gate on demand during peak periods. These additional volumes were included in the pipeline's system as additions to line pack and/or underground storage. When the additional volumes were added to line pack, many pipelines charged the cost of the gas to expense at that time, even though the gas was not physically delivered to a customer until a later period. When the additional volumes were injected into underground storage, the cost of the gas was charged to either Account 164.1 or Account 117. As the volumes were withdrawn from inventory for load balancing or sales service, the related cost was charged to expense. The cost of gas withdrawn from storage would be determined in accordance with a generally accepted inventory method, consistently applied. The accounting costs were then recovered from sales customers through purchased gas adjustments (PGAs).

In the post-Order No. 636 period, there is a need to measure and recognize the additional volumes of gas needed for load balancing and no-notice transportation service, as well as the recoverable base gas volumes, differently from how they have been measured and recognized in the past. This is because such investments are necessary to perform a transmission function whether there continue to be sales services or not. Further, with the implementation of unbundled services, pipelines generally discontinued their PGAs. Most pipelines that continue to provide sales service do so at market-based prices. It is obviously important to identify and aggregate the costs of transportation service separately from the costs of providing sales service, in order to avoid inappropriate allocations of costs between the two.

Under Order No. 636, pipelines were required to relinquish most of the capacity of their transmission system, including storage, to their customers. The Commission permits pipeline companies to retain for their own use only a designated volume of storage capacity on their systems for use in load balancing and no-notice transportation service. These volumes, in general, are intended to represent the maximum volume needed to maintain reliability and continuity of transportation service during peak periods. It would be inappropriate to classify these volumes as gas held for resale in the ordinary course of business, i.e. inventory; instead, they represent permanent investments that a pipeline must make for providing transportation service. The Commission believes that the use of this gas provides further support for no longer viewing the costs incurred to provide this transportation function as inventory (or expended when acquired in the case of some line pack). To account for this gas in such a manner, which would be more appropriate for an enterprise engaged in a merchant type of business activity, is no longer the best financial statement representation.

Even if a pipeline receives payment for system gas delivered to meet an imbalance or no-notice transportation requirement, the Commission does not believe that it should account for the transaction as if a sale has occurred. Simultaneously with the gas delivery, the transportation pipeline has an obligation, in order to maintain the integrity of the transportation system, to replenish the designated volumes that make up system supply. The obligation to replace these volumes would more appropriately be accounted for as if ''owed to system gas'' rather than as a sale. There is no expectation by the pipeline of realizing a profit from this type of gas transaction. It is merely a loan that is to be repaid by the shipper through either providing gas in kind or through cash-out provisions.

The primary difference between the fixed asset accounting model and the inventory model for system gas is in the carrying value of the asset. Under the inventory model, the carrying value of the asset will change over time as withdrawals of system gas are made and replacements are brought back into the system. The inventory model would permit various methods of pricing these withdrawals. For instance, an entity could assign a cost to these withdrawals using LIFO, FIFO, or a weighted average inventory method, or specific identification, provided that the method is consistently applied. Replacements would be priced at their acquisition cost. Under the fixed asset model, as we view it, the carrying value for system gas would not change except for recognition of changes in designated volumes. Instead, the carrying value would be locked-in the same way that plant investments are to historical cost. Further, the fixed asset model would permit only one method for assigning cost to the temporary ''owed to system gas'' account—current market price. Gain or loss recognition, if any, would be limited to any differences between the actual replacement cost of system gas and reimbursements from customers on a cash-out basis where the differences are not required to be passed along to customers.

The Commission believes that the fixed asset model is superior for several reasons.

First, it more accurately reflects the economics of transportation transactions. If the withdrawal/replacement transaction is satisfied by gas in kind, it is obvious that there should be no economic gain or loss realized. Since the cash-out provisions are intended to be substitutes for gas deliveries, it should likewise be obvious that no economic gain or loss occurred from the basic transaction. However, the inventory method would result in a gain or loss being recognized to the extent that the accounting cost of gas withdrawn from storage (historical cost) differs from the cash-out price (generally current spot market prices). On the other hand, the fixed asset model would not show a gain or loss from the withdrawal/replacement activity. Both

[9] Gas Plant Instruction 3(20).

[10] Gas Plant instruction 3(21).

[11] The gas needed to maintain pressure requirements refers to those volumes needed to maintain the system at its design operating capacity. It includes the volumes of gas held in natural gas storage facilities in order to maintain pressure and deliverability requirements. These storage volumes are often referred to as base or cushion gas.

[12] System balancing, as used here, refers to those situations where the pipeline provided gas from its own source of supply in order to meet deficiencies caused by a shipper tendering less volumes to the pipeline at the receipt point than it took from the systems at the delivery point. The term can also be used to refer to situations where the shipper tenders more volumes than it takes from the system.

models, however, will correctly show that a gain or loss has been realized by the pipeline on the difference between the cash-out price and the actual cost of replacement gas (if such gain or loss is not passed along to customers).

Second, the fixed asset model better matches cost (expenses) with services. To the extent that accounting gains and losses on system gas transactions are required to be passed along to transportation customers, the fixed cost model would achieve a closer matching of current gas cost with current service than would the inventory model. For instance, if a company uses a FIFO inventory pricing method, the effect of gas costs incurred in prior years will enter into the determination of the revenue requirements for current service. This distortion does not occur under the fixed asset model.

Third, the fixed asset model for assigning costs to unbundled services permits a clearer separation of costs deemed to be transmission from costs related to other functions.

And fourth, the fixed asset model, once adopted, should make the Commission's ratemaking and compliance activities an easier task since the investment included in rate base would be fixed. Any cash flow requirements/benefits related to the proposed ''Gas owed to system gas'' account and the companion account receivable could be included in cash working capital consideration.

2. Revenues and Expenses Associated With Compressor Fuel

Some transportation tariffs provide for the shippers to furnish gas for compressor fuel and other pipeline system use. In other instances, the pipeline is required to purchase gas for such purposes from a third party. It is the Commission's understanding that, at least in the majority of instances, no accounting recognition is currently being given to the compensation in the form of gas that is received for the transportation service when the pipeline reports transportation revenues. However, in any instances where it is the pipeline's responsibility to purchase the gas, gas cost reimbursements would be included in reported revenues. Similarly, the pipeline that does not report the furnished gas as compensation would not show an expense for fuel burned, whereas the pipeline that purchases the gas would.

This diversity in accounting treatment is not warranted. The Commission believes that all consideration received for services should be reported as revenues, whether paid in cash or otherwise. If the consideration is other than cash, then the non-cash consideration should be measured on a cash basis. In the case of gas furnished by a customer for compressor fuel, the Commission believes that an appropriate measure of the revenues received by the transportation pipeline is the cost that would have been incurred had the pipeline been required to purchase the gas itself. The same assigned value should be used when costing the gas actually used for compressor fuel. It is only through such accounting that uniformity can be achieved and valid financial comparisons made. The Commission invites comments from the industry about whether a price index should be used to account for the value of gas furnished by customers; if so, what would be the appropriate price index, and how should that price index be applied?

The Commission is not proposing changes to its Uniform System of Accounts for these items since it believes that the current system already adequately provides for such recognition. However, it should be made clear that the expense account to be charged with the gas provided by shippers is the same purchased gas account that would have been charged if the gas was separately purchased in a cash transaction. Further, the records supporting the purchased gas accounts for retained gas must be so maintained that there will be readily available for each shipper and point of receipt, the quantity of gas tendered and the values assigned.

3. The Proposed Rule

The Commission is proposing to revise its accounting regulations to provide for uniform accounting for all pipeline investment in the volumes of gas needed to operate the transportation system. The Commission is not proposing changes to the accounting requirements for initial line pack, LNG heel, and non-recoverable base gas. The cost of this gas will continue to be recorded in the utility plant accounts. The proposed rule will require, however, that Account 117, Gas Stored Underground-Noncurrent, be replaced by new accounts Account 117.1, Gas stored-Base Gas, Account 117.2, System balancing gas, Account 117.3, Gas stored in reservoirs and pipelines-noncurrent, and Account 117.4, Gas owed to system gas.

Account 117.1 is to include the cost of recoverable gas volumes that are necessary, in addition to those volumes for which costs are properly includable in Account 352.3, Nonrecoverable Natural Gas, to maintain pressure and deliverability requirements for the storage facility. Account 117.2 is to be used to record a pipeline's investment in any additional system gas volumes, including line pack not capitalized in Account 101, Gas Plant in Service, designated as maximum system gas needed for load balancing, no-notice transportation, and other operational purposes. Account 117.3 is to include the cost of noncurrent company-owned stored gas not includable in Accounts 117.1 or 117.2. Account 117.4 is to include encroachments upon system gas which result from transportation imbalances, no-notice transportation, and other operational needs.

The initial investment cost to be recorded in Account 117.1 and 117.2 is to be determined from the book balances on the date of adoption of the new accounts. If there is no Commission approved method to the contrary, volumes in Account 117.1 are to be priced consistent with the inventory method previously in use. Volumes includable in Account 117.2 are to be priced at the inventory price that would be applicable to the last volumes that would be withdrawn from storage before encroachment upon base gas. If there are insufficient volumes in gas storage to fully provide for the volumes designated as system gas as of the adoption date, the deficient volumes are to be priced at the current market price with an equal amount being credited to Account 117.4. Future encroachments upon system gas are to be credited to Account 117.4 at the then current market price of gas with a corresponding charge to Account 808.1, Gas Withdrawn From Storage-Debit. Account 806, Exchange Gas, would be credited and Account 174, Miscellaneous Current and Accrued Assets, would be debited simultaneously with the entries to system gas.

If a customer responsible for an owed-to-system gas balance meets his responsibility for repayment by delivering gas in kind, Account 806 would be debited and Account 174 credited at the market price originally used to establish the Account 174 balance. The next volumes injected into system gas would likewise be priced at this same price by crediting 808.2 Gas Delivered to Storage-Credit and debiting Account 117.4. If the owed to system gas balance (Account 117.4) is due to more than one transaction, the above accounting would follow a queue with the earliest transaction first. Such accounting would be followed until the credit balance in Account 117.4 was eliminated.

If the customer responsible for an owed-to-system gas balance meets his

responsibility for repayment through a cash-out provision, similar accounting would be followed. However, a gain or loss may be realized under either settlement method selected. The gain or loss could result from either the book amount for the account receivable (Account 174, Miscellaneous Current and Accrued Assets) being different than the cash-out settlement or the price paid for the replacement volumes being different than the price used to establish the owed to system gas account or both.

If the pipeline's tariff provides that gains and losses on such transactions are to be passed along to customers in future periods, the gain or loss should be included in either Account 182.3, Other Regulatory Assets or Account 254, Other Regulatory Liabilities, with contra entries to Account 407.3, Regulatory Debits, or Account 407.4, Regulatory Credits, as appropriate. If the gain or loss on settlement of the imbalance receivable or payable is not to be passed along to customers, Account 495, Other Gas Revenues, or Account 813, Other Gas Supply Expenses, as appropriate, should be used to record the gain or loss.

B. Other Revisions to Uniform System of Accounts

1. Revenues

At present, a pipeline includes in Account 489, Revenues from transportation of gas of others, ''revenues from transporting gas for other companies through the production, transmission, and distribution lines, or compression stations of the utility.'' Service charges for the storage of gas of others is included in Account 495, Other gas revenues, (See Item No. 5 of Account 495). The Commission proposes to delete Account 489 (Revenues from transportation of gas of others) in its entirety and Item No. 5 of Account 495 (Service charges for storing gas for others) and replace them with four new accounts. Those are: Account 489.1 in which the pipeline would include revenues from transportation of gas through gathering facilities; Account 489.2 in which the pipeline would include revenues from transportation of gas through transmission facilities; Account 489.3 in which the pipeline would include revenues from transportation of gas through distribution facilities; and Account 489.4 in which the pipeline would include revenues from storing gas of others. In addition, the Commission proposes to add a new item to the list of items in Account 495. This is item 8, ''Gains on settlements of imbalance receivables (See Account 806).''

The Commission is proposing the above changes in order to appropriately record revenues from unbundled services.

2. Gas Supply Expenses

The Commission proposes to revise Account 806, Exchange gas, so that it will include debits or credits for the cost of gas in unbalanced transactions and not just unbalanced exchange transactions. Such unbalanced transactions would be those whereby gas is delivered to another party in exchange, load balancing, or no-notice transportation transactions. In addition, the Commission proposes to revise the instructions in paragraph B concerning the recording of revenue, gain, expense, or loss in connection with the performance of exchange services and to revise paragraph C with respect to the maintenance of records so that there would be readily available for each party entering gas exchange, load balancing, or no-notice transportation transactions by point of receipt and delivery, the quantity of gas delivered and received, the amount of consideration if other than gas, and the basis for the consideration. The Commission also proposes to revise Account 813, Other gas supply expenses, so that it will include losses on settlements of imbalance receivables.

3. Major/Nonmajor Accounts

The Commission is proposing to eliminate all Nonmajor accounts in the Uniform System of Accounts and to require all natural gas companies to use the same accounts. The Commission is, thus, also proposing that the Major accounts be changed to eliminate their application to Major natural gas companies only and to revise the instructions, notes and items accordingly. In addition, as discussed below, the Commission is proposing to revise Form No. 2–A to require Nonmajor respondents to file certain Form No. 2 pages as their Form No. 2–A report. The Commission is also proposing to revise part 158 of the regulations to delete the references to major and nonmajor in sections 158.10 and 158.11. In addition, the Commission proposes to further amend section 158.10(a) so that it applies to all examinations of accounts without limitation and requires independent licensed public accountants to be licensed on or before December 30, 1970 as is the case in current section 158.10(b) and to delete present section 158.10(b). Further, the Commission proposes to revise section 158.11 to require the filing of the independent accountant's letter or report of certification with the original and each copy of the Form No. 2 or Form No. 2–A. Last, the Commission proposes to revise section 158.12 by removing the words, ''The Commission will not recognize any certified public accountant or public accountant through December 31, 1975, who is not in fact independent. Beginning January 1, 1976, and each year thereafter, the'' and adding in their place, the word ''The''.

4. Mcf to Dth

At present, the Uniform System of Accounts requires reporting volumes by Mcf. The Commission proposes to amend the Uniform System of Accounts where applicable to measure gas by dekatherms rather than by Mcf to reflect the current measurement of gas by heat content rather than by volume.

IV. Part 250

Part 250 of the Commission's regulations specifies the use of certain forms for accomplishing specific actions. The most significant change proposed in Part 250 is the removal of section 250.16 (Format of compliance plan for transportation services and affiliate transactions) of the transportation discount information that a pipeline transporting gas under subparts B or G of Part 284 and conducting discounted transportation transactions with a marketing or brokering affiliate must maintain for each billing period. As more fully explained under the discussion in this NOPR regarding the changes proposed for Part 284, infra, the discount reporting requirements under section 250.16(d) are somewhat duplicative of the discount reports required under section 284.7(d)(5)(iv). Therefore, the Commission is proposing in this NOPR various modifications to section 284.7(d)(5)(iv) (proposed section 284.7(c)(6)) that will make the discount reporting information under section 250.16(d) unnecessary. Accordingly, the Commission proposes to delete section 250.16(d).

The other proposed changes to Part 250 are essentially intended to simplify, update, or eliminate these forms to reflect current regulatory practice, and to eliminate the forms related to the regulation of producers and gatherers, since the wellhead gas market has been finally deregulated and such forms are required by regulations that have been removed in Parts 154 and 157.

Section 250.2 sets forth the forms required under section 154.64 (proposed section 154.602) for notification to the

Commission of a cancellation of a filed tariff or part thereof, or a termination of the tariff by its own terms, when no new tariff or part thereof is to be filed in its place. The Commission proposes to simplify and clarify section 250.2 by stating that the notices of cancellation to be used when canceling an entire tariff or an entire rate schedule should be filed as a tariff sheet. Currently, the existing forms themselves include the header and footer information normally associated with a tariff sheet, which is unnecessary and confusing.

In addition, the Commission proposes to modify section 250.2 by eliminating the requirement that a specific form be used when providing notice of the cancellation of individual tariff sheets. Rather, section 250.2 will provide that when a single sheet is canceled, it should be reserved for future use. This does not represent a substantive change, but more accurately represents the current practice in canceling a tariff sheet, and will allow the sheet to conform better to the Commission's electronic tariff sheet filing requirements.

Section 250.3 specifies the form required under section 154.64 (proposed section 154.602) for notification to the Commission of a cancellation or termination of a contract, or executed service agreement. The Commission proposes to change the current instruction in the form to indicate the ''name of purchaser or purchasers'' to an instruction to indicate the ''name of customer or customers.'' The use of ''customer'' rather than ''purchaser'' better reflects the shift in today's gas market from sales to transportation service.

The Commission proposes to modify the headings of sections 250.2, 250.3, and 250.4 (governing the form of the certificate of adoption required under existing section 154.65 (proposed section 154.603) to be used when the tariff or contracts of a natural gas company are to be adopted by a successor entity) to refer to the new section numbers of the regulations from which their authority stems, since the Commission proposes in the companion rulemaking to redesignate the referenced sections of Part 154. Thus, the reference in sections 250.2 and 250.3 to section 154.64 is changed to section 154.602, and the reference in section 250.4 to section 154.65 is changed to section 154.603. The Commission also proposes, in section 250.4, to modify the line indicating the date of the form of certificate of adoption by removing the year indicator of ''194 —.''

Many of the forms set forth in Part 250 relate to the filing requirements of natural gas producers and gatherers under Parts 154 and 157 of the Commission's regulations. Specifically, section 250.5 specifies the form of contract summary required to be filed under section 154.24(a) by independent producers applying for a certificate of public convenience and necessity under section 7 of the NGA for the transportation, or sale for resale, of natural gas in interstate commerce. Section 250.7 specifies the form of contract summary required to be filed under section 157.30(b) by independent producers seeking abandonment authorization. Section 250.8 specifies the form for the summary of contract information required by section 154.92(d) to be filed by independent producers seeking authority to provide natural gas service, previously authorized by the Commission, as a successor-in-interest. Section 250.9 specifies the form of notice required under section 154.97(a) to be filed by an independent producer when a rate schedule is proposed to be cancelled, or will terminate by its own terms, and no new schedule is to be filed in its place. Section 250.10 specifies the form required to be filed under section 157.40(b)(4) by independent producers applying for a small producer exemption from certain filing requirements. Section 250.14 specifies the form of the initial billing statement required under section 154.92 to be filed with the filing of a rate schedule by every independent producer, and the form required under section 154.94(f) to be used by an independent producer seeking a change in its rate schedule.

All of the above-referenced sections of Parts 154 and 157 have been removed from the Commission's regulations by Order No. 567, issued July 28, 1994, in Docket No. RM94–18–000.[13] Order No. 567 deleted certain regulations related to natural gas producer rate regulation that were either obsolete or nonessential in light of the deregulation of wellhead gas prices under the Natural Gas Wellhead Decontrol Act of 1989,[14] that finally occurred on January 1, 1993. Since the regulations requiring that independent producers make certain filings, and in specific forms, have been deleted, sections 250.5, 250.7, 250.8, 250.9, 250.10, and 250.14 of part 250, setting forth the actual forms, should also be deleted. Thus, the Commission is proposing to remove these sections.

The Commission also proposes to remove section 250.12, governing the form of escrow agreements. This regulation was originally promulgated by Order No. 400, issued April 28, 1970, in Docket No. R–376. It is rarely used. In the instances in which companies are required to place funds in escrow, the Commission proposes to determine in the proceeding establishing the escrow requirement whether, and in what form, the escrow agreement should be filed with the Commission. However, the Commission will invite comments from parties who believe it would be useful to retain a form of escrow agreement, or suggestions as to how this regulation could be modified to become more useful, rather than eliminated.

Finally, the Commission proposes to change all references in Part 250 from the ''FPC'' and the ''Federal Power Commission'' to the ''FERC,'' and to the ''Federal Energy Regulatory Commission,'' respectively.

V. Part 260

The provisions of Part 260 require that pipelines file certain forms and reports with the Commission, such as the FERC Form Nos. 2, 2–A, 11, and 549–ST. As further discussed below, the Commission is proposing to modify the actual Form Nos. 2, 2–A, and 11, and various sections of Part 260. The proposed changes to Part 260 are simply designed to update these reporting requirements to reflect current regulatory practice, and to conform these prescriptive requirements to the changes to the other parts of the Commission's regulations proposed in this NOPR.

A. Revisions to Form No. 2

The Commission is proposing to revise Form No. 2 for a variety of reasons. First, it is desirable to update Form No. 2 by deleting unneeded schedules, or individual data elements, by clarifying and modernizing schedules and instructions, and by increasing the thresholds for the reporting of certain information. Second, it is vital to revise Form No. 2 to accurately present the restructured nature of the natural gas pipeline industry, which is primarily focused on the transportation of gas rather than the sale of gas. Only then will the Form No. 2 provide more useful and relevant information to the Commission and to pipeline customers for the assessment of pipeline operations. A sample copy of the proposed revised Form No. 2 is attached as Appendix A.

The specific changes the Commission proposes are:

[13] 68 FERC ¶ 61,135 (1994).

[14] Pub. L. No. 101–60; 103 Stat. 157 (1989).

General Information—Pages i and ii

The Commission proposes to require Form No. 2 to be filed by each major interstate natural gas company having combined gas transported or stored for a fee exceeding 50 million dekatherms (Dth) in each of the three previous calendar years. This will replace the present requirement that Form No. 2 must be filed by major companies which are those having combined gas sold for resale and gas transported or stored for a fee exceeding 50 million Mcf at 14.70 psia (60°F) in each of the three previous calendar years. The proposed elimination of ''gas sold for resale'' reflects the current nature of the pipeline industry where pipelines are primarily transporters of gas and make sales for resale on an unbundled basis in the supply area. The proposed replacement of Mcf with Dth reflects the current measurement of gas by heat content rather than by volume.

The Commission also proposes to eliminate the words ''is a Regulatory Support Requirement (18 CFR 260.1)'' in the first sentence of page i as not needed and to revise the last sentence in Instruction 1, to eliminate the reference to the Energy Information Administration's statistical publication (Financial Statistics of Interstate Natural Gas Pipeline Companies), to delete the words, ''as classified in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (18 CFR 201),'' from the first sentence in Instruction II, and to add the words, ''which meets the filing requirements of 18 CFR 260.1'' after the word company in that sentence.

The Commission proposes to revise Instruction III(a) to add the present requirement for filing on an electronic medium. The Commission further proposes to change Instruction III(c) to replace the present Certified Public Accountant (CPA) certification statement with a flexible format that will enable the respondent's CPA firm to prepare its certification statement in accordance with current standards of reporting and still attest as to the conformity of listed FERC Form No. 2 schedules with the Commission's Uniform System of Accounts and the Chief Accountant's published accounting releases.

In addition, the Commission proposes that the letter or report required by Instruction III(c) for the CPA certification be submitted with each copy as well as with the original submission and be submitted with that submission rather than alternatively within 30 days after the filing date for Form No. 2.

General Instructions—Page iii

The Commission proposes to replace Mcf with Dth in General Instruction II on page (ii) and ''14.73 psia and a temperature base of 60°F'' with ''in Btu and Dth,'' in General Instruction XII on page (iii). The Commission also proposes to delete General Instruction V with respect to the means of completing the report as outdated and unnecessary.

Definitions—Page iv

The Commission proposes to define dekatherm as a unit of heating value equivalent to 10 therms or 1,000,000 Btu.[15]

Excepts From the Law—Page iv

The Commission proposes to correct the quoted language of the Natural Gas Act.

List of Schedules (Natural Gas Company)—Pages 2–4

The Commission proposes to revise the list of schedules to conform with the changes proposed to the schedules by this NOPR.

Control Over Respondent—Page 102

The Commission proposes to revise the instructions and provide a format for information required with respect to entities controlling the respondent natural gas company to provide better reporting of the vertical integration of the respondent and its parents.

The Commission is proposing to delete referencing the SEC 10–K Report Form because most respondents are included in consolidated reports and do not prepare separate 10–K reports.

Corporations Controlled By Respondent—Page 103

The Commission proposes to delete instruction 4, which permits referencing the SEC 10–K Report Form filing for the reason stated above. The Commission also proposes to add a new instruction 4 and new column (b) for designation of the type of control held by the respondent.

Definitions—Page 103

The Commission proposes to delete column (d) entitled ''Footnote Ref.''

Officers—Page 104

The Commission proposes to delete this page because it is not needed for Commission regulatory purposes.

[15] Btu refers to British Thermal Unit—the quantity of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

Directors—Page 105

The Commission proposes to delete this page because it is no longer needed for Commission regulatory purposes.

Security Holders and Voting Powers (Continued)—Page 107

The Commission proposes to delete this continuation page because it is not needed with electronic reporting since supplemental pages can be added if more space is needed.

Important Changes During the Year—Page 108

The Commission proposes to delete item 12, which allows the respondent to substitute notes from the annual report to stockholders for required data because most respondents are included in consolidated reports and do not prepare separate annual reports.

Important Changes During the Year—Page 109

The Commission proposes to delete this continuation page because it is not needed with electronic reporting.

Comparative Balance Sheet (Assets and Other Debits)—Page 110

The Commission proposes to modify column (c) by deleting ''Balance at Beginning of Year'' and inserting ''Balance at End of Current Year (in dollars)'' and to modify column (d) by deleting ''Balance at End of Year (in dollars)'' and inserting ''Balance at End of Previous Year (in dollars).'' The Commission also proposes to delete ''Gas Stored Underground Noncurrent (117)'' at Line 12 and replace it with four new accounts—Gas Stored—Base Gas (117.1), System Balancing Gas (117.2), Gas Stored in Reservoirs and Pipelines—Noncurrent (117.3), and Gas Owed to System Gas (117.4). The Commission discussed the proposed new accounts above.

Comparative Balance Sheet (Assets and Other Debits) (Continued)—Page 111

The Commission proposes to modify column (c) by deleting ''Balance at Beginning of Year'' and inserting ''Balance at End of Current Year (in dollars)'' and to modify column (d) by deleting ''Balance at End of Year'' and inserting ''Balance at End of Previous Year (in dollars).''

Comparative Balance Sheet (Liabilities and Other Credits)—Page 112

The Commission proposes to modify column (c) by deleting ''Balance at Beginning of Year'' and inserting ''Balance at End of Current Year (in dollars)'' and to Modify Column (d) by deleting ''Balance at End of Year'' and

inserting ''Balance at End of Previous Year (in dollars).'' The Commission also proposes to add the language ''(Less) Current Portion of Long-Term Debt'' to Line 22 and to add the language ''Current Portion of Long-Term Debt'' as Line No. 33.

Comparative Balance Sheet (Liabilities and Other Credits) (Continued)—Page 113

The Commission proposes to modify column (c) by deleting ''Balance at Beginning of Year'' and inserting ''Balance at End of Current Year (in dollars)'' and to modify column (d) by deleting ''Balance at End of Year'' and inserting ''Balance at End of Previous Year (in dollars).''

Statement of Income for the Year—Page 114

The Commission proposes to move instructions 5 and 6 from this schedule to Notes to Financial Statements on page 122.

Statement of Income for the Year (Continued)—Page 115

The Commission proposes to delete instruction 7, which permits the attaching at page 122 of any notes appearing in the report to stockholders that are applicable to this Statement of Income, and to move instruction 8 from this schedule to Notes to Financial Statement on page 122.

Statement of Income for the Year (Continued)—Page 116

The Commission proposes to delete this continuation page because it is not needed with electronic reporting.

Statement of Retained Earnings for the Year—page 118

The Commission proposes to modify column (c) by deleting ''Amount'' and inserting ''Current Year Amount (in dollars)'' and to add column (d) ''Previous Year Amount (in dollars).'' The Commission also proposes to delete instruction 8, which requires the attaching at page 122 of applicable notes in the annual report to stockholders.

Statement of Retained Earnings for the Year (Continued)—Page 119

The Commission proposes to modify column (b) by deleting ''Amount'' and inserting ''Current Year Amount'' and adding column (c) ''Previous Year Amount.''

Statement of Cash Flows—Pages 120 and 121

The Commission proposes to delete the first sentence of instruction 1, which requires the attaching at page 122 of applicable notes in the annual report to stockholders.

The Commission proposes to modify column (b) by deleting ''Amounts'' and inserting ''Current Year Amount'' and to add Column (c) ''Previous Year Amount.''

Notes to Financial Statement—Page 122

The Commission proposes to change instruction one to require at least the same level of detail for disclosures that would be given in shareholder annual reports and to add new instructions to provide significant details on: the respondent's pension and other benefit plans; income tax accounting; differences in the way in which transactions are presented in the shareholder annual reports versus the Form No. 2; and disclosure of financial changes either to the respondent or the respondent's consolidated group that will directly affect the respondent's gas pipeline operations. The Commission also proposes to delete instructions 3 (''For Account 116, Utility Plant Adjustments'') and 6 (permitting the attaching of notes to financial statements in the annual report to stockholders). In addition, as stated above, the Commission proposes to move three instructions from pages 114 and 115 to page 122.

Notes to Financial Statement (Continued)—Page 123

The Commission proposes to delete this continuation page between it is not needed with electronic reporting.

Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion (Continued)—Page 201

The Commission proposes to delete columns (f) and (g) both entitled ''other (specify)'' as unneeded because electronic reporting permits additional columns to be added as necessary.

Gas Property and Capacity Leased From Others—Page 212

The Commission proposes a new schedule to provide detailed information about gas property and capacity leased from others, including leases involving property constructed by the respondent, sold, and then leased back. The Commission proposes to require only the reporting of property leases in which the average annual lease payment under the initial term of the lease exceeds $500,000.

Gas Property and Capacity Leased to Others—Page 213

The Commission proposes to revise the schedule on page 213 entitled ''Gas Plant Leased to Others (Account 104)'' by changing the schedule and instructions to obtain details about gas property and capacity leased to others. The changes are necessary to provide information that would allow the Commission to determine whether ratepayers are paying for facilities not used in the respondent's utility operations. The Commission proposes to require only the reporting of property leases in which the average lease income over the initial term of the lease exceeds $500,000.

Gas Plant for Future Use (Account 105)—Page 214

The Commission proposes to raise the reporting threshold from $250,000 to $500,000 and to delete the language in Line No. 1 which refers to pages 500–01, which are proposed to be deleted.

Production Properties Held for Future Use (Account No. 105.1)—Page 215

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Gas Stored (Accounts 117.1, 117.2, 117.3, 117.4, 164.1, 164.2, and 164.3)—Page 220

The Commission proposes to delete Account 117 and replace it with four new accounts as discussed above. The Commission also proposes to change Mcf to Dth in instruction 1 and lines 6 and 7, to redesignate the column letters, to eliminate instructions 2 through 5 as no longer necessary, and to add a new instruction on encroachments on base gas, system gas, and gas properly recordable.

Non-utility Property (Account No. 121) and Accumulated Provision for Depreciation and Amortization of Nonutility Property (Account 122)—Page 221

The Commission proposes to delete these schedules because they are not needed for Commission regulatory purposes.

Gas Prepayments Under Purchase Agreements—Pages 226 and 227

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Advances for Gas Prior to Initial Deliveries or Commission Certification (Accounts 124, 166, and 167)—Page 229

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Prepayments (Account 165)—Page 230

The Commission proposes to eliminate the instruction requiring the

reporting of all payments for undelivered gas and the completion of pages 226 to 227, along with Line 5, Gas Prepayments (pages 226–227). Pages 226 and 227 are also proposed to be eliminated.

Preliminary Survey and Investigation Charges (Account 183)—Page 231

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Other Regulatory Assets (Account 182.3)—Page 232

The Commission proposes to raise the reporting threshold for minor items from $50,000 to $100,000 and to add new instruction 4—''Report separately any 'deferred regulatory Commission expenses' that are also reported on pages 350–351, Regulatory Commission Expenses.''

Miscellaneous Deferred Debits (Account 186)—Page 233

The Commission proposes to raise the reporting threshold for minor items from $100,000 to $250,000 and to delete Line No. 48 ''Deferred Regulatory Commission Expenses (*see* pages 350–351).

Capital Stock (Accounts 201 and 204)—Page 250

The Commission proposes to delete part of instruction 1, which permits referencing the SEC 10–K Report Form filing. The Commission is proposing this deletion because most respondents are included in consolidated reports and do not prepare separate 10–K reports.

Long-Term Debt (Accounts 221, 222, 223, and 224)—Page 256

The Commission proposes to delete part of instruction 1, which permits referencing the SEC 10–K report Form filing for the reason stated above.

Investment Tax Credits Generated and Utilized—Pages 264 and 265

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Accumulated Deferred Investment Tax Credits (Account 253)—Pages 266 and 267

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Miscellaneous Current and Accrued Liabilities (Account 242)—Page 268

The Commission proposes to raise the reporting threshold for minor items from $100,000 to $250,000.

Other Deferred Credits (Account 253)—Page 269

The Commission proposes to raise the reporting threshold for minor items from $100,000 to $250,000 and to delete instruction 4 as not needed for Commission regulatory purposes in that it refers to undelivered gas obligations to customers under take-or-pay clauses in sales agreements.

Undelivered Gas Obligations Under Sales Agreements—Pages 270 and 271

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Accumulated Deferred Income Taxes—Accelerated Amortization Property (Account 281)—Pages 272 and 273

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Other Regulatory Liabilities (Account 254)—Page 278

The Commission proposes to raise the reporting threshold for minor items from $50,000 to $100,000 and to correct a typographical error.

Gas Operating Revenues (Account 400)—Pages 300, 301, and 301A

The Commission proposes substantial and significant changes to this schedule. The proposed changes are: (1) the elimination of instruction 1's reference to manufactured gas revenues; (2) the deletion of instruction 2 defining natural gas; (3) the deletion of instruction 3 and present columns (f) and (g) concerning average number of natural gas customers per month; (4) the deletion of instruction 4 with respect to Mcf and therms; (5) the revision of instruction 5 to eliminate the reference to columns (c), (e), and (g); (6) the deletion of instruction 6 concerning commercial and industrial sales; (7) the revision of instruction 7 to read, ''Include information on page 106, Important Changes During Year, for important new service added and important rate increases and decreases;'' (8) the addition of new instruction 2 to provide that other revenues are recovery of Order No. 636 transition costs and take-or-pay costs; (9) the addition of a new instruction 5 with respect to reporting the revenue of bundled transportation and storage service as transportation service revenue; (10) the addition of new instruction 6 with repect to the reporting in columns (j) and (k) of revenues received for operational penalties (e.g., operational flow order penalties, scheduling penalties, penaties for failure to cycle storage gas, (11) the revising of operating revenues in columns (b) and (c) to revenues excluding GRI, ACA, other revenues, and penalties, (12) the deletion of lines 2–12 and 28–32, which provide for the reporting of sales revenues; (13) the addition of lines to show separately sales revenues,[16] and revenues from gathering, transmission, distribution, and storage services; and (14) added columns showing GRI revenues, ACA revenues, other revenues, penalty revenues, and total operating revenues and dekatherms of natural gas, each for the current reporting year and the previous year.

The Commission's main reason for proposing these changes is to recognize that pipelines now receive most of their revenues from transportation and not sales. Hence, the breakout of information by types of sales is not needed. The Commission proposes to break out Account 489 into four new accounts (Accounts 489.1–489.4) as discussed above. The segregation of operating revenues from other types of revenues will facilitate comparisons to operating costs.

Revenues From Transportation of Gas of Others Through Gathering Facilities (Account 489.1)—Pages 302, 303, and 304

The Commission proposes to replace the schedule ''Distribution Type Sales by States'' with several new schedules. The current schedule, which reflects residential, commercial, and industrial revenues and volumes by state is no longer needed for Commission regulatory purposes because with unbundling those sales are now unbundled and occur in the production area rather than in the market area.

In the proposed new Revenues from Transportation of Gas of Others Through Gathering Facilities Schedule, the pipeline would have to report its revenues by state of delivery and by rate. The pipeline would have to report for both the current and previous year its revenues,[17] GRI revenues, ACA revenues, other revenues,[18] and total operating revenues, along with its Dth of gas delivered. The Commission believes that this proposed schedule will provide the information needed with respect to gathering to obtain a good description of the pipeline's activities in the unbundled environment.

[16] The proposed new sales line includes Accounts 480–84 which are now reported on lines 2–12.

[17] Revenues excludes GRI, ACA, and other revenues.

[18] Other revenues are Order No. 636 transition costs and take-or-pay costs.

Revenues From Transportation of Gas of Others Through Transmission Facilities (Account 489.2)—Pages 302A, 303A, and 304A

In the proposed new Revenues from Transportation of Gas of Others Through Transmission Facilities Schedule, the pipeline would have to report its revenues by state of delivery and by rate schedule. The pipeline would have to report for both the current and previous year its revenues,[19] GRI revenues, ACA revenues, other revenues,[20] and total operating revenues, along with its Dth of gas delivered. The Commission believes that this reporting reflects the current unbundled environment's emphasis on transportation for others.

Revenues From Storage of Gas of Others—Pages 302B, 303B and 304B

In the proposed new Revenues from Storage of Gas of Others schedule, the pipeline would have to report its revenues by rate schedule. The pipeline would have to report for both the current and previous year its revenues,[21] GRI revenues, ACA revenues, other revenues,[22] and total operating revenues, along with the Dth withdrawn from storage.

The Commission believes that this proposed schedule will provide the information needed with respect to unbundled storage to obtain a good description of the pipeline's activities in the unbundled environment.

Residential and Commercial Space Heating Customers and Interruptible, Off-Peak, and Firm Sales to Distribution System Industrial Customers—Page 305

The Commission proposes to delete this page because it is not needed for Commission regulatory purposes.

Sales of Natural Gas—Pages 306 Through 309

The Commission proposes to change the title of this schedule from Field and Main Line Industrial Sales of Natural Gas to ''Sales of Natural Gas'', to revise instruction 1, and the information required, and to delete continuation sheets on pages 308 and 309.

The proposed new schedule will include all sales information on the schedule. The pages when revised will require respondents to report all sales by customer in Dth rather than Mcf (column (c)), by point of delivery (column (b)), and with total sales revenue from the customer (column (d)). The Commission also proposes to eliminate current instructions 2, 3, 4, 6, 7, and 8 and current columns (b), and (d)–(m) because that detailed information is no longer needed for Commission regulatory purposes. Pages 308 and 309 are proposed to be deleted because they are continuation pages and are no longer needed with electronic reporting.

Sales for Resale—Natural Gas (Account 483)—Pages 310 and 311

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Transportation Dth and Revenues—Pages 312 and 313

The Commission proposes to replace the schedule ''Revenue From Transportation of Gas of Others—Natural Gas (Account 489)'' (pages 312 and 313) with ''Transportation Dth and Revenues'', ''Storage Dth and Revenues'', and ''Gathering Dth and Revenues.''

In the proposed new Transportation Dth and Revenues schedule, the respondent would have to list annual Dth of Gas delivered by state of delivery by rate schedule by customer.[23] The respondent would have to report its deliveries separately to interstate pipelines and to others. The respondent would no longer have to set forth the distance the gas was transported in miles. In addition, the respondent would have to report operating revenues,[24] GRI revenues, ACA revenues, other revenues,[25] and total revenues by state of delivery by rate schedule by customer.

Storage Dth and Revenues—Pages 312(a) and 313(a)

In the proposed new Storage Dth and Revenues schedule, the respondent would have to list annual Dth withdrawn from storage by rate schedule by customer. In addition, the respondent would have to report operating revenues,[26] GRI revenues, ACA revenues, other revenues,[27] and total revenues by rate schedule and by customer.

Gathering Dth and Revenues—Pages 312(b) and 313(b)

In the proposed new Gathering Dth and Revenues schedule, the respondent would have to list annual Dth of gas delivered by state of delivery by rate by customer. In addition, the respondent would have to report operating revenues,[28] GRI revenues, ACA revenues, other revenues,[29] and total revenues by rate of delivery by rate by customer.

Revenues From Natural Gas Processed by Others (Account 491)—Page 315

The Commission proposes to replace Mcf with Dth in column (b).

Other Gas Revenues (Account 495)—Page 316

The Commission proposes new schedule ''Other Gas Revenues (Account 495)'' for the reporting of a variety of other gas revenues, such as revenues from dehydration and gains on settlements of imbalance receivables.

Exploration and Development Expenses (Accounts 795, 796, 798) (Except Abandoned Leases, Account 797)—Page 326

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Abandoned Leases (Account 797)—Page 326

The Commission proposes to delete this schedule because it is not needed for Commission regulating purposes.

Gas Receipts—Page 327

The Commission proposes to revise instruction 5 to require the providing of the total quantity and cost data for gas supplied by shippers on lines 12, 13, and 14. The Commission proposes to add line 11 as a heading, ''Gas Received From Shippers Included in Accounts 800–805,'' line 12, ''Gas Received From Shippers as Fuel'', line 13, ''Gas Received From Shippers As Lost and Unaccounted'', and line 14, ''Total (Enter Total of Lines 12 and 13).'' The Commission also proposes that gas purchases in column (b) and average cost in column (d) be reported in Dth.

[19] Revenues excludes GRI, ACA, and other revenues.

[20] Other revenues are Order No. 636 transition costs and take-or-pay costs.

[21] Revenues excludes GRI, ACA, and other revenues.

[22] Other revenues are Order No. 636 transition costs and take-or-pay costs.

[23] The respondent's Dth of gas reported would not be adjusted for discounting.

[24] Operating revenues excludes GRI, ACA, and other revenues and includes reservation and usage charges.

[25] Other revenues are Order No. 636 transition costs, take-or-pay costs.

[26] Operating revenues excludes GRI, ACA, and other revenues and includes reservation, deliverability, injection, and withdrawal charges.

[27] Other revenues are Order No. 636 transition costs, take-or-pay costs.

[28] Operating revenues excludes GRI, ACA, and other revenues and includes reservation and usage charges.

[29] Other revenues are Order No. 636 transition costs, take-or-pay costs.

Exchange Gas Transactions (Account 806, Exchange Gas)—Pages 328, 329 and 330

The Commission proposes to revise instruction 1 to require the reporting of gas quantities rather than gas volumes and to require the reporting of load balancing and no-notice transactions separately from other exchange transactions. The Commission also proposes to revise instruction 4 by adding the words, ''For exchanges only,'' at the beginning of the instruction and to delete instruction 6 with respect to the pressure base of gas volumes. The Commission also proposes to replace Mcf with Dth in instruction 1 and in columns (c), (f) and (h).

Gas Used In Utility Operations—Page 331

The Commission proposes to strike ''Credit (Accounts 810, 811, 812)'' from the title, to replace Mcf with Dth, and to delete part of Instruction 1 and all of instructions 2, 3 and 5 concerning the definition of natural gas and Mcf reporting.

Transmission and Compression of Gas By Others (Account 858)—Pages 332 and 333

The Commission proposes to replace Mcf with Dth and to delete current columns (b)–(f) and to require the reporting of Dth of gas delivered in new column (b). This would eliminate the reporting of the distance gas is transported and revenue information. The continuation page 333 is deleted.

Other Gas Supply Expenses (Account 813)—Page 334

The Commission proposes to require the reporting of losses on settlements of imbalance receivables.

The Commission also proposes to require that items of $25,000 or more be listed separately.

Miscellaneous General Expenses (Account 930.2)(Gas)—Page 335

The Commission proposes to divide Line No. 2 (Experimental and general research expenses) into (a) Gas Research Institute (GRI) expenses and (b) other expenses. In addition, the Commission proposes to raise the thresholds from $5,000 to $25,000.

Depreciation, Depletion, and Amortization of Gas Plant (Accounts 403, 404.1, 404.2, 404.3, 405) (Except Amortization of Acquisition Adjustment)—Page 336

The Commission proposes to delete instruction 2 to report information called for in Section B every fifth year after 1974 and to insert the words ''and amortizable'' in the first line of new instruction 2 after the word ''depreciable.''

Depreciation, Depletion, and Amortization of Gas Plant (continued)—Page 338

The Commission proposes to revise the headings to column (b) to read ''Plant Base (thousands)'' and column (c) to read ''Applied Depreciation or Amortization Rates (Percent).''

Income From Utility Plant Leased to Others (Account 412 and 413)—Page 339

The Commission proposes to delete this schedule because the information will be reported on page 213.

Particulars Concerning Certain Income Reductions and Interest Charges Accounts—Page 340

The Commission proposes the raise the threshold for the grouping of items from $10,000 to $25,000.

Regulatory Commission Expenses—Pages 350 and 351

The Commission proposes to change the account number reference in the headings to columns (e), (i) and (l) from 186 to 182.3, and to replace instruction 4 on page 351, which references Account No. 186, with ''4. Identify separately all annual charge adjustments (ACA).'' In addition, the Commission proposes to raise the threshold for minor items from $25,000 to $50,000.

Research, Development, and Demonstration Activities—Pages 352 and 353

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Charges for Outside Professional and Consultative Services—Pages 357

The Commission proposes to raise the threshold from $25,000 to $50,000.

Natural Gas Reserves and Land Acreage—Pages 500 and 501

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Changes in Estimated Gas Reserves—Page 503

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Changes in Estimated Hydrocarbon Reserves and Costs, and Net Realizable Value—Page 504 and 505

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Natural Gas Production and Gathering Statistics—Page 506

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Products Extraction Operations—Natural Gas—Page 507

The Commission proposes to replace Mcf with Dth and to delete Line 15, ''For Line 9, Do Fuel Costs Include Gas Used From Company's Own Supply?''

Compressor Stations—Pages 508 and 509

The Commission proposes to replace the reporting of number of employees in column (b) with a report of the number of units and the horsepower of each unit and to redesignate the remaining columns. In addition, gas for compressor fuel would be reported by Dth rather than by Mcf.

Gas and Oil Wells—Page 510

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Field and Storage Lines—Page 511

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Gas Storage Projects—Page 512

The Commission proposes to delete this schedule because it is not needed in that the same information is reported on Form No. 8.

Gas Storage Projects—Page 513

The Commission proposes to replace Mcf with Dth and to delete Lines 42–44 and 58 concerning top gas and cushion gas because this information is reported on Form No. 8. In addition, the Commission proposes to renumber Lines 45–57 as 1–13 and to add two new instructions.

Liquefied Petroleum Gas Operations—Pages 516 and 517

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Transmission System Peak Deliveries—Page 518

The Commission proposes to replace Mcf with Dth and to require the reporting of total deliveries, deliveries of gas to interstate pipelines, and

deliveries to others. The Commission also proposes to delete the information with respect to the second and third highest peak day deliveries and the section, Highest Month's System Deliveries. Single peak day and consecutive three-day peak deliveries would be reported by various services and activities. The differentiation between jurisdictional and non-jurisdictional deliveries would be eliminated as no longer pertinent with unbundling.

Auxiliary Peaking Facilities—Page 519

The Commission proposes to replace Mcf with Dth.

Gas Account-Natural Gas—Pages 520 and 521

The Commission proposes to revise instruction 1 to exclude the reference to consideration of pressure bases in measuring Mcf of natural gas and replace Mcf with Dth in instruction 3 and column (c) on pages 520 and 521. The Commission also proposes to make line 17, ''Exchange Gas Received,'' into a heading, to add lines 18, ''Imbalances,'' and 19, ''Other'', to make line 48, ''Exchange Gas Delivered,'' a heading, and to add lines 5, ''Imbalances,'' and 52, ''Other.'' The proposed changes reflect the proposed changes on pages 328 and 329.

System Maps—Page 522

The Commission proposes to clarify the information to be shown on the maps and to eliminate the requirement that transmission lines be colored in red, if they are not otherwise clearly indicated.

Index—Pages 1–4

The Commission proposes to revise the index to reflect the above proposed changes.

B. Revisions to Form No. 2–A

At present, a Nonmajor natural gas company [30] must submit Form No. 2–A. The respondent is required to submit designated pages reflecting data designed for Nonmajor natural gas companies in the Uniform Systems of Account. However, if the respondent maintains the ''Major'' designated accounts, it may substitute certain pages from Form No. 2. The Commission proposes to require Nonmajor respondents to submit only Form No. 2 type pages as their Form No. 2–A report. In addition, the Commission proposes to replace Mcf with Dth and to revise the instructions, including the CPA certification as discussed above. A sample copy of the proposed revised Form No. 2–A is attached as Appendix B.

The proposed Form No. 2–A will consist of instructions, identification, attestation, and list of schedules (pages i and ii and 1 and 2), the following pages from Form No. 2 as proposed to revised by this NOPR: 106, 110–115, 117–122, 204–209, 212, 213, 219, 300, 301, 320–325, 327, 520, 521, and the following pages from current Form No. 2–A as renumbered: 26 as 211, 16 as 232, 19 as 250, and 20 as 278.

C. Revisions to Form No. 11

The Commission proposes to modify Form No. 11, attached as Appendix C. [31] The Commission has identified certain portions of Form No. 11 which are no longer necessary. Those portions of the Form No. 11 are removed or consolidated to reduce the reporting burden on the pipelines. In addition, much of Form No. 11 was geared towards the collection of sales related data. In view of the restructuring of the interstate pipeline industry under Order No. 636, the pipeline's sales business is declining while the pipeline's transportation and storage business is increasing in relative importance. Therefore, the Commission proposes to modify the Form No. 11 to reflect the reduced emphasis on sales and the greater emphasis on transportation and storage. Finally, the Commission wishes to ensure that data collected in the Form No. 11 and the Form No. 2, as revised, is more consistent and interconnected. This interconnection will improve the usefulness of the data collected by the Commission. As a result, the proposed rule modifies Form No. 11 to collect data in the same general format as proposed in Form No. 2. This is particularly apparent in Part II of the revised Form No. 11. The specific changes the Commission proposes are as follows:

General Information and General Instructions

Currently, the Form No. 11 is filed monthly. The report is submitted within 40 days of the end of the month being reported. The Commission proposes to reduce the monthly reporting requirement to a semi-annual requirement. The proposed rule requires the first report covering the last six months of the calendar year to be submitted with the Form No. 2 on April 30 of each year. The second report covering the first six months of the calendar year will be filed on October 31. Parts II, III, and V require the data to be filed for each individual month of the six-month period. The proposed rule requires that the balances in the required accounts in Part IV be filed as of the end of each six-month reporting period with the exception of item 42. On line 42, the pipeline will report in the aggregate all projects valued in excess of $5,000,000 started within the six-month reporting period.

The proposed rule modifies instruction I to require consistency between the data filed on Form No. 11 and the data filed with Form No. 2. It is the intent of the Commission to be able to compare the aggregation of twelve months of information submitted on the Form No. 11 with data filed on the Form No. 2. Comparisons with the Form No. 2 data may require aggregation of the Form No. 2 data as well.

In a departure from current requirements, the Commission proposes that quantities reported on Form No. 11 be in thousands of dekatherms, rather than in thousands of Mcf. The change to dekatherms is consistent with the changes proposed to the Form No. 2. Costs and revenues will continue to be reported in thousands of dollars.

Since there will be a longer lag time between the end of the reporting period and the date the report is due, the Commission anticipates actual data will be readily available. Consequently, former instruction V relating to estimated data is removed. It is replaced with the instruction regarding the filing of monthly data described above.

Specific Instructions and Definitions

The instruction for the item ''All'' is modified and the instructions for items 7 through 12 and 15 through 17 are added to conform to the instructions contained in Form No. 2 for reporting transportation and storage services. Instructions for items 15 through 17 are added to clarify the reporting of storage revenues. Since storage injections and withdrawals are reported separately on Part V, revenues related to quantities withdrawn or injected should not be reported here. Existing instructions for items 22, 24, and 27 are retained and renumbered 30, 32, and 35. The instructions for items 38 and 40 are deleted, since the Commission no longer proposes to collect details on manufactured gas. An instruction is

[30] Nonmajor means having total annual gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psia (60° F) in the previous calendar year and not classified as ''Major.'' The Commission proposes to revise the definition of Nonmajor as follows: ''Nonmajor means having annual gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years and not classified as 'Major'.'' This comports with proposed section 260.2 of the Commission's regulations.

[31] Appendix C is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

added to explain the contents of item 43, Natural Gas Manufactured, Purchased or Produced.

All existing definitions relate to purchases or sales of natural gas. The Commission proposes to simplify the reporting of sales and purchase information; therefore, the definitions are removed as no longer necessary.

Identification (Part I) and Revenue Data (Part II)

Except for the revision to the period reported, Part I is unchanged. The proposed rule replaces Part II, which relates primarily to sales. The Commission proposes to modify Part II to recognize the de-emphasis of sales and the increased emphasis on transportation and storage subsequent to the implementation of Order No. 636. Specifically, Part II is modified to collect information for sales, transportation, gathering, storage and other revenue categories in the same way it is proposed to be collected in the Form No. 2, but in aggregate, rather than in detail.

Income Data (Part III) and Other Selected Data (Part IV)

Part III is unchanged except for the numbering of the line items and the addition of two items, 37 and 38, which currently appear on Part IV as items 33 and 35. These items were moved to Part III since they are related more closely to revenues than to plant information.

The proposed rule modifies the monthly reporting requirement for Part IV. Instead, the pipeline would report the balances at the end of the reporting period for each of the indicated accounts. The Commission proposes to replace the item ''gross additions to construction work in progress (107) for this month being reported'' with an aggregate value for major plant additions in excess of $5,000,000 started during the reporting period. As noted items 33 and 35 will be moved to Part III. Items 34 and 36 are no longer necessary for regulatory purposes and are removed.

Operation and Maintenance Expense (Part V)

The Commission proposes to consolidate on one line the items previously reported on lines 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 68, 69, and 70. These items are related to the costs of manufactured petroleum gas, other manufactured gas, liquefied natural gas, gasified coal and synthetic gas, production and gathering, products extraction, exploration and development, gas purchased from producers, intracompany transfers, imports, gas purchased from other pipelines, and gas produced by the pipeline along with other gas purchases. The consolidation of these items recognizes the reduced role that sales of natural gas now play for the interstate pipelines. In addition, exchange gas-in and exchange gas-out are consolidated into one line, net exchange gas.

D. Other Revisions

Section 260.1 requires that major natural gas companies, as defined in part 201 of the Commission's regulations, file with the Commission an annual report, designated as FERC Form No. 2. The Commission proposes to modify section 260.1 to remove references to reporting requirements pre-dating December 30, 1988, and to correct a typographical error that referenced ''§ 385.201'' instead of ''§ 385.2011.''

Section 260.2 requires that nonmajor natural gas companies file an annual report, designated as FERC Form No. 2–A. The Commission proposes to modify section 260.1 to remove references to reporting requirements pre-dating December 30, 1988, to correct a typographical error that referenced ''§ 385.201'' instead of ''§ 385.2011,'' and to conform to the format set forth in section 260.1 governing the FERC Form No. 2.

Section 260.3 requires that natural gas companies file with the Commission a monthly statement—the FERC Form No. 11—containing information concerning selected revenues, income statements, and other items, and details of operation and maintenance expenses. The Commission proposes to modify section 260.3 to remove references to dates that have long since passed, and references to reporting requirements pre-dating November 30, 1988.

Section 260.4 requires that importers and exporters of natural gas file with the Commission an annual report, Form No. 14. Section 260.11 requires natural gas companies operating an underground natural gas storage field to file with the Commission a monthly underground gas storage report, Form No. 8. The Commission is not proposing any substantive changes to these sections in this NOPR. However, the Commission is seeking comments on whether the collection of the information contained in these forms by other governmental or private sources is currently adequate, making the collection of the same information in these Commission forms unnecessary. In addition, the Commission is proposing to modify section 260.4 to remove references to reporting requirements pre-dating December 30, 1988.

Section 260.9 requires every natural gas pipeline company to report to the Commission serious interruptions of service to any wholesale customer involving facilities operated under certificate authorization from the Commission. The Commission proposes to modify sections 260.9(b) and (e) to include facsimile transmission as an optional method for reporting interruptions of service. This recognizes advances in technology and current practice. Further, the Commission proposes to modify sections 260.9(b) and (c) to require that companies send telegrams, facsimile transmissions, or supplemental information to the Director, Division of Environmental and Engineering Review, the successor to the Director, Division of Engineering, Market and Environmental Analysis. A correction to the Commission's zipcode in 260.9(b) is also proposed.

Section 260.13 sets forth the requirements for the filing of the FERC Form No. 549–ST, Form of self-implementing transportation reports. The initial and subsequent reports currently filed by interstate and intrastate pipelines, Hinshaw companies, and local distribution companies undertaking transportation transactions under subparts B, C, or G of part 284 are required to be made on the FERC Form No. 549–ST. Because the Commission is proposing in this NOPR to eliminate the requirements of filing initial and subsequent reports for companies subject to the requirements of subparts B, C, and G of part 284, as further described below, the FERC Form No. 549–ST is no longer necessary. Accordingly, the Commission proposes to remove section 260.13.

Section 260.15 requires that natural gas companies making direct sales in interstate commerce of natural gas to customers consuming such gas file a Report of Alternate Fuel Demand Due to Natural Gas Curtailment, FPC Form No. 69. As noted in the footnote to section 260.15, Form No. 69 was discontinued and replaced with Form No. EIA–50 by order issued June 23, 1978.[32] The EIA Form No. 50 was eliminated in 1984 after the Office of Management and Budget (OMB) rejected the Energy Information Administration's (EIA) request for an extension of OMB approval of the data collection. Thus, it now appears that the footnote to 18 CFR 260.15 references a non-existent EIA form as a replacement for the Form No. 69. Since neither the Commission nor EIA has collected this data since 1984, and there has been no significant

[32] FERC Statutes and Regulations, Regulations Preambles, 1977–1981, ¶30,013 (1978).

curtailment of natural gas in the nation for more than ten years, the Commission proposes to remove section 260.15.

In addition, the Commission proposes to change all references in Part 260 from the ''FPC'' and the ''Federal Power Commission'' to the ''FERC,'' and ''Federal Energy Regulatory Commission,'' respectively.

VI. Part 284

A. Introduction

Under Part 284, the Commission is proposing revisions to the reporting requirements, and/or certain non-reporting requirements, contained in Subparts A, B, C, E, G, J and L. These subparts set forth general provisions and conditions (Subpart A), and govern the transportation of natural gas by interstate pipelines under section 311(a)(1) of the NGPA (Subpart B), the transportation of natural gas by intrastate pipelines under section 311(a)(2) of the NGPA (Subpart C), the assignment by any intrastate pipeline to any interstate pipeline or local distribution company of contractual rights to receive surplus natural gas under section 312 of the NGPA (Subpart E), the transportation of natural gas by interstate pipelines on behalf of others, and services by local distribution companies, under blanket certificates authorized by section 7(c) of the NGA (Subpart G), (General Provisions and Conditions), as well as the sale of natural gas under section 7(c) blanket certificates by interstate pipelines offering transportation service under subparts B or G (Subpart J), and by non-interstate pipeline sellers (Subpart L).

As further discussed below, many of the simplifying changes being proposed to the reporting requirements of the interstate pipelines are attributable to the fact that the Commission's close regulation of the interstate pipelines has required, in many instances, the reporting of the same information under several different reporting provisions in the regulations.

There are six major categories of proposed changes to the Part 284 provisions: (1) The removal of the initial full report, subsequent reports, annual report, and notification of termination, currently required under subparts B, G, and/or J; (2) the removal of the initial full report, subsequent reports, and notification of termination required under subpart C; (3) the modification of the Commission's discount reporting requirement; (4) the addition of a new reporting requirement under subparts B and G, that the pipelines maintain an electronic index of customers; (5) the elimination as obsolete of certain non-reporting provisions in subparts A and G, setting forth interim measures related to the implementation of Order Nos. 436 and 636; and (6) other changes that either are grammatical in nature, remove references to deadlines that have long since passed or other outdated requirements, or reflect the use of current, more accurate, terminology. These revisions are discussed more fully below.

B. Removal of Initial, Subsequent, Annual, and Termination Reports Under Subparts B, G and J

In light of all of the broad changes that are being proposed in this NOPR, and the changes to the industry brought about by Order No. 636, it is no longer necessary to require interstate pipelines to provide the detailed and duplicative reporting set forth under the initial, subsequent, termination, and annual reports in sections 284.106 and 284.223. Most of the information included in these reports will be reported in other ways. For example, the Commission proposes to collect some contract information, including the date the contract terminates, through an Index of Customers, as discussed below. Under changes being proposed in the contemporaneous NOPR being issued in Docket No. RM95–3–000 to section 154.1, contracts will be filed if the contract differs in a significant manner from the form of service agreement in the pipeline's tariff. If it does not, the form of service agreement will provide information relating to the basic terms and conditions of the contract.

Accordingly, the Commission proposes to remove paragraphs (a), (b), (c), and (d) of section 284.106, and paragraph (d) of section 284.223, to delete the requirements that pipelines file the initial full report, subsequent reports, notification of termination, and annual report. However, the Commission proposes to retain the requirement in section 284.106(a)(4) that an interstate pipeline file a statement with the Commission that the pipeline has provided notification of bypass of a local distribution company (LDC) to the LDC and the LDC's regulatory agency.[33] In addition, the Commission proposes to remove sections 284.106(e) and 284.223(b) relating to the fees accompanying the initial full report, and sections 284.106(f) and 284.223(c), prescribing the use of FERC Form No. 549–ST for the initial and subsequent reports, since they would no longer apply due to the proposed discontinuance of the associated reporting requirements. Because sections 284.106 and 284.223 will require identical reporting requirements, the Commission proposes to remove all of the filing requirements from section 284.223(d), and to substitute a statement that all pipelines transporting gas under section 284.223 of Subpart G must comply with the reporting requirements specified under section 284.106 of Subpart B. There is no reason to require an identical report under section 284.223.

The Commission is also proposing to remove the annual report required under section 284.288 of Subpart J, applicable to pipelines that engage in sales under a blanket certificate and also offer interstate transportation under subparts B and G. Most of the sales information required by this annual report is being reported in the FERC Form No. 2. Removal of this section will eliminate duplicative reporting requirements.

C. Removal of Initial, Subsequent, and Termination Reports Under Subpart C

The Commission proposes to delete certain of the reporting requirements for intrastate pipelines transporting gas under NGPA section 311 under Subpart C. The Commission proposes to eliminate the initial full report, subsequent reports, and notification of termination currently required under section 284.126. The Commission no longer finds these reports useful for regulatory review. However, the Commission invites parties to comment on our proposed removal of these reports.

The Commission will continue to require intrastate pipelines to file the annual report and semi-annual storage reports required under section 284.126, as well as the notification of bypass requirement currently included in the initial report. However, the Commission is revising the annual report to reflect the fact that the transportation transactions are no longer docketed, and to require the specification of whether the transportation service is firm or interruptible. Until recently, intrastate pipelines only provided interruptible transportation service. Since they are now performing firm transportation service, firm and interruptible transactions must be separately identified for accurate reporting.

Additionally, as a conforming change to reflect the elimination of the initial and subsequent reporting requirements under section 284.126, the Commission proposes to remove section 284.227(d), governing the conversion reports filed by intrastate pipelines transporting

[33] The Commission also proposes to retain the semi-annual storage reports currently required under sections 284.106(g) and 284.223(d)(5).

certain gas produced offshore. That section requires the initial and subsequent reports filed under section 284.126 to state that service is now being provided under section 284.227.

Further, the Commission proposes to revise the filing requirements under section 284.123(e) to require that the statement filed by an intrastate pipeline within 30 days after commencement of new service under subpart C, include the rate election made by the intrastate pipeline under section 284.123(b).

D. Modification of Discount Reports

In considering revisions to the Commission's marketing affiliate regulations implemented in Order No. 566,[34] the Commission received comments contending that the discount information that had to be filed with the Commission under section 284.7(d)(5)(iv) was duplicative of the information on transportation discounts provided to affiliate and non-affiliate shippers that pipelines are required to maintain under section 250.16(d). There are two major differences between the sections: section 250.16(d) requires maintenance of information on quantities scheduled under the discount, while section 284.7(d)(5)(iv) does not require filing of quantity information; and the information required under section 250.16 only has to be maintained and made available to the Commission upon request, while the information in section 284.7(d)(5)(iv) must be filed with the Commission.

In Order No. 566, the commenters urged the Commission to consider reconciling the duplicative requirements.[35] The Commission declined to make a piecemeal change at that time, because the Part 284 discount reporting requirements are not identical with the requirements of section 250.16(d). The Commission, however, noted that it was in the process of examining its regulations, in light of the changes caused by Order No. 636, and that revisions to these requirements would be made at the appropriate time when all the regulations could be considered as a whole.

The Commission is now proposing to eliminate the section 250.16(d) maintenance requirement and to expand the Part 284 filing requirement to include the relevant information previously maintained under section 250.16 (proposed section 284.7(c)(6)). The major change from the existing Part 284 regulations would be the addition of a requirement for filing information on quantities delivered for interruptible service and the contract demand for firm service.[36] In light of the Commission's adoption of a capacity release program under Order No. 636, information on quantities shipped and contract demand would enable the Commission and the market to compare the extent of interruptible and firm discounting by the pipelines with the extent of capacity release transactions. Under this proposal, the discount information would be required to be filed electronically with the Commission.

The discount reports would not apply to capacity releases at a discounted rate, except when the release is permanent. The discount report is designed to capture discounts granted by the pipelines. In a temporary capacity release, the releasing shipper is still obligated to the pipeline under its initial contract. Thus, even if the shipper obtaining released capacity pays a discounted rate, the pipeline has not agreed to the discount because the releasing shipper will owe the pipeline the maximum rate under its contract. In a permanent capacity release, however, the releasing shipper's contractual obligations end, and the replacement shipper enters into a new primary contract with the pipeline. Thus, if the pipeline offers a discount for a permanent capacity release, the pipeline is providing the discount and would have to report it.

The Commission is not proposing to require the filing of two items of information that the pipelines are now required to maintain under section 250.16(d): the duration of discounts and the delivery points to which the gas is delivered. Elimination of these items would reduce the filing burden. Moreover, the filing of this information for every transaction involving both affiliates and non-affiliates does not appear necessary for monitoring of affiliate discount transactions given the Commission's other regulations regarding affiliate discount transactions. Under Standard H of the Standards of Conduct, section 161.3(h), pipelines are now required to post discount information concerning affiliate transactions on their EBBs, including the delivery points to which the discount applies. The proposed elimination of section 250.16(d), therefore, would have no effect on the ability of non-affiliates to learn the details of affiliate discounts so they can assess whether possible undue discrimination has occurred. With respect to non-affiliate transactions, filing of information on delivery points for every discount transaction does not appear warranted, since the Commission only requires this information in specific situations. The Commission, however, continues to require pipelines to maintain records of affiliate and non-affiliate discount transactions, including the delivery points used, in case the Commission requires this information for specific investigations.

E. Establishment of Electronic Index of Customers

In the Electronic Bulletin Board (EBB) standardization proceeding in Docket No. RM93–4–000, some groups had proposed to include an electronic Index of Purchasers to provide the market with information about capacity rights.[37] The EBB Industry Working Groups, which developed the standards implemented by the Commission, failed to reach consensus on an Index of Purchasers proposal. However, several groups of participants in the process submitted proposals for consideration. In Order No. 563–A, the Commission found that one proposal by a group of 44 participants had significant merit.[38]

Under this proposal, the Commission would eliminate some of the paper reporting requirements relating to firm and interruptible transportation, specifically, the initial and subsequent reports (but not the annual reports or the reports on bypasses), and the requirement in section 154.41 (proposed section 154.111) to include an Index of Purchasers in a pipeline's tariff. These reports would be replaced by an electronic index provided in downloadable form consisting of the following nine data elements for each firm transportation and storage shipper:[39] shipper's name, contract identifier, rate schedule, contract start

[34] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. Preambles ¶ 30,997 (June 17, 1994), Order No. 566–A, 59 FR 52896 (Oct. 20, 1994), III FERC Stats. & Regs. Preambles ¶ 31,002 (Oct. 14, 1994).

[35] *Slip op.* at 31.

[36] For interruptible discounts, the Commission is proposing to include the zone in which the quantities are delivered. Information on zones is not needed for firm service because the information would be reported in the index of customers under section 284.106.

[37] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), order on reh'g, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), reh'g denied, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[38] Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,047.

[39] Although the initial and subsequent reports had included interruptible contracts, it is not necessary to require the posting of interruptible contracts in the Index of Customers.

date, contract end date, contract quantity, receipt points (and associated maximum daily quantities (MDQs)), delivery points (and associated MDQs), and conjunctive restrictions, if any.[40]

In Order No. 563–A, the Commission was unclear with respect to some details in the proposal, and directed the Working Groups, together with Commission staff, to work on developing a final proposal. In a report filed on October 3, 1994, in Docket No. RM93–4–005, the Working Group reported that it was still unable to reach consensus on a final Index of Purchasers. However, a drafting committee, composed both of opponents and proponents of the Index of Purchasers, filed on October 4, 1994, a proposal addressing the mechanics for implementing such an Index of Purchasers, should the Commission decide to proceed with one.

After considering the elements included in the industry proposals and the Commission's own need for information about shippers' contracts, the Commission is proposing to require pipelines to provide an electronic Index of Customers[41] through a downloadable file that is updated monthly, and restated in its entirety annually (sections 284.106 and 284.243). The proposed requirement includes many of the elements proposed during the Working Group process, as well as independent requirements the Commission deems necessary. The electronic Index of Customers information would serve two functions. It would provide the Commission with the information that the Commission requires for analyzing capacity held on pipelines (which previously was included in the initial and subsequent reports); and it would provide capacity information to the market, which will aid the capacity release system by enabling shippers to locate those holding capacity rights that the shippers may want to acquire.[42]

The proposed Index of Customers would contain the nine data elements referenced above. The Commission also is proposing some additional elements: information on capacity held by rate zones to permit verification of reservation billing determinants; and additional elements for storage to capture the additional detail required to assess storage capacity.[43] When a pipeline has implemented the electronic Index of Customers, its obligation to provide for an Index of Customers in its tariff would cease.

In the EBB proceeding, some commenters objected to the inclusion of receipt and delivery points, contending that the provision of such information would be burdensome and might disclose information that would place firm shippers at a competitive disadvantage with respect to future gas purchase decisions.[44] Since pipelines must currently file receipt and delivery point information for all their shippers in the initial and subsequent reports, the Commission would not anticipate that including such information in the Index of Customers would create undue burdens. Commenters, however, should address the relative burden or difficulty in including the receipt and delivery point information under the assumption that all the other information would be required.

Once the Commission decides upon the data elements to be included in the Index of Customers, the EBB Working Group should work with the Commission staff to develop the data sets and other procedures necessary to provide for downloading of the information. For example, the EBB Working Group and the Commission Staff must determine whether the data should be reported as a data set suitable for electronic data interchange or for posting on the pipeline's electronic bulletin board. Further, instructions for reporting the data elements listed in the regulations will need to be finalized. In particular, the participants must determine how the contract end date will be reported, so that the Commission may know with certainty when a contract has terminated.

The finalization of the Index of Customers by the EBB Working Group and the Commission Staff will not occur until some time after the effective date of this rule. The Commission is proposing to require the pipelines to initially comply with the Index of Customers requirement within 180 days of the effective date of the final rule. Such deadline should allow ample time for the EBB Working Group and Staff to conclude their conferences, and for the pipelines to implement the resulting electronic elements of the Index of Customers. However, in the intervening period between the effective date of the rule and the pipelines' implementation of the electronic Index of Customers under sections 284.106 and 284.223, the Commission proposes, as an interim measure, to require pipelines providing transportation service under sections 284.106 or 284.223 to comply with the non-electronic index of customer requirements applicable to transportation and sales under Part 157, as set forth in sections 154.111 (b) and (c).

F. Removal of Obsolete Transitional Requirements

Several sections in Part 284 were established by either Order No. 436 or Order No. 636 as interim measures to implement those orders, or to bridge the transition between the two orders. Some of these provisions contained action deadlines that have long since passed. The Commission proposes to remove the following sections because they have become outdated due to subsequent events, and the current state of the regulatory environment.

Section 284.7(b) provides for interim rates for part 284 transactions to be charged until new transportation rates are filed under section 284.7, which had to have been filed by July 1, 1986. This section has become obsolete, and therefore is no longer necessary.

Section 284.10 provides an interim program for bundled sales customers to convert to firm transportation services. Since Order No. 636 has unbundled sales service, so that sales and transportation services are now separate services, there is no need for customers to convert from one to the other. This section is no longer applicable to the current regulatory framework.

Section 284.14—Provisions governing pipeline restructuring—was designed to implement the restructuring of pipelines' services under Order No. 636, and contains, among other things, the requirements for the compliance filings pipelines were required to make, and for

[40] Conjunctive restrictions are provisions that operate across multiple points or contracts and may limit a shipper's rights at a particular receipt or delivery point. For example, a shipper with stated rights of 2,000 MDQs at three points may but not be able to ship more than a total of 2,500 MDQ's from all three points on a single day.

[41] The Commission is proposing to term the electronic index an ''Index of Customers'' rather than an ''Index of Purchasers,'' to reflect the proposed use of that term in the NOPR revising part 154. ''Index of Customers'' more accurately captures the nature of the current natural gas market.

[42] The Commission also is considering whether other changes to facilitate the release of capacity are warranted. Any such changes would be promulgated in another proceeding. The Commission is proceeding with the proposed electronic index in this proceeding because, in addition to fostering capacity release, the Commission finds that such index is necessary to provide the information previously provided through the initial and subsequent reports. Moreover, regardless of the changes made to the capacity release system, information on contractual rights appears to be important to facilitating the secondary market in capacity.

[43] In addition, the Commission is proposing to include a unique customer identifier to permit the information in the Index of Customers to be tied to the electronic data interchange information on capacity release, and an authorization code to delineate whether the information is for Part 284, Subpart B, Part 284, Subpart G, or Part 157 service.

[44] Order No. 636–A, III FERC Stats. & Regs. Preambles at 31,047–48.

the associated restructuring proceedings. The restructuring process is now complete; therefore this section is no longer necessary. Any pipeline who proposes to offer transportation service under subpart B or G of part 284 in the future will simply file to comply with the requirements of this part and Order No. 636.

Section 284.122 governs transportation by intrastate pipelines under Section 311(a)(2) of the NGPA. The Commission proposes to delete paragraph (e) of section 284.122, which sets a January 31, 1992 expiration date for the authorization provided under that section for certain transportation. This transitional provision is no longer required. Similarly, section 284.123, governing the rates and charges for this section 311 transportation service, contains in subparagraph (e)(2) a transitional filing requirement deadline of February 1, 1985 for certain pre-existing transportation arrangements; thus, the Commission proposes to remove section 284.123(e)(2).

The Commission also proposes to remove sections 284.223(e) (Transitional rule for transportation arrangements) and 284.223(f) (governing the conversion of transportation service under NGPA section 311 to NGA section 7(c) blanket transportation service. Section 284.223 authorizes an interstate pipeline to transport gas under a section 7 blanket certificate of public convenience and necessity for any shipper for any end use by that shipper or any other person. Section 284.223(e) was established as a transitional provision to permit transportation arrangements authorized under section 157.209(a)(1), which commenced before October 9, 1985, to qualify as transportation under section 284.223. Section 157.209(a)(1) permitted section 7 certificate holders under section 157.201 to transport natural gas only on behalf of a high-priority end user for a high-priority end use. Section 157.209(a)(1) was replaced by section 284.223, and was removed from the regulations effective November 18, 1985.[45] Accordingly, the transitional rule contained section 284.223(e) applicable to transportation under section 157.209 is obsolete, and no longer necessary. Similarly, section 284.223(f) is an interim measure that was designed to implement the addition of blanket transportation services. This section requires that all conversions be made prior to November 1, 1990. Consequently, sections 284.223(f) is also obsolete, and no longer necessary.

Finally, section 284.402 of Subpart L, setting forth the authorization for blanket marketing certificates, provides in paragraph (c)(1) that the authorization for an ''affiliated marketer'' with respect to transactions involving affiliated pipelines becomes effective either when the affiliated pipeline receives its blanket sales certificate under Subpart J, a transportation-only affiliated pipeline's Order No. 636 compliance filing is approved, or when the Commission terminates the affiliated pipelines RS proceeding. The Commission proposes to delete the latter two conditions, since those occurrences have passed.

G. Other Revisions

The Commission proposes to delete most of Subpart D, governing certain sales under section 311 of the NGPA by intrastate pipelines. In Order No. 547,[46] the Commission granted any person who is not an interstate pipeline a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the certificate holder to make sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's Natural Gas Act jurisdiction. The certificate of limited jurisdiction does not subject the certificate holder to any other regulation under the Natural Gas Act by virtue of transactions under the certificate. Although the blanket certificate eliminates the need for Subpart D, the Commissison will retain the basic authorization and rate provisions under Subpart D in sections 284.141, 284.142, and 284.144 for those persons who may wish to make sales under the NGPA instead of the blanket certificate under the Natural Gas Act. However, in recognition that an intrastate pipeline can also sell natural gas in an unbundled transaction under the blanket certificate, at negotiated rates, the Commission proposes to retain a simplified version of section 284.144 governing rates and charges as part of the authorization provision set forth in section 284.142. The proposed rate rule within section 284.142, simplifies the current maximum sales rate rule to permit the gas commodity price negotiated in the contract, plus a fair and equitable transportation rate.

The Commission proposes to delete Subpart E in its entirety, governing the assignment by any intrastate pipeline to any interstate pipeline or local distribution company of its contractual right to receive surplus natural gas at any first sale, without prior Commission approval. The Natural Gas Wellhead Decontrol Act of 1989 amended the definition of ''surplus natural gas'' in section 312 of the NGPA to mean ''any natural gas.'' Moreover, the only filings under Subpart E were made in 1979. Therefore, Subpart E is no longer necessary.

Further, in light of the proposed elimination of Subpart E, the Commission proposes to remove all references in section 284.224, governing certain transportation, sales and assignments by local distribution companies, to Subpart E, as well as to the word ''assignments'' in the section provisions and in the section heading. The Commission also proposes to remove the reference to assignment in section 284.3, which sets forth the NGA jurisdiction. In addition, the Commission proposes to delete the references in section 284.224(e)(5) to those reporting requirements that the Commission is proposing to delete in subparts C and D. The Commission is retaining the blanket certificate and rate election procedures in section 284.224 that allow local distribution companies served by an interstate pipeline or Hinshaw pipeline to engage in sales and transportation of natural gas to the same extent as intrastate pipelines are authorized to engage in such activities under subparts C and D.

The Commission proposes to remove sections 284.225 and 284.226 concerning the transportation of gas released under the good faith negotiation procedures. Order No. 567,[47] issued July 28, 1994, in Docket No. RM94–18–000, removed the good faith negotiation procedures under Section 270.201 as a result of the repeal of maximum lawful ceiling prices under the NGPA.

The Commission proposes to remove section 284.222, regarding transportation by interstate pipelines on behalf of other interstate pipelines. Since the Commission deleted the prior notice requirement in Order No. 537,[48] which applied to transportation by interstate pipelines on behalf of shippers other than interstate pipelines under section 284.223, but did not apply to transactions under section 284.222, there is no longer any reason to distinguish between transportation under sections 284.222 and 284.223. Thus, the Commission proposes to delete section 284.222, and apply section 284.223 to transportation by

[45] See 50 FR 42408 (October 18, 1985).

[46] 61 FERC ¶ 61,281 (1992).

[47] 68 FERC ¶ 61,135 (1994).

[48] Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, 56 FERC ¶ 61,415 (1991).

interstate pipelines on behalf of other interstate pipelines, as well as transportation by interstate pipelines on behalf of non-interstate pipeline shippers. Therefore, the Commission is also proposing to modify the title of section 284.223 to read ''Transportation by interstate pipelines on behalf of shippers.''

The Commission proposes to modify paragraph (b) of section 284.221, setting forth the general rules regarding the transportation by interstate pipelines on behalf of others under section 7(c) blanket certificates, to delete reference to an October 31, 1989 date no longer relevant, and a fee no longer collected.

In section 284.102(e), governing the certifications interstate pipelines must obtain from shippers to be able to transport gas on behalf of an intrastate pipeline or local distribution company under section 311, the Commission proposes to delete reference to a January 3, 1992 deadline for tariff revisions establishing the certification requirement.

Finally, the Commission proposes to make a grammatical revision in section 284.8(b)(4)(iii).

VII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[49] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[50] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[51] Therefore, neither an environmental impact statement, nor an environmental assessment is necessary, and will not be prepared in this proposed rulemaking.

VIII. Reporting Flexibility Certification

The Regulatory Flexibility Act (RFA)[52] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[53] Most gas companies to whom the proposed rule will apply do not fall within the definition of a ''small entity.''[54] Consequently, pursuant to section 605(b) of the RFA, the Commission certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

IX. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[55] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in the following: FERC Form No. 2 ''Annual Report of Major Natural Gas Companies'' (1902–0028); FERC Form No. 2–A ''Annual Report of Nonmajor Natural Gas Companies'' (1902–0030); FERC Form No. 11 ''Natural Gas Pipeline Company Monthly Statement'' (1902–0032); FERC Form No. 549 ''Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions'' (1902–0086); FERC Form No. 549B ''Gas Pipeline Rates: Capacity Release Information'' (1902–0169); FERC Form No. 576 ''Reports on Pipeline Systems Service Interruptions'' (1902–0004); FERC Form No. 8 ''Underground Gas Storage Report'' (1902–0026); and FPC–14 (redesignated herein FERC Form No. 14) ''Annual Report for Importers and Exporters of Natural Gas'' (1902–0027).

The Commission in this proposed rule intends to modernize its regulations to reflect the current regulatory environment that it instituted with Order No. 636 and the restructuring of the natural gas industry. Specifically, the Commission intends to revise the Uniform System of Accounts to provide financial information that will be of greater benefit than what is available now, and to create forms and reports that reflect open-access transportation of natural gas and unbundled pipeline sales for resale at market-based prices. The Commission's Office of Chief Accountant uses the data in its audit program and continuous review of the financial condition of regulated companies. The Office of Pipeline Regulation uses the data in its various rate proceedings and supply programs, and the Office of Economic Policy and Office of General Counsel use the data in their programs relating to the administration of the Natural Gas Act.

The Commission is submitting to the Office of Management and Budget a notification of these proposed collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission).

X. Comment Procedures

The Commission invites all interested persons to submit written comments on the proposals of this NOPR. To the extent possible, the comments should be keyed to the topic headings of this NOPR. An original and 14 copies of the written comments must be filed with the Commission by April 13, 1995. Comments must refer to Docket No. RM95–4–000 and be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

All written submissions will be placed in the Commission's public file and will be available for public inspection, during regular business hours, at the Commission's Public Reference Room, Room 3408, 941 North Capitol Street, N.E., Washington, D.C. 20426.

List of Subjects

18 CFR Part 158

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

[49] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[50] 18 CFR 380.4.

[51] See 18 CFR 380.4(a)(2)(ii).

[52] 5 U.S.C. 601–612.

[53] 5 U.S.C. 605(b).

[54] Section 601(c) of the RFA defines a ''small entity'' as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A ''small business'' is defined by reference to section 3 of the Small Business Act as an enterprise which is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a).

[55] 5 CFR 1320.13.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 158, 201, 250, 260, and 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 158—ACCOUNTS, RECORDS, AND MEMORANDA

PART 158—AUTHORITY CITATION [REVISED]

1. The authority citation for Part 158 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 15 U.S.C. 717–717w, 3301–3432.

2. Section 158.10 is revised to read as follows:

§ 158.10 Examination of accounts.

All natural gas companies not classified as Class C or Class D prior to January 1, 1984 shall secure for each year, the services of an independent certified public accountant, or independent licensed public accountant (licensed on or before December 31, 1970), certified or licensed by a regulatory authority of a State or other political subdivision of the United States, to test compliance in all material respects of those schedules that are indicated in the General Instructions set out in the applicable Annual Report, Form No. 2 or Form No. 2–A, with the Commission's Uniform System of Accounts and published accounting releases. The Commission expects that identification of questionable matters by the independent accountant will facilitate their early resolution and that the independent accountant will seek advisory rulings by the Commission on such items. This examination shall be deemed supplementary to periodic Commission examinations of compliance.

3. Section 158.11 is revised to read as follows:

§ 158.11 Report of certification.

Each natural gas company not classified as Class C or Class D prior to January 1, 1984 shall file with the Commission a letter or report of the independent accountant certifying approval, together with the original and each copy of the filing of the applicable Annual Report, Form No. 2 or Form No. 2–A, covering the subjects and in the format prescribed in the General Instructions of the applicable Annual Report. The letter or report shall also set forth which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission shall not be bound by the certification of compliance made by an independent accountant pursuant to this paragraph.

4. In section 158.12, the words ''The Commission will not recognize any certified public accountant or public accountant through December 31, 1975, who is not in fact independent. Beginning January 1, 1976, and each year thereafter, the'' are removed and the word ''The'' is added in their place.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

5. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

PART 201—[AMENDED]

6. In Part 201, Definitions, Definitions 13, 15, 16, 32B, 38, and 39 are amended by removing the words ''in the case of Major natural gas companies,'' and Definition 29 is amended by removing the word ''(Major natural gas companies).''

7. In Part 201, General Instructions, paragraph 1 is revised to read as follows:

General Instructions

1. Applicability. Each natural gas company must apply the system of accounts prescribed by the Commission.

* * * * *

8. In Part 201, General Instructions, paragraphs 8, 12, 14, 15, and 16, the words ''*(Major natural gas companies)*'' are removed at the end of each heading, and in the heading for paragraph 21, the words ''*(Nonmajor Natural Gas Companies)*'' are removed.

9. In Part 201, Gas Plant Instructions, paragraph 1, the words ''Classification of utilities (Major natural gas companies)'' are removed from the heading and the words ''Classification of gas plant at effective date of system of accounts'' are added in their place.

10. In Part 201, Gas Plant Instructions, paragraph 3, introductory text, the words ''For Major natural gas companies'' are removed and the words ''A. The'' are added in their place, the words ''(Major and Nonmajor Natural Gas Companies)'' are removed from paragraphs 3A.(17) and 3A.(19), and paragraph 3B. is removed.

11. In Part 201, Gas Plant Instructions, paragraph 4C., the words ''For Major natural gas companies, the'' are removed and the word ''The'' is added in their place.

12. In Part 201, Gas Plant Instructions, paragraph 6A., the words ''(For Nonmajor companies, account 404, Amortization of Limited-Term Gas Plant)'' are removed.

13. In Part 201, Gas Plant Instructions, paragraphs 7C. and 7E., the words ''or in the case of Major companies,'' are removed.

14. In Part 201, Gas Plant Instructions, paragraph 7D., the words ''In the case of Major companies, a parcel,'' are removed and the words ''A parcel'' are added in their place.

15. In Part 201, Gas Plant Instructions, paragraph 7G., the words ''in the case of Major Companies,'' are removed.

16. In Part 201, Gas Plant Instructions, paragraph 7H., the words ''(For Major companies, see,'' are removed and the word ''(See'' is added in its place, and the two sentences ''For Nonmajor companies, see account 403.1, Depreciation and Depletion Expense, and account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Utility Plant. See also account 797, Abandoned Leases, for the accounting for abandonments of natural gas leases which have never been productive'' are removed and the words '', and account 797, Abandonment, leases'' are added in their place.

17. In Part 201, Gas Plant Instructions, paragraph 8G., the words ''(Major natural gas companies)'' are removed at the end of Items 2, 6, 11, 12, 18, 19, 22, 28, 29, 32, 35, 36, 39, 40, 41, 42, 44, 45, 47, 49, 52, 53, 55, 58, 60, 61, 62, 62, 64, 65, 66, and 67.

18. In Part 201, Gas Plant Instructions, paragraph 10E., the words ''or in the case of Major companies,'' immediately following the words ''Gas Plant Held for Future Use'' are removed.

19. In Part 201, Gas Plant Instructions, paragraph 10F., the words ''(account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Utility Plant, in the case of Nonmajor companies)'' and the words ''(account 110 for Nonmajor companies)'' are removed.

20. In Part 201, Gas Plant Instructions, paragraph 10G., the words ''In the case of Major companies, the accounting for'' are removed and the words ''The accounting for'' are added in their place.

21. In Part 201, Gas Plant Instructions, paragraph 11C., the words ''In the case of Major companies, each utility'' are

removed and the words ''Each utility'' are added in their place.

22. In Part 201, Gas Plant Instructions, paragraph 12, the words ''(105.1, Production Properties Held for Future Use, in the case of Major companies)'' are removed and the words ''105.1, Production Properties held for Future Use,'' are added in their place, and the words ''(Major Companies)'' in the note are removed.

23. In Part 201, Gas Plant Instructions, paragraph 14, the words ''(Major natural gas companies)'' are removed at the end of the heading.

24. In Part 201, Gas Plant Instructions, paragraph 15A., the words ''(account 180, Other Deferred Debits, in the case of Nonmajor companies)'' are removed from paragraph A.(1), the words ''(the amounts recorded in account 186 shall be cleared to the appropriate plant accounts, in the case of Nonmajor companies)'' are removed from paragraph A.(2), and the words ''(Account 180 in the case of Nonmajor companies)'' are removed from paragraph A.(3).

25. In Part 201, Gas Plant Instructions, paragraph 16 is removed.

26. In Part 201, Operating Expense Instructions, paragraph 1, the words ''(Major natural gas companies)'' at the end of the heading are removed.

27. In Part 201, Balance Sheet Chart of Accounts, and Balance Sheet Accounts, the words ''(Major only)'' at the end of the headings of Accounts 103, 105.1, 106, 108, 111, 115, 117, 123, 123.1, 125, 126, 128, 131 through 135, 151 through 153, 155, 156, 163, 164.3, 166, 167, 171 through 173, 183.1, 183.2, 184, 185, 188, 202, 203, 205 through 210, 216.1, 222, 238 through 241 are removed.

28. In Part 201, Balance Sheet Chart of Accounts, Accounts 103.1, 110, 129, 180, and 218, and their respective titles are removed.

29. In Part 201, Balance Sheet Accounts, Accounts 117A, 117D, 117E, 117F, and 117G are removed, Accounts 117B and 117C are redesignated 117.3B and 117.3C, respectively, new Accounts 117.1, 117.2, 117.3A, and 117.4 are added, and redesignated Account 117.3C is revised to read as follows:

Balance Sheet Accounts

* * * * *

117.1 Gas stored-Base gas.

This account is to include the cost of recoverable gas volumes that are necessary, in addition to those volumes for which cost are properly includable in Account 101, Gas plant in service, to maintain pressure and deliverability requirements for each storage facility. Subaccounts are to be maintained so that the cost of base gas applicable to each gas storage facility shall not be changed from the amount initially recorded except for changes in volumes designated as base gas.

117.2 System balancing gas.

This account is to be used to record the cost of system gas designated as available for transmission load balancing (including no-notice transportation) and other uses associated with maintaining efficient transmission operations other than gas properly recordable in Account 117.1 or the plant accounts. The cost initially recorded herein shall not be changed except for adjustments to volumes designated as system gas. Detailed records must be kept separately identifying volumes and unit prices of system gas held in underground storage facilities and held in pipelines.

117.3 Gas stored in reservoirs and pipelines-noncurrent.

A. This account shall include the cost of stored gas available for sale.

B. Gas stored during the year shall be priced at cost according to generally accepted methods of cost determination consistently applied from year to year. Transmission expenses for facilities of the utility used in moving the gas to the storage area and expenses of storage facilities shall not be included in the inventory of gas except as may be authorized or directed by the Commission.

Note B–1: In general, gas stored from the supply in an integrated system shall be priced at the average cost of the gas constituting the common supply of the system, although this general rule may be departed from where conditions of system operation of gas supply and utilization permit a valid presumption that the gas stored may be considered to be from specified sources, as indicated below.

Note B–2: When in harmony with the over-all system operation of gas supply and utilization, and the presumption is consistently observed from year to year, gas stored during the year may be presumed to be from total gas purchases, or from purchases from specified sources. When either of these presumptions is proper, the cost of gas stored shall be priced at the weighted average cost of all gas purchased, or at the weighted average cost of purchases from the specified sources, as appropriate. The weighted average cost may be the average for preceding twelve months, except where a significant change occurs in the cost of gas, the full effect of such change shall be reflected for the period after the change is effective.

Note B–3: When in harmony with the over-all system operation of gas supply and utilization, and the presumptions are consistently observed from year to year, gas stored during the year may be presumed to be from identified sources of the utility's own production. Such stored gas shall be priced at the weighted average cost of gas produced from the specified production areas. Where this presumption is made, or where the stored gas is identified as a matter of fact under circumstances which do not permit a proper application of the theory of displacement, the utility shall maintain separate records of the cost of gas produced from such areas and the derivation of the cost used for stored gas from such sources.

Note B–4: Where gas is purchased specifically for storage, or a price concession received because of the storing of purchased gas, such gas shall be priced at the net contract price of the gas so purchased and stored.

Note B–5: The provisions of this instruction and the related footnotes shall not be construed as permitting or authorizing a restatement of the amounts at which stored gas inventories are stated on the utility's books at the effective date of this instruction, except as may be authorized by the Commission.

C. Withdrawals of gas may be priced according to the first-in-first-out, last-in-first-out, or weighted average cost method, provided the method adopted by the utility is used consistently from year to year and the inventory records are maintained in accordance therewith. Approval of the Commission must be obtained for any other pricing method, or change in the pricing method adopted by the utility.

117.4 Gas owed to system gas.

A. This account shall include credit balances resulting from withdrawals from system gas of volumes that encroach upon the volumes designated as base gas (Account 117.1), system balancing gas (Account 117.2), and gas properly recordable in the plant accounts. Withdrawals are to be credited to this account and charged to Account 808.1, Gas Withdrawn From Storage-Debit, at an amount equal to the current market price of gas available to the utility. Gas owned by the utility and injected into the system will be deemed to satisfy the owed to system account first before any other use. The gas injected is to be priced at the same rate used to price withdrawals by crediting Account 808.2, Gas Delivered to Storage-Credit. If the owed to system balance is due to more than one transaction, the accounting for injections should follow a queue with the earlier transaction being the first accounted for.

B. Detailed records must be kept for each transaction identifying volumes and unit prices used for gas owed to system gas.

* * * * *

30. In Part 201, Balance Sheet Accounts, Account 154, the words ''For Nonmajor utilities, this account shall include the cost of fuel on hand and unapplied materials and supplies (except meters and house regulators). For both Major and Nonmajor utilities, it shall'' are removed from the introductory text of paragraph A, paragraph C and Note B are removed, Note A is redesignated Note, and the words ''they may be charged to a stores expense clearing account (account 163, Stores Expenses Undistributed, in the case of Major Utilities), and distributed therefrom to the appropriate accounts'' in redesignated Note are removed and the words ''they shall be charged to account 163, Stores expenses Undistributed'' are added in their place.

31. In Part 201, Balance Sheet Accounts, Account 164.1 is revised to read as follows:

Balance Sheet Accounts

* * * * *

164.1 Gas stored-current.

This account shall be debited with such amounts as are credited to account 117.3, Gas Stored in Reservoirs and Pipelines-Noncurrent, to reflect classification for balance sheet purposes of such portion of the inventory of gas stored as represents a current asset according to conventional rules for classification of current assets.

Note: It shall not be considered conformity to conventional rules of current asset classification if the amount included in this account exceeds an amount equal to the cost of estimated withdrawals of gas from storage for purposes of sale within the 24-month period from date of the balance sheet, or if the amount represents a volume of gas which, in fact, could not be withdrawn from storage without impairing pressure levels needed for normal operating purposes.

* * * * *

32. In Part 201, Balance Sheet Accounts, Accounts 164.2D. and 164.3D., the words ''Mcf'' and ''Mcf (or Btu),'' respectively, are removed, and the words ''Dth'' are added in their place.

33. In Part 201, Balance Sheet Accounts, Account 186, the words ''For Major companies, this account shall'' are removed from paragraph A, and the words ''This account shall'' are added in their place, paragraph B is removed, paragraph C is redesignated as paragraph B, and all the words in parenthesis in redesignated paragraph B are removed.

34. In Part 201, Balance Sheet Accounts, Accounts 201 through 204, Note, the words ''(For Nonmajor companies, account 211, Miscellaneous Paid-In Capital)'' are removed.

35. In Part 201, Balance Sheet Accounts, Account 211, the words ''(In the case of Nonmajor companies, this account shall be kept so as to show the source of the credits includible herein) are removed, the ITEMS section and Note B are removed, Note A is redesignated Note, and the words ''(Major companies)'' are removed from the heading of redesignated Note.

36. In Part 201, Balance Sheet Accounts, Account 242, the Items section is removed.

37. In Part 201, Gas Plant Chart of Accounts and Gas Plant Accounts, the words ''(Major only)'' at the end of each title of Accounts 363, 363.1, 363.2, 363.3, 363.4, 364.1, 364.2, 364.3, 364.4, 364.5. 364.6, 364.7 and 364.8 are removed.

38. In Part 201, Gas Plant Accounts, Accounts 302C. and 303B., the words ''(For Nonmajor Companies; account 110, Accumulated Provisions for Depreciation, Depletion and Amortization of Gas Utility Plant)'' following the words ''Gas Utility Plant'' are removed.

39. In Part 201, Gas Plant Accounts, the first sentence of Account 352.3B is revised to read as follows:

Gas Plant Accounts

* * * * *

352.3 Nonrecoverable natural gas

* * * * *

B. Such nonrecoverable gas shall be priced at the acquisition cost of native gas or, when acquired for storage by purchase or presumed to be supplied from the utility's own production, priced as outlined in Paragraph B of account 117.3 Gas Stored in Reservoirs and Pipelines-Noncurrent. * * *

40. In Part 201, Income Chart of Accounts and Income Accounts, Accounts 403, 404.1, 404.2, 404.3, and 418.1, the words ''(Major only)'' are removed from the end of the headings.

41. In Part 201, Income Chart of Accounts, Accounts 403.1 and 404 are removed.

42. In Part 201, Income Accounts, Accounts 421.1 and 421.2, the words ''(Major only)'' are removed.

43. In Part 201, Operating Revenue Chart of Accounts and Operating Revenue Accounts, Account 482, the words ''(Major only)'' are removed at the end of the headings.

44. In Part 201, Operating Revenue Accounts, Account 481C, the words ''(Major companies)'' is removed from the introductory text, and the word ''Mcf'' is removed and the word ''Dth'' is added in its place.

45. In Part 201, Operating Revenue Accounts, Account 488, Item 3, the words ''For Major Companies, see,'' are removed and the word ''See'' is added in their place.

46. In Part 201, Operating Revenue Accounts, Account 489 is deleted, and new Accounts 489.1, 489.2, 489.3, and 489.4 are added read as follows:

Operating Revenue Accounts

* * * * *

489.1 Revenues from transportation of gas of others through gathering facilities.

This account shall include revenues from transporting gas for other companies through the gathering facilities of the utility.

489.2 Revenues from transportation of gas of others through transmission facilities.

This account shall include revenues from transporting gas for other companies through the transmission facilities of the utility.

489.3 Revenues from transportation of gas of others through distribution facilities.

This account shall include revenues from transporting gas for other companies through the distribution facilities of the utility.

489.4 Revenues from storing gas of others.

This account shall include revenues from storing gas for other companies.

* * * * *

47. In Part 201, Operating Revenue Accounts, Account 491B is revised to read as follows:

Operating Revenue Accounts

* * * * *

491 Revenues from natural gas processed by others.

* * * * *

B. The records supporting this account shall be so maintained that full information concerning determination of the revenues will be readily available concerning each processor of gas of the utility, including as applicable (a) the Dth of gas delivered to such other party for processing, (b) the Dth of gas received back from the processor, (c) the field, general production area , or other source of the gas processed, (d) Dth of gas used for processing fuel, etc., which is chargeable to the utility, (e) total gallons of each product recovered by the processor and the utility's share thereof, (f) the revenues accruing to the utility, and (g) the basis of determination of the revenues accruing to the utility. Such records shall be maintained even though no revenues are derived from the processor.

* * * * *

48. In Part 201, Operating Revenue Accounts, Account 495 is revised to read as follows:

Operating Revenue Accounts

* * * * *

495 Other gas revenues.

This account shall include revenues derived from gas operations not includible in any of the foregoing accounts.

Items

1. Commission on sale or distribution of gas of others when sold under rates filed by such others.
2. Compensation for minor or incidental services provided for others such as customer billing, engineering, etc.
3. Profit or loss on sale of material and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts.
4. Sales of steam, water, or electricity, including sales or transfers to other departments of the utility.
5. Miscellaneous royalties received.
6. Revenues from dehydration and other processing of gas of others, except products extraction where products are received as compensation and sales of such are includible in account 490, Sales of Products Extracted From Natural Gas, and except compression of gas of others, revenues from which are includible in accounts 489.1,

489.2, or 489.3, Revenues from Transportation of Gas of Others.

7. Included in a separate subaccount, revenues in payment for rights and/or benefits received from others which are realized through research, development, and demonstration ventures.

8. Gains on settlements of imbalance receivables (See Account 806).

49. In Part 201, Operation and Maintenance Expense Chart of Accounts and Operation and Maintenance Expense Accounts, the words ''(Major only)'' are removed at the end of each title of Accounts 700 through 708, 711 through 730, 732 through 735, 740 through 742, 751 through 754, 756, 757, 761, 762, 765 through 775, 777 through 791, 800, 801 through 804.1, 806, 809.1, 809.2, 810 through 812, 815 through 822, 824, 830, 831, 833 through 837, 840 through 842, 842.1 through 842.3, 843.1 through 842.3, 843.1 through 843.9, 844.1 through 844.8, 845.1 through 845.6, 846.1, 846.2, 847.1 through 847.8, 851, 853, 854 through 857, 859, 861, 862, 865 through 867, 871 through 873, 875 through 877, 880, 885 through 892, 894, 901, 905, 907 through 913, and 916.

50. In Part 201, Operation and Maintenance Expense Chart of Accounts, and Operating and Maintenance Expense Accounts, Accounts 724.1, 729.1, 737, 743, 769.1, 792, 799, 812.1, 827, 838, 839, 853.1, 857.1, 868, 880.1, 892.1, 895, 906, 917, and 933 are removed, and Account 935 is redesignated Account 932.

51. In Part 201, Operation and Maintenance Expense Accounts, Account 710, the words ''For Major companies, this'' are removed from paragraph A, and the word ''This'' is added in their place, and paragraph B and the Items section are removed.

52. In Part 201, Operation and Maintenance Expense Accounts, Account 731A and 731B, the words ''(for Nonmajor companies, account 154, Plant Materials and Operating Supplies)'' are removed.

53. In Part 201, Operation and Maintenance Expense Accounts, Account 750, the words ''For Major companies, this'' in paragraph A are removed and the word ''This'' is added in their place, and paragraph B, the headings ''Major and Nonmajor'' and ''Nonmajor Only'' under Items, and Items 5 through 21 are removed.

54. In Part 201, Operation and Maintenance Expense Accounts, Account 755, the words ''stations (including in the case of Major companies, applicable amounts of fuel stock expenses)'' in paragraph A are removed and the words ''stations, including applicable amounts of fuel stock expenses'' are added in their place, the words ''For Major companies, respective'' in paragraph B are removed and the word ''Respective'' is added in their place, Note B is removed, Note A is redesignated Note, and the words ''(Major Companies)'' are removed from redesignated Note.

55. In Part 201, Operation and Maintenance Expense Accounts, Account 759, the words ''(Major companies only)'' in the introductory text are removed, the headings ''(Major only)'' and ''(Nonmajor companies):'' in the Items section are removed, and Items 1 through 18 are removed.

56. In Part 201, Operation and Maintenance Expense Accounts, Account 776, the words ''in the case of Major companies,'' the words ''(Major only)'' following the heading ''Items'', and the Note at the end of the account are removed.

57. In Part 201, Operation and Maintenance Expense Accounts, Account 795, Note, the words ''(in the case of Nonmajor Companies, account 105, Gas Plant Held for Future Use)'' are removed.

58. In Part 201, Operation and Maintenance Expense Accounts, Account 796, Note A, the words ''(in the case of Nonmajor companies, General Instruction 21, Gas Well Records)'' following the words ''Each Plant'' are removed.

59. In Part 201, Operation and Maintenance Expense Accounts, Account 797, paragraph A, the words ''For Major companies, this'' are removed, the word ''This'' is added in their place, and the sentence following the word ''productive.'' is removed, and in paragraph B, the words ''(Major only)'' are removed.

60. In Part 201, Operation and Maintenance Expense Accounts, Account 798, the words ''for Major companies,'' and the words ''for ''Nonmajor companies, see account 186, Miscellaneous Deferred Debits'' are removed.

61. In Part 201, Operation and Maintenance Expense Accounts, Account 806 is revised to read as follows:

806 Exchange gas

A. This account shall include debits or credits for the cost of gas in unbalanced transactions whereby gas is received from or delivered to another party in exchange, load balancing, or no-notice transportation transactions. The costs are to be determined from the current market price of gas at the time gas is tendered for transportation. Contra entries to those in this account shall be made to account 174, Miscellaneous Current and Accrued Assets, for gas receivable and to account 242, Miscellaneous Current and Accrued Liabilities, for gas deliverable under such transactions. Such entries shall be reversed and appropriate contra entries made to this account when gas is received or delivered in satisfaction of the amounts receivable or deliverable (See Paragraph B of this account for unbalanced transactions that are satisfied by other than gas in kind).

B. If revenue is earned or amounts are payable in consideration of the performance of exchange services, or if consideration for the amounts receivable or deliverable are satisfied by other than gas, such as in cash-out provisions, and at different amounts than originally recorded pursuant to Paragraph A of this account, such revenue, gain, expense, or loss should be recorded in account 495, Other Gas Revenues, or in account 813, Other Gas Supply Expenses, as appropriate. See, however, accounts 489.1, 489.2, and 489.3, Revenues from Transportation of Gas by Others, for transactions which, in fact, are for transportation of gas rather than exchange of gas.

C. Records shall be maintained so that there is readily available for each party entering gas exchange, load balancing, or no-notice transportation transactions by point of receipt and delivery, the quantity of gas delivered and received, the amount of consideration if other than gas, and the basis for the consideration.

62. In Part 201, Operation and Maintenance Expense Accounts, Account 807, paragraph D, the words ''(Major companies'') are removed.

63. In part 201, Operation and Maintenance Expense Accounts, paragraph A of Accounts 808.1 and 808.2 are revised to read as follows:

808.1 Gas withdrawn from storage-Debit

A. This account shall include debits for the cost of gas withdrawn from storage during the year. Contra credits for entries to this account shall be made to accounts 117.3 Gas Stored in Reservoirs and Pipelines-Noncurrent, or account 117.4, Gas Owed to System Gas, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See instructions to accounts 117.3 and 117.4).

* * * * *

808.2 Gas delivered to storage-Credit

A. This account shall include credits for the cost of gas delivered to storage during the year. Contra debits for entries to this account shall be made to accounts 117.3 Gas Stored in Reservoirs and Pipelines-Noncurrent, account 117.4, Gas Owed to System Gas, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See instructions to accounts 117.3 and 117.4).

* * * * *

64. In Part 201, Operation and Maintenance Expense Accounts, Account 813, the words ''including, in the case of Major companies, research and development expenses'' are removed and the words ''including research and development expenses. This account shall include losses on settlements of imbalance receivables (See Account 806)'' are added in their place.

65. In Part 201, Operation and Maintenance Expense Accounts, Account 814, paragraph B and the Items (Nonmajor only) section are removed, and in paragraph A, the designation ''A.'' and the words ''For Major companies, this'' are removed and the word ''This'' is added in their place.

66. In Part 201, Operation and Maintenance Expense Accounts, Account 823, the words ''For Major companies, see'' are removed and the word ''See'' is added in their place.

67. In Part 201, Operation and Maintenance Expense Accounts, Account 845.6B, the words ''Mcf or Bth, as appropriate,'' are removed and the word ''Dth'' is added in their place.

68. In Part 201, Operation and Maintenance Expense Accounts, Account 850, paragraph B and the Items (Nonmajor only) section are removed, and in paragraph A, the designation ''A.'' and the words ''For Major companies, this'' are removed and the word ''This'' is added in their place.

69. In Part 201, Operation and Maintenance Expense Accounts, Accounts 853.1B and 854B, the word ''Mcf'' is removed and the word ''Dth'' is added in its place.

70. In Part 201, Operation and Maintenance Expense Accounts, Account 858B, the word ''Mcf'' is removed in two places and the word ''Dth'' is added in its place.

71. In Part 201, Operation and Maintenance Expense Accounts, Account 870, the words ''(Major only)'' are removed, and the words ''For Major companies, see'' are removed, and in their place the word ''See'' is added.

72. In Part 201, Operation and Maintenance Expense Accounts, Account 874, Items, the words ''(Major only)'' in the heading ''Labor'' are removed, the heading ''Labor (Nonmajor only):'' and Items 1 through 3 under that heading are removed, the words ''(Major and Nonmajor):'' in the heading ''Materials and Expenses'' are removed, and the words ''(Major only)'' are removed from Items 2, and 8 through 12 under that heading.

73. In Part 201, Operation and Maintenance Expense Accounts, Account 878, Items, the words ''(Major only)'' are removed at the end of each Item 1 through 12 and 20.

74. In Part 201, Operation and Maintenance Expense Accounts, Account 879, Items, the words ''(Major only)'' are removed at the end of Items 1, 2, 4, 5, 6, 9, and 11 through 13.

75. In Part 201, Operation and Maintenance Expense Accounts, Account 902, Items, Items 13 and 14 are removed, and a new Item 13 is added to read as follows:

902 Meter reading expenses

* * * * *

13. Transportation, meals and incidental expenses.

76. In Part 201, Operation and Maintenance Expense Accounts, Account 903, the words ''(Major only)'' at the end of Item 26 are removed, and Items 31 and 32 are removed.

77. In Part 201, Operation and Maintenance Expense Accounts, Account 924, the words ''For Major companies, it'' are removed from paragraph A and the word ''It'' is added in their place, the words ''(stores expenses in the case of Nonmajor companies)'' are removed from paragraph (1) of Note B, in paragraph (2) of Note B, the words ''For Major companies, transportation'' are removed and the word ''Transportation'' is added in their place, and the words ''For Nonmajor companies, transportation and garage equipment, to account 933, Transportation expenses.'' are removed, and the words ''(Major only)'' are removed from the title of Note C.

78. In Part 201, Operation and Maintenance Expense Accounts, Account 925A, the words ''For Major Companies, it'' are removed and the word ''It'' is added in their place.

79. In Part 201, Operation and Maintenance Expense Accounts, Account 926D, the words ''For Major companies, records'' are removed and the word ''Records'' is added in their place.

80. In Part 201, Operation and Maintenance Expense Accounts, Account 930.2, Item 4, the words ''For Major Companies, research'' are removed and the word ''Research'' is added in their place, and the words ''For Nonmajor companies, experimental and general research work for the industry.'' are removed.

81. In Part 201, Operation and Maintenance Expense Accounts, Account 935 is redesignated Account 932, and redesignated Account 932 is amended by removing the words ''For Nonmajor companies, include also other general equipment accounts (not including transportation equipment).'' in paragraph A, revising paragraph B after the words ''the following accounts:'' and adding the Note to read as follows:

932 Maintenance of general plant.

* * * * *

B. * * *

Manufactured Gas Production, accounts 708, 742.
Natural Gas Production and Gathering, account 769
Natural Gas Production Extraction, account 791
Underground Storage, account 837
Local Storage, account 846.2
Transmission Expenses, account 867
Distribution Expenses, account 894
Merchandising and Jobbing, account 416
Garage, Shops, etc.—appropriate clearing account, if used.

Note: Maintenance of plant included in other general plant equipment accounts shall be included herein unless charged to clearing accounts or to a particular functional maintenance expense indicated by the use of the equipment.

PART 250—FORMS

82. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

83. Section 250.2 is revised to read as follows:

§ 250.2 Form of proposed cancellation of tariff or part thereof (see § 154.602 of this chapter).

When cancelling an entire tariff or an entire rate schedule, the notice of cancellation as set forth below must be filed as a revised tariff sheet superseding the first tariff sheet in the sequence of tariff sheets containing the tariff or part of the tariff being cancelled. When cancelling an individual tariff sheet, the tariff sheet should be designated as reserved for future use.

Cancellation of Entire Tariff

Notice is hereby given that effective _____(date) FERC Gas Tariff of _____ (Name of Company) is to be cancelled.

Cancellation of Rate Schedule

Notice is hereby given that effective _____(date) Rate Schedule _____ constituting _____ Sheet(s) No.(s) _____ of the FERC Gas Tariff of _____ (Name of Company) is to be cancelled.

84. Section 250.3 is revised to read as follows:

§ 250.3 Form of proposed cancellation or termination of contract or part thereof (see § 154.602 of this chapter).

Notice is hereby given that effective the _____ day of _____, _____, the contract with _____, (Name of customer or customers) dated _____ and relating to service under rate schedules(s) _____ (Here identify the rate schedule(s), giving sheet numbers in the Tariff) is to be _____ (Specify whether it automatically terminates by its terms or is to be canceled by action of the parties) _____ (Name of natural-gas company filing notice)

By _____

_____

(Title)

Dated _____

85. Section 250.4 is revised to read as follows:

§ 250.4 Form of certificate of adoption (see § 154.603 of this chapter).

The _____
(Exact name of company or person)
_____ (Address) effective
_____ (Effective date of adoption)
hereby adopts, ratifies, and makes its own, in every respect, the Tariff and contracts listed below, which have heretofore been filed with the Federal Energy Regulatory Commission by _____ (Exact name of predecessor) _____ (Here identify the Tariff and contracts adopted.)

_____
(Name of successor)
By _____

_____
(Title)
Dated _____

§ 250.16 [Amended]

86. In § 250.16, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d).

§§ 250.5, 250.7, 250.8, 250.9, 250.10, 250.12, and 250.14 [Removed]

87. Sections 250.5, 250.7, 250.8, 250.9, 250.10, 250.12, and 250.14 are removed and reserved.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

88. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

89. In § 260.1, paragraph (a) is amended by adding a heading, and paragraph (b) is revised to read as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies.

(a) *Prescription.* * * *

(b) *Filing requirements.* Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, et seq.) which is a major company (a natural gas company whose combined gas transported or stored for a fee exceeded 50 million Dth in each of the three previous calendar years) must prepare and file with the Commission for the calendar year beginning January 1, 1995, and for each calendar year thereafter, on or before April 30 following the close of such calendar year, FERC Form No. 2. Newly established entities must use projected data to determine whether FERC Form No. 2 must be filed. The form must be filed electronically as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, N.E., Washington, D.C. 20426. One copy of the report must be retained by the respondent in its files. The conformed copies may be by any legible means of reproduction.

90. In § 260.2, paragraph (b) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual report for nonmajor natural gas companies.

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act, not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, must prepare and file with the Commission for the calendar year beginning January 1, 1995, and for each calendar year thereafter, on or before March 31 following the close of such calendar year, FERC Form No. 2–A. Newly established entities must use projected data to determine whether FERC Form No. 2–A must be filed. The form must be filed electronically as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, N.E., Washington, D.C. 20426.

91. In § 260.3, paragraph (b)(1) is revised to read as follows:

§ 260.3 FERC Form No. 11, Natural gas pipeline company monthly statement.

* * * * *

(b)(1) *Who must file.* Each natural gas company, as defined in the Natural Gas Act, whose combined gas sold for resale and gas transported or stored for a fee exceeded 50 million Dth in the previous calendar year, must prepare and file with the Commission FERC Form No. 11. The form must be filed electronically. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, NE., Washington, DC. 20426.

* * * * *

92. § 260.4 is revised to read as follows:

§ 260.4 Form No. 14, Annual report for importers and exporters of natural gas.

(a) The form of the annual report for importers and exporters of natural gas is prescribed for the calendar year ending December 31, 1972, and thereafter, and is designated as FERC Form No. 14.

(b) Each person having authorization from the Federal Energy Regulatory Commission pursuant to section 3 of the Natural Gas Act, to import or export natural gas must, beginning with the reporting year 1972, and thereafter annually, filed on or before March 31, Form No. 14. The form must be submitted in the manner prescribed in § 285.2011 of this chapter.

93. In § 260.9, the introductory text of paragraph (b), and paragraphs (c) and (e) are revised to read as follows:

§ 260.9 Report by natural gas pipeline companies on service interruptions occurring on the pipeline system.

* * * * *

(b) Natural gas pipeline companies must report such interruptions to service by any electronic means, including facsimile transmission or telegraph, to the Director, Division of Environmental and Engineering Review, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (FAX: (202) 208–2853), at the earliest feasible time following such interruption to service, and must state briefly:

* * * * *

(c) If so directed by the Commission or the Director, Division of Environmental and Engineering Review, the company must provide any supplemental information so as to provide a full report of the circumstances surrounding the occurrence.

* * * * *

(e) Copies of the telegraphic or facsimile report on interruption of service must be sent to the State commission in those States where service has been or might be affected.

94. In § 260.11, paragraph (a) is revised to read as follows:

§ 260.11 Form No. 8, Underground gas storage report.

(a) The Form of Underground Gas Storage Report as FERC Form No. 8, is prescribed.

* * * * *

§§ 260.13 and 260.15 [Removed]

95. Sections 260.13 and 260.15 are removed and reserved.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

96. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7201–7352; 43 U.S.C. 1331–1356.

Subpart A—General Provisions and Conditions

§ 284.3 [Amended]

97. In § 284.3(a), the words ‘‘, sale or assignment’’ are removed and the words ‘‘or sale’’ are added in their place.

98. In § 284.7, paragraph (b) is removed, paragraphs (c) and (d) are redesignated (b) and (c), respectively, redesignated paragraph (c)(5)(iv) is removed, and a new paragraph (c)(6) is added to read as follows:

§ 284.7 Rates.

* * * * *

(c) *Rate design.* * * *

(6) *Discount reports.*

(i) A pipeline that provides either firm or interruptible transportation service at a discounted rate must file within 15 days of the close of the billing period a report containing the following information:

(A) The name of the shipper being provided the discount (including a designation whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user, a producer, a marketer, or a pipeline sales operating unit), and for discounts of firm transportation, the shipper's contract number;

(B) Any affiliate relationship between the pipeline and the shipper and the affiliate's role in the transportation transaction (i.e., shipper, marketer, supplier, seller);

(C) The maximum rate or fee;

(D) The rate or fee actually charged during the billing period;

(E) For discounted interruptible service, the quantity of gas delivered during the billing period at the discounted rate and the zone of delivery; and

(F) For discounted firm service, the contract demand for firm service provided at the discounted rate.

(ii) The requirements of this section do not apply to discounts relating to the release of capacity under § 284.243, unless the release is permanent.

(iii) The discount report information must be provided in electronic format according to the specifications and format contained in Form No. _____, which can be obtained at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol St., N.E., Washington, DC 20426. The discount information with respect to each transaction, including the delivery points used, must be maintained for three years from the date the transaction commences.

99. In § 284.8, paragraph (b)(4)(iii) is revised to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(b) * * *

(4) * * *

(iii) Purging of information on completed transactions from current files,

* * * * *

§ 284.10 [Removed]

100. Section 284.10 is removed and reserved.

§ 284.14 [Removed]

101. Section 284.14 is removed and reserved.

Subpart B—Certain Transportation by Interstate Pipelines

102. Section 284.102(e) is revised to read as follows:

§ 284.102 Transportation by interstate pipelines.

* * * * *

(e) An interstate pipeline must obtain from its shippers certifications including sufficient information to verify that their services qualify under this section. Prior to commencing transportation service described in paragraph (d)(3) of this section, an interstate pipeline must receive the certification required from a local distribution company or an intrastate pipeline pursuant to paragraph (d)(3) of this section.

103. In § 284.106, paragraph (a) is revised, paragraphs (b) through (f) are removed, paragraph (g) is redesignated as paragraph (b), the introductory text of redesignated paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 284.106 Reporting requirements.

(a) *Notice of bypass.* An interstate pipeline that provides transportation (except storage) under § 284.102 to a customer that is located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission, within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to commencement.

(b) *Semi-annual storage report.* Within 30 days of the end of each complete storage injection and withdrawal season, the interstate pipeline must file with the Commission a report of storage activity provided under the authority of either § 284.102 or § 284.223, as applicable. The report must be signed under oath by a senior official, consist of an original and five conformed copies, and contain a summary of storage injection and withdrawal activities to include the following:

* * * * *

(c) *Index of customers.* (1) Within 180 days of the effective date of this paragraph, and each year thereafter on January 15, an interstate pipeline must provide for electronic dissemination of an index of all its firm transportation customers under contract as of the preceding December 31.

(2) Until an interstate pipeline is in compliance with the reporting requirements of this paragraph, the pipeline must comply with the index of customer requirements applicable to transportation and sales under Part 154, set forth under § 154.111(b) and (c) of this chapter.

(3) For each customer receiving firm transportation service, the index must include the information listed below in paragraphs (c)(3)(i) through (x) of this section. For each customer receiving firm storage service, the index must include the information in paragraphs (c)(3)(i) through (vi) and (c)(3)(x) through (xiii) of this section.

(i) The legal name of the customer;

(ii) The DUNS number for the customer;

(iii) The unique contract number;

(iv) Rate schedule;

(v) Contract start date;

(vi) Contract end date;

(vii) Contract quantity, or if applicable, the contract quantity associated with each zone, or other rate subdivision of the pipeline, created in a proceeding before the Commission;

(viii) Receipt points and associated Maximum Daily Quantities (MDQ) and any restrictions or limitations on the use of points;

(ix) Delivery points and associated Maximum Daily Quantities (MDQ) and any restrictions or limitations on the use of points;

(x) Source of authorization (*i.e.*, Subpart B of this part implementing Section 311 of the NGPA; Subpart G of this part implementing Section 7(c) of the NGA; or Part 157 of this chapter implementing section 7(c) of the NGA);

(xi) Maximum Storage Quantity;

(xii) Maximum Daily Injection Quantity;

(xiii) Maximum Daily Withdrawal Quantity.

(4) During the year, between the annual restatements provided on January 15, the interstate pipeline must provide updates detailing all changes or

additions to the index prepared under paragraph (c)(1) of this section occurring during a calendar month. The updates for each month must be provided by the 15th of the next month. The updates must reflect only the new or modified contracts without restating the entire index.

(5) The information included in the annual index and each monthly update must be available until the next year's annual index is established. The electronic files must be archived for at least three years.

(6) The requirements of this section do not apply to contracts which relate solely to the release of capacity under § 284.243, unless the release is permanent.

(7) The requirements for the electronic index can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington DC 20426.

Subpart C—Certain Transportation by Intrastate Pipelines

§ 284.122 [Amended]

104. In § 284.122, paragraph (e) is removed.

105. In § 284.123, paragraph (e) is revised to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions, such as, quality standards and financial viability of the shipper. The statement must also include the rate election made by the intrastate pipeline pursuant to paragraph (b) of this section. If the pipeline changes its operations or rate election under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

106. In § 284.126, paragraph (a) is revised, paragraphs (b), (e), and (f) are removed, paragraphs (c) and (g) are redesignated (b), and (c), respectively, and redesignated paragraph (b) is revised to read as follows:

§ 284.126 Reporting Requirements

(a) *Notice of bypass.* An intrastate pipeline that provides transportation (except storage) under § 284.122 to a customer that is located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution and the local distribution company's appropriate state regulatory agency in writing of the proposed transportation prior to commencement.

(b) *Annual report.* Not later than March 1 of each year, each intrastate pipeline must file an annual report with the Commission and the appropriate state regulatory agency that contains, for each transportation service (except storage) provided during the preceding calendar year under § 284.122, the following information:

(1) The name of the shipper receiving the transportation service;

(2) The type of service performed (*i.e.* firm or interruptible);

(3) Total volumes transported for the shipper. If it is firm service, the report should separately state reservation and usage quantities; and

(4) Total revenues received for the shipper. If it is firm service, the report should separately state reservation and usage revenues.

* * * * *

Subpart D—Certain Sales by Intrastate Pipelines

107. Section 284.142 is revised to read as follows:

§ 284.142 Sales by intrastate pipelines.

Any intrastate pipeline may, without prior Commission approval, sell natural gas to any interstate pipeline or any local distribution company served by an interstate pipeline. The rates charged by an intrastate pipeline pursuant to this subpart may not exceed the price for gas as negotiated in the contract, plus a fair and equitable transportation rate as determined in accordance with § 284.123.

§ § 284.143 and 284.148 [Removed]

108. Sections 284.143 through 284.148 are removed and reserved.

Subpart E—Assignment of Contractual Rights to Receive Surplus Natural Gas

Subpart E—[Removed]

109. Subpart E is removed and reserved.

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

110. In § 284.221, the introductory text of paragraph (b)(1) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(b) *Application procedure.* (1) An application for a blanket certificate under this section must be filed electronically. The format for the electronic application filing can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, N.E., Washington, D.C. 20426, and must include:

* * * * *

§ 284.222 [Removed]

111. Section 284.222 is removed and reserved.

112. In § 284.223, the section heading is revised, paragraphs (b) through (f) are removed, and a new paragraph (b) is added to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers.

* * * * *

(b) *Reporting requirements.* Any interstate pipeline transporting gas under this section must comply with each of the reporting requirements specified in § 284.106.

113. In § 284.224, the heading, paragraphs (b)(3), (c) introductory text, (d)(1), (e)(1), and (g) are revised, paragraph (e)(5)(i) is redesignated as paragraph (e)(5) and paragraph (e)(5)(ii) is removed to read as follows:

§ 284.224 Certain transportation and sales by local distribution companies.

* * * * *

(b) *Blanket certificate*— * * *

(3) The Commission will grant a blanket certificate to such local distribution company or Hinshaw pipeline under this section, if required by the present or future public convenience and necessity. Such certificate will authorize the local distribution company to engage in the sale or transportation of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent that and in the same manner that intrastate pipelines are authorized to engage in such activities by subparts C and D of this part, except as otherwise provided in paragraph (e)(2) of this section.

(c) *Application procedure.* Applications for blanket certificates must be accompanied by the fee prescribed in § 381.207 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, and shall state:

* * * * *

(d) *Effect of certificate.* (1) Any certificate granted under this section will authorize the certificate holder to engage in transactions of the type authorized by subparts C and D of this part.

* * * * *

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate is subject to the same rates and charges, terms and conditions, and reporting requirements that apply to a transaction authorized for an intrastate pipeline under subparts C and D of this part.

* * * * *

(g) *Hinshaw pipeline without blanket certificate.* A Hinshaw pipeline that does not obtain a blanket certificate under this section is not authorized to sell or transport natural gas as an intrastate pipeline under subparts C and D of this part.

* * * * *

114. Sections 284.225 and 284.226 are removed and reserved.

115. In § 284.227, paragraph (d) is removed, and paragraphs (e), (f), and (g) are redesignated (d), (e), and (f).

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

§ 284.288 [Removed]

116. Section 284.288 is removed and reserved.

Subpart L—Certain Sales for Resale by Non-interstate Pipelines

117. In § 284.402, paragraph (c)(1) is revised to read as follows and in the first sentence of paragraph (c)(2) the word ''criteria'' in paragraph (c)(2) is removed, and the word ''criterion'' is added in its place:

§ 284.402 Blanket marketing certificates.

* * * * *

(c)(1) The authorization granted in paragraph (a) of this section will become effective for an affiliated marketer with respect to transactions involving affiliated pipelines when an affiliated pipeline receives its blanket certificate pursuant to § 284.284.

* * * * * *

[FR Doc. 95–653 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 94N–0345]

Medical Devices; Classification of Transilluminators (Diaphanoscopes or Lightscanners) for Breast Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the transilluminator (diaphanoscope or lightscanner) for breast evaluation into class III (premarket approval). The agency is also publishing in this document the recommendations of the Obstetrics and Gynecology Devices Panel regarding the classification of the device. After considering public comments on the proposed classification, FDA will publish a final regulation classifying the device. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

DATES: Written comments by April 13, 1995. FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION:

I. Background

The act, as amended by the 1976 amendments (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments) are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device.

A device that is first offered in commercial distribution after May 28, 1976, and which FDA determines to be substantially equivalent to a device classified under this scheme, is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807). A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed device, is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking proceedings.

In 1980, when other obstetric and gynecological devices were classified (45 FR 12684 through 12720, February 26, 1980), FDA was not aware that transilluminators, also known as lightscanners or diaphanoscopes, for breast evaluation were preamendments devices, and inadvertently omitted them from the classification process. Based upon the recommendations the Obstetrics and Gynecological Devices Panel made during its January 11, 1991, meeting (Ref. 24), FDA is now proposing to classify the transilluminator for breast evaluation into class III, thereby requiring each manufacturer of the device to submit to FDA a PMA by a date to be set in a future regulation under section 515(b) of the act (21 U.S.C. 360e(b)). Specifically, a preamendments class III device may be commercially distributed without an approved PMA until 90 days after FDA issues a final rule requiring premarket approval of the device or 30 months after classification of the device under section 513 of the act, whichever is later. Each application must include sufficient valid scientific evidence to provide reasonable assurance that the device is safe and effective under the conditions of use prescribed,

recommended, or suggested in its proposed labeling.

II. The Obstetrics and Gynecology Devices Panel Recommendations

The Obstetrics and Gynecology Devices Panel, an FDA advisory committee, made the following recommendations regarding the classification of the transilluminator for breast evaluation.

A. Identification

A transilluminator, also known as a lightscanner or diaphanoscope, is an electrically powered device that uses low intensity emissions of visible light and near-infrared radiation (approximately 700 to 1050 nanometers (nm)), transmitted through the breast, to visualize translucent tissue for the diagnosis of cancer, other conditions, diseases, or abnormalities (Ref. 24).

B. Recommended Classification

Class III (premarket approval). The Obstetrics and Gynecology Devices Panel recommended that the transilluminator for breast evaluation be classified into class III and that a regulation requiring submission of premarket approval applications for this device be a high priority. The Obstetrics and Gynecology Devices Panel further recommended that, at this time, the device should not be used for breast examinations, either alone or in conjunction with other techniques.

C. Summary of Reasons for Recommendation

The Obstetrics and Gynecology Devices Panel recommended that transilluminator devices for breast evaluation be classified into class III because the Panel believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. The Obstetrics and Gynecology Devices Panel concludes that there are no published studies or clinical data demonstrating the safety and effectiveness of the device. The Obstetrics and Gynecology Devices Panel also believes that the device presents a potential unreasonable risk of illness or injury to the patient if the clinician relies on the device. Although the device's illumination level, wavelength, and image quality can be controlled through tests and specifications, the Obstetrics and Gynecology Devices Panel believes that insufficient evidence exists to determine that special controls can be established to provide reasonable assurance of the safety and effectiveness of the device for its intended use. The Obstetrics and Gynecology Devices Panel recommends, therefore, that the device be subject to premarket approval to ensure that manufacturers of this device demonstrate the device's safety and effectiveness in order to market the device.

D. Summary of Data Upon Which the Recommendation is Based

The Obstetrics and Gynecology Devices Panel based its recommendation on the review of the studies cited in this document, on expert testimony presented to the Obstetrics and Gynecology Devices Panel, and on the Panel members' personal knowledge of, and experience with, the device.

E. Risks to Health

The following risks are associated with the use of transilluminators: Missed diagnosis; delayed diagnosis; delayed treatment; electrical shock; and optical radiation. Due to the transilluminator's questionable performance, the use of the device could result in missed or delayed diagnosis of breast cancer. Such misdiagnoses could result in more traumatic treatment to the patient and a potentially higher risk of death.

III. Proposed Classification

FDA agrees with the Obstetrics and Gynecology Devices Panel's conclusions and recommendations. The National Cancer Institute (NCI) also agrees that transilluminators have not been proven effective for diagnosis of cancer. In a September 1990 issue of *Cancer Facts*, the NCI states, ''Although this technique has been improved over the years, at this time transillumination is not an effective technique for the detection of early breast cancer,'' and, ''Transillumination is especially poor at finding small tumors (less than 1 centimeter).'' NCI supports the idea of further research, but states, ''* * * at this time, transillumination has no role in breast cancer screening'' (Ref. 1).

A major study of transillumination involving 2,763 patients was conducted by the National Institutes of Health in the late 1980's (Ref. 2). In a section entitled ''Combined Modality Results,'' the study authors concluded: ''While the accuracy of clinical exam [in detecting cancer] is 0.67 and that of lightscanning is 0.57, there is no statistically significant difference between them.'' That is, there was no difference between the use of lightscanning and clinical examination (palpation). They also stated, ''When the results of lightscanning, mammography and physical exam are added, no additional benefit is seen'' as a result of light scanning. This study indicates that transilluminators, at this time, do not have clinical benefits as an alternative to mammography or as an adjunctive diagnostic tool to mammography.

Following the January 1991 Obstetrics and Gynecology Devices Panel meeting, FDA undertook a literature search to determine if any new and significant studies had been performed, which would affect the proposed classification. The agency reviewed approximately 20 references (Refs. 4 through 23) published since 1988. None of these studies recommend the device for routine clinical use.

One of the largest studies conducted in a clinical setting was a multicenter study in Sweden involving 2,568 women (Ref. 3). The study concluded that lightscanning, as utilized in the study, is inferior to mammography and produced a large number of false positive results.

In summary, FDA's review of recent technical and clinical papers did not reveal any data that would influence the agency to adopt any classification other than class III.

FDA believes that insufficient information exists to determine that general controls, or special controls, such as postmarket surveillance, the development of guidelines, the establishment of a performance standard, or other actions will provide reasonable assurance of the effectiveness of the transilluminator for breast evaluation. FDA believes that use of the transilluminator for breast evaluation presents a potential health risk because of the possibility of misdiagnosis. The evident failure of transilluminator evaluations to detect breast cancer in its earliest stages, when the chance for a cure is highest, requires FDA to place this preamendment device in class III in order to require manufacturers to provide data establishing reasonable assurance of the device's safety and effectiveness.

FDA concurs with the Obstetrics and Gynecology Devices Panel's recommendation that the agency should give high priority to a regulation to establish premarket approval requirements for the transilluminator because of the public health considerations involved.

Since the Obstetrics and Gynecology Devices Panel meeting of January 1991, FDA has warned manufacturers of breast transillumination devices that these devices are in violation of the act because their labeling is false or misleading and fails to bear adequate direction for use under section 502(a) and (f)(1) of the act (21 U.S.C. 352(a)

and (f)(1)). FDA took this position following the Obstetrics and Gynecology Devices Panel meeting, after considering the Obstetrics and Gynecology Devices Panel's recommendation, after further evaluation of the available scientific literature, and following further consultation with outside medical experts. FDA concluded that the transillumination devices are not clinically effective for the diagnosis or detection of breast cancer or other breast abnormalities or conditions, and that the use of the technique may contribute to the delay of detection of lesions in the early stages of cancer, when the disease is most treatable.

At this time, therefore, the distribution of breast transillumination devices or any multipurpose transillumination device that is labeled, promoted, or intended for use in the breast is in violation of the law, regardless of whether the device is labeled for independent use or adjunctive use with mammography. FDA has initiated enforcement actions against manufacturers who have continued to distribute transilluminators.

When these devices become subject to the premarket approval process, the manufacturer of each individual device will have an opportunity to demonstrate the safety and effectiveness of the device for its indicated use. Any further decision on adjunctive use versus stand alone use will be based on valid scientific data presented by manufacturers in the PMA's they submit at that time.

FDA intends to publish pursuant to section 515(b) of the act, a proposed rule to establish the effective date of the requirement for premarket approval for transilluminators. Such a rule will be published after the effective date of a final classification regulation based on this proposed rule. A PMA may be required 30 months after the effective date of the final rule classifying the device in class III under section 513 of the act or 90 days after publication of the final rule requiring premarket approval under section 515(b), whichever is later. After the establishment of an effective date for the requirement of PMA submissions for these devices, any transilluminators for use on breast tissue that are being marketed without a PMA will be considered adulterated under section 501(f)(2) of the act (21 U.S.C. 351(f)(2). However, as noted earlier, FDA has determined, in light of scientific data that has become available, that transilluminators for use in the breast are already misbranded under sections 502(a) and 502(f)(1) of the act and should not be marketed at this time.

FDA concludes that because the transilluminator is a diagnostic imaging device, it would be more appropriately classified as a radiological device. The agency therefore proposes to classify it in part 892 (21 CFR part 892) of the regulations (radiology devices) instead of part 884 (21 CFR part 884) of the regulations (obstetrical and gynecological devices).

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Transillumination Not Effective for Early Breast Cancer Detection,'' National Cancer Institute, Office of Cancer Communications, September 1990.

2. ''Breast Cancer Diagnosis by Lightscan (Revised),'' final report, Grant No. CA37970–04, Myron Moskowitz, principal investigator, Breast Imaging Center, University of Cincinnati Medical Center, December 1989.

3. Alveryd, A. et al., ''Lightscanning Versus Mammography for the Detection of Breast Cancer in Screening and Clinical Practice: A Swedish Multicenter Study,'' Cancer (U.S.A.), vol. 65/8 1671–1677, April 15, 1990.

4. Key, H., P. C. Jackson, and P. N. T. Wells, ''New Approaches to Transillumination Imaging,'' *Journal of Biomedical-Engineering*, vol. 10, No. 2, 113–118, 1988.

5. Zhou, X., and R. Gordon, ''Detection of Early Breast Cancer: An Overview and Future Prospects,'' *Critical Reviews in Biomedical Engineering*, vol. 17, issue 3, 230–232, 1989.

6. Adams, D. L., ''Reassessment of Transillumination Light Scanning for the Diagnosis of Breast Cancer,'' National Center for Health Services Research and Health Care Technology Assessment, U.S. Department of Health and Human Services, Public Health Service, Springfield, VA. Available from National Technical Information Services, Health Technology Assessment Report; No. 2, 1988.

7. Hebden, J. C., and R. A. Kruger, ''Transillumination Imaging Performance: A Time-of-Flight-Imaging System,'' *Medical Physics*, vol. 17, No. 3, 1990.

8. Jarlman, O., R. Berg, and S. Svanberg, ''Time-Resolved Transillumination of the Breast,'' *Acta Radiological*, vol. 33, 1992.

9. Key, H., E. R. Davies, P. C. Jackson, and P. N. T. Wells, ''Optical Attenuation Characteristics of Breast Tissue at Visible and Near Infrared Wavelengths,'' *Physics in Medicine and Biology*, vol. 36, No. 5, 1991.

10. Peters, V. G., D. R. Wyman, M. S. Patterson, and G. L. Frank, ''Optical Properties of Normal and Diseased Human Breast Tissue in the Visible and Near Infrared,'' *Physics in Medicine and Biology*, vol. 35, No. 9, 1990.

11. Profio, A. E., G. A. Navarro, and O. W. Sartorius, ''Scientific Basis of Breast Diaphanography,'' *Medical Physics*, vol. 16, No. 1, 1989.

12. Key, H., E. R. Davies, P. C. Jackson, and P. N. T. Wells, ''Monte Carlo Modelling of Light Propagation in Breast Tissue,'' *Physics in Medicine and Biology*, vol. 36, No. 5, 1991.

13. Navarro, G. A., and A. Edward Profio, ''Contrast in Diaphanography of the Breast,'' *Medical Physics*, 15(2), March/April 1988.

14. Watmough, D. J., ''Breast Compression to Increase the Sensitivity of Lightscanning for the Detection of Carcinoma: Potential Hazard?'' Letter to the editor, *Journal of Biomedical Engineering*, vol. 14, March 1992.

15. Economou, S. G. et al., eds., *Imaging Techniques in Adjuncts to Cancer Surgery*. Lea and Febiger, 51–126, 1991.

16. ''Is Lightscanning a Viable Alternative to Mammography for Detecting Breast Cancer?'' in News Briefs, *New York State Journal of Medicine*, June 1990.

17. Jarlman, O., I. Anderson, G. Balldin, and S. A. Larsson, ''Diagnostic Accuracy of Lightscanning and Mammography in Women with Dense Breasts,'' *Acta Radiological* 33, fasc. 1, 1992.

18. He, Ping, Kaneko, Maseo, et al., ''Breast Cancer Diagnosis by Laser Transmission Photo-scanning with Spectro-Analysis'' (Report 4), *Radiation Medicine*, vol. 8 No. 1, 1–5, 1990.

19. Braddick, M. R., ''Audit of a Breast Cancer Screening Programme Using Clinical Examination and Lightscanning,'' *Health Bulletin* 49/6 299–303, November 1991.

20. Gordenne, W., and E. Bauduin, ''Diagnostic Accuracy of New Imaging Techniques in Breast Diseases,'' *Journal Belge de Radiologie*, 72:35–38, 1989.

21. Heywang-Kobrunner, ''Nonmammographic Breast Imaging Techniques,'' *Current Opinion in Radiology*, vol. 4, 146–154, 1992.

22. Jarlman, O. et al., ''Relation Between Lightscanning and the Histologic and Mammography Appearance of Malignant Breast Tumors,'' *Acta Radiological* 33, 63–68, fasc. 1992.

23. Monsees, B., J. M. Destouet, and D. Gersell, ''Lightscanning of Monpalpable Breast Lesions: Reevaluation,'' *Radiology*, 167:352, 1988.

24. Obstetrics and Gynecology Devices Obstetrics and Gynecology Panel, Forty-fifth Meeting. Transcript and Meeting Minutes, January 11, 1991.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency believes only a small number of firms will be affected by this rule when finalized, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Request for Comments

Interested persons may, on or before April 13, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 892 be amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 892.1990 is added to subpart B to read as follows:

§ 892.1990 Transilluminator for breast evaluation.

(a) *Identification*. A transilluminator, also known as a diaphanoscope or lightscanner, is an electrically powered device that uses low intensity emissions of visible light and near-infrared radiation (approximately 700–1050 nanometers (nm)), transmitted through the breast, to visualize translucent tissue for the diagnosis of cancer, other conditions, diseases or abnormalities.

(b) *Classification*. Class III (premarket approval).

(c) *Date premarket approval (PMA) or notice of completion of a product development protocol (PDP) is required*. The effective date of the requirement for premarket approval has not been established. See § 892.3.

Dated: December 23, 1994.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–971 Filed 1–12–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 804; Re Notice No. 803]

RIN: AB32

Alteration of Labels on Containers of Distilled Spirits, Wine, and Beer (CRD–94–8)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Corrected Notice of Proposed Rulemaking.

SUMMARY: On January 4, 1995, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking (Notice No. 803, 60 FR 411) in the **Federal Register**. Because the notice contained errors which could cause confusion to the public, ATF is reprinting the entire corrected text here, in this correction notice, as it should have appeared in Notice No. 803. The original text of Notice No. 803 should be disregarded; instead, all interested parties should refer to the reprinted text in this document. ATF is extending the comment period accordingly to allow 60 days from the date of this correction notice.

ATF is proposing to amend the regulations in 27 CFR Parts 4, 5, and 7 which implement section 105(e) of the Federal Alcohol Administration Act of 1935, which makes it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand or label on wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein. The proposed amendments will eliminate a requirement that persons obtain ATF approval before relabeling wine and malt beverage products. Instead, persons who intend to relabel wine, malt beverage, or distilled spirits products would be required to notify ATF, in writing, of their intent to relabel. The proposed amendments will make it unlawful to relabel a distilled spirits, wine, or malt beverage container if the effect of such action is to remove from the container or label any information required by ATF regulations, or a product identification code placed on the product by the producer for tracing purposes.

DATES: Written comments must be received on or before March 14, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221. [Attn: Notice No. 804.]

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210)

SUPPLEMENTARY INFORMATION:

Background

Several producers and importers of alcoholic beverages have complained to the Bureau of Alcohol, Tobacco and Firearms (ATF) that product identification code markings placed on containers and labels of wines and distilled spirits by producers for tracing purposes are being removed or mutilated after the product has left the producer's premises. Such alterations of labels or packages have been permitted in foreign trade zones and Customs bonded warehouses, because ATF regulations do not specifically address such activities, and because product identification codes are not mandatory information under ATF regulations. However, the effect of such action is to make it impossible for the producers to rely on production codes to trace mislabeled, adulterated, or unsafe products.

Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), authorizes ATF to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers as will prohibit deception of the consumer with respect to such products or the quantity thereof.

In order to prevent the sale or shipment or other introduction of

distilled spirits, wine, or malt beverages in interstate or foreign commerce which are not bottled, packaged, or labeled in compliance with the regulations, the FAA Act requires that prior to bottling distilled spirits, wines, or malt beverages, the producer or bottler must obtain a certificate of label approval covering the product. Similarly, the law provides that no person shall remove bottled distilled spirits, wines, or malt beverages from Customs custody for consumption in bottles, for sale or any other commercial purpose, without having first obtained a certificate of label approval covering the product.

Thus, the certificate of label approval requirement ensures that mislabeled distilled spirits, wines, or malt beverages cannot be introduced in interstate or foreign commerce. To ensure that products with proper labels were not altered once such products had been removed from bond, section 205(e) further provides as follows:

> It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

Regulations which implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively. These regulations provide for relabeling in certain circumstances.

Sections 4.30 and 7.20 provide that someone wanting to relabel must receive prior permission from the Regional Director (Compliance). Section 5.31 does not currently require prior approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved certificate of label approval.

The regulations provide that distilled spirits, wines and malt beverages may be relabeled as authorized by Federal law. Such products may also be relabeled for purposes of compliance with the requirements of the regulations, or of State law. Finally, there may be added to wine and distilled spirits bottles, after removal from Customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

Customs Bonded Warehouses and Foreign Trade Zones

The statutory prohibition against the alteration or mutilation of distilled spirits, wine, or malt beverage labels applies to all products held for sale in interstate or foreign commerce. The terms of the statute thus apply to nontaxpaid domestic and imported products held for storage or manipulation in a Customs bonded warehouse or foreign trade zone.

However, since domestic nontaxpaid alcoholic beverages bottled for exportation are exempt from the certificate of label approval requirement, and certificates of label approval are not required for imported alcoholic beverages until they are withdrawn from Customs custody for consumption in the United States, ATF has previously taken the position that relabeling activities could occur in a Customs bonded warehouse or foreign trade zone without prior ATF approval. ATF regulations authorize the relabeling of alcoholic beverages in Customs custody in order to bring such products in compliance with a certificate of label approval prior to withdrawal for consumption. However, current regulations do not specifically set forth the limitations on other types of relabeling activities in Customs bonded warehouses or foreign trade zones. In general, ATF saw no need to scrutinize labeling activities involving such products unless and until they were withdrawn from Customs custody for consumption in the United States.

While ATF has not required that persons relabeling alcoholic beverages in Customs bonded warehouses or foreign trade zones obtain prior approval, such activities are subject to regulation by the United States Customs Service (''Customs''). Because the current regulations do not clarify the scope of the prohibition against alteration of labels, there has been considerable confusion as to what types of labeling activities are authorized in a Customs bonded warehouse or foreign trade zone.

ATF has taken the position that there are restrictions as to the removal of mandatory information from domestic nontaxpaid distilled spirits, wines, and malt beverages. Pursuant to parts 19, 24, and 25, such products must be marked with certain mandatory information, which is necessary to protect the revenue, and to ensure the tracing of the product in the event of diversion. Thus, it has been ATF's policy that such mandatory information may not be removed from products, regardless of the fact that they are in a Customs bonded warehouse or foreign trade zone awaiting exportation. However, this policy is not set forth in the current regulations.

ATF is thus proposing to amend the regulations in parts 4, 5, and 7 to clarify that the prohibition against alteration or mutilation of labels applies to products held in a foreign trade zone or customs bonded warehouse. The proposed amendments will specify the type of relabeling activities permissible for both domestic nontaxpaid alcoholic beverages and imported alcoholic beverages stored in a Customs bonded warehouse or foreign trade zone. Since current regulations do not authorize removal of domestic nontaxpaid malt beverages to Customs bonded warehouses pending exportation, the relabeling of malt beverages in Customs bonded warehouses is not discussed.

The proposed regulations will provide that relabeling of distilled spirits, wines, and malt beverages in Customs bonded warehouses or foreign trade zones can be accomplished without giving notice to ATF, as long as such relabeling is done under the supervision of Customs officials, in compliance with Customs requirements, and does not involve the removal from the label or package of information made mandatory by ATF regulations. The proposed language concerning the supervision of Customs officials and compliance with Customs requirements is not intended to impose any new requirements; instead, this language merely recognizes current requirements under Customs regulations. *See* 19 C.F.R. 19.11 and 146.51.

Product Identification Codes

The complaints about the mutilation of product identification codes in Customs bonded warehouses and foreign trade zones brought to the surface an issue which ATF had previously been considering—whether lot identification numbers or product identification codes should be made mandatory information on consumer packages of alcoholic beverages. Such codes are not currently required under the regulations. Instead, labels on domestic distilled spirits, wines, and malt beverages are merely required to list the name and address of the bottler. For imported products, the name and address of the importer is required information on the label.

Obviously, these requirements provide enough information so that if a product is mislabeled, adulterated, or poses a health hazard, it is possible to determine the source of the product. However, this does not allow either ATF or the producer to trace a particular

consumer package back to a bottling line or production shift.

Current regulations in parts 19, 24 and 25 promulgated pursuant to the Internal Revenue Code require certain markings on cases of distilled spirits, wines, and malt beverages. Cases of distilled spirits and wines must be marked with serial numbers. These markings are required in order to protect the revenue, and to facilitate tracing in the event of the diversion of nontaxpaid goods. However, case markings have limited value in tracing consumer packages such as bottles and cans. Once the product is removed from the case, those markings are obviously of no value in tracing the product.

The purpose of product identification codes (i.e., lot identification numbers, bottling dates, freshness dates, etc.) on labels or packages of products is to facilitate the tracing of a product for safety, compliance or quality control issues. For example, if an alcoholic beverage product is found to have been tampered with, or contaminated, any type of code which would enable the tracing of the product back to the bottling line or production batch would be extremely valuable in determining how the tampering or contamination occurred, and in allowing the producer to make an informed decision as to the extent of the problem, and the need for product recalls.

For this reason, ATF believes that product identification codes are useful as a consumer protection measure. Safety, labeling and quality control problems often come to light by virtue of consumer complaints or market place testing of products by ATF. In such instances, case markings will generally be of no avail. However, the use of product identification codes can help to readily identify the hazardous or defective product, and, in the event that a health hazard exists, assist in a speedier and more orderly recall of these products from the marketplace.

The use of lot identification numbers has already been mandated by the Council of the European Communities, in Council Directive 89/396/EEC, dated June 14, 1989. In view of the fact that many European countries now require such markings, and many large producers in the United States voluntarily place such codes on product labels or containers, ATF raised the issue of mandatory product identification codes at an industry meeting held in Washington, D.C. on July 26, 1994.

The purpose of raising this issue with industry members was to gather information on current industry practices regarding product identification codes. ATF has learned that many domestic and foreign producers of alcoholic beverages voluntarily place product identification codes or lot identification numbers on the labels or containers of wines, distilled spirits, and malt beverages. Typically, the label or container of the product will be marked with a code indicating the batch from which the product was made, a bottling date, a production shift code, or some other type of mark which will enable the producer to trace the consumer package to a specific production batch or bottling line.

While large producers are more likely to have their own system of product codes, small producers often find that such a system is unnecessary, because their own records will enable them to do any necessary tracing. At the industry meeting, questions were raised as to whether it was necessary to impose a product identification code requirement on small producers.

Rather than impose a mandatory product identification code requirement on all producers, ATF is proposing to leave the decision as to whether to place product identification codes on consumer packages to the producer. At this time, we believe that the consumer is adequately protected by the information required under the current regulations.

However, in order to allow producers to efficiently develop a system in which they can ensure the tracing of their own products, we believe that the voluntary placement of product identification codes on consumer packages by producers should be protected by regulation. This will address the specific problem currently faced by producers—the removal of product identification codes by distributors or other third parties.

If a producer believes that the only way it can efficiently trace products is to put product identification codes on the consumer packages, ATF does not believe it should allow the intent of the producer to be frustrated by third parties. It is the producer who will have to bear the costs of recalls if product identification codes have been obliterated by distributors. It is the consumer who will suffer if the obliteration of such marks makes it impossible to trace problems with contaminated products. Finally, such actions make it more difficult for ATF to trace problems with products already in the market place.

Thus, ATF is proposing an amendment to the regulations which will specifically prohibit the labeling or relabeling of products if the effect of such action is to remove from labels or containers ''product identification codes'' placed on the label or container by the producer for tracing purposes. The term ''product identification code'' is defined to include any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

Under the proposed regulations, if it is necessary for anyone but the producer to remove the original label from the product, the product identification code must be put back on the new label. ATF believes that this proposal will adequately address the problem before us, without imposing an undue burden on any part of the industry. Most importantly, it will ensure that an important consumer protection mechanism voluntarily placed on consumer packages by manufacturers will not be thwarted.

Although ATF is not proposing to require product identification codes on labels or packages, it is the opinion of the Bureau that such codes are useful, and should be encouraged. If at any time we find that the lack of such codes is hampering the exercise of our consumer protection function, we may wish to reconsider this option.

Products Bottled for Exportation

Although products which are bottled for exportation are not required to be covered by certificates of label approval, ATF believes that the prohibition on alteration of labels applies to such products. The alteration or mutilation of required information on labels, as well as product identification codes, would hamper ATF's efforts in tracing the illegal diversion of nontaxpaid alcoholic beverages which were intended for exportation. One of the purposes of the FAA Act was to aid in the collection of taxes on distilled spirits, wines, and malt beverages. Thus, we have authority under the FAA Act to extend these provisions to products which are intended to be exported.

Elimination of Prior Approval Requirement

The proposed amendments to parts 4, 5, and 7 relating to the relabeling of wine, distilled spirits, and malt beverages would also resolve an inconsistency in the present regulations. Currently, persons who wish to relabel wine and malt beverages are required to make written application and receive approval from ATF prior to relabeling these products. However, persons who wish to relabel distilled spirits are not

required to receive prior approval from ATF, as long as the distilled spirits products are relabeled in accordance with an approved label.

The proposed amendments would eliminate the requirement to receive approval from the regional director prior to relabeling wine and malt beverages. Instead, any persons who wished to relabel wine, malt beverages, or distilled spirits would be required to notify the Director, in writing, of their intent to relabel. This letterhead notice must be accompanied by duplicate copies of the old and new labels, together with a written statement of the reasons for relabeling, the quantity and location of the product to be relabeled, and the name and address of the person conducting the relabeling activities.

ATF believes that the proposed amendment will eliminate the inconsistencies in the current regulations, while still enabling the tracing of products in the event of a safety hazard or a compliance issue. Since the requirement for prior approval is being eliminated, the proposed amendments will provide that the notice should be sent to the Director, rather than the regional director. This proposal will increase efficiency in the Bureau's tracing of labels, since copies of certificates of label approval are maintained at Bureau headquarters.

As previously noted, the proposed regulations will provide that ATF does not need to be notified of the relabeling of alcoholic beverage products in Customs bonded warehouses or foreign trade zones, as long as all other requirements are met.

Miscellaneous

ATF is also proposing to add to section 7.20 a provision which is already found in slightly different forms in sections 4.30 and 5.31. This provision authorizes, without any notice requirement, the addition of a label identifying the wholesale or retail distributor, or identifying the purchaser or consumer, as long as the label contains no reference whatever to the characteristics of the product. The proposed regulations will standardize this provision for wines, distilled spirits, and malt beverages. Furthermore, the notice procedure in all three sections is also standardized for the sake of consistency. Although the current regulations in sections 4.30 and 7.20 do not specifically condition approval for relabeling on the existence of a certificate of label approval for the new labels, such a policy has always been enforced by ATF. The proposed regulations will require submission of evidence of label approval for label changes.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. This notice requests comments on a proposal to make it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand or label on wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, including products held in a foreign trade zone or Customs bonded warehouse, if the effect of such action is to remove mandatory information required by ATF regulations, or to remove a product identification code placed on the label or container by the producer for tracing purposes. The proposal would also impose a notice requirement on the relabeling of distilled spirits, wine, and malt beverages, while eliminating the prior approval requirement previously imposed by the wine and malt beverage regulations. This proposal does not mandate new labeling requirements, but merely protects and preserves mandatory information already required under the regulations, and product identification codes which a producer voluntarily chooses to put on the product. Thus, the proposal should not have a significant economic impact on a substantial number of small entities.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected: (1) To have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has 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 directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to: Reports Management Officer, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this regulation are in 27 CFR 4.30, 5.31, and 7.20. These sections require that persons who wish to alter approved labels must notify ATF. This information is required by the Bureau of Alcohol, Tobacco and Firearms to ensure that alterations of labels are done in compliance with the regulations. The likely respondents are businesses or other for-profit institutions, including small businesses or organizations. This information collection requirement is included in OMB Control Number 1512–0092, which covers the relabeling of distilled spirits, wines, and beer. The estimated total number of label approvals issued annually under Control Number 1512–0092 is 54,601. Based on an estimated average time of 30 minutes to complete the application for label approval, the total annual burden associated with Control Number 1512–0092 is 27,300 hours. We estimate that ATF will receive about 180 notices of intent to relabel distilled spirits, wines, and malt beverages every year.

The amendments proposed in this document will not change the estimated number of 54,601 responses, because any person wanting to relabel an alcoholic beverage product is already required to obtain a certificate of label approval. The requirement for filing a notice with the Director will not change the estimated average time of 30 minutes to complete the application for a certificate of label approval, because only about 180 of the 54,601 responses will involve relabeling. The additional time required for those 180 responses is not significant enough to affect the estimated average time of 30 minutes to complete the application for label approval. Thus, the total burden estimate associated with Control Number 1512–0092 is not affected by the amendments proposed in this document.

Public Participation

ATF requests comments from all interested persons concerning the amendments proposed by this notice. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same

consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed amendments to the regulations should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226

Drafting Information

The principal author of this document is Daniel J. Hiland, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Consumer Protection, Customs duties and inspection, Imports, Labeling.

Issuance

Title 27, Chapter I, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.30(b) is revised, and new paragraphs (c) and (d) are added to read as follows:

§ 4.30 General.

* * * * *

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon wine held for sale in interstate or foreign commerce or after shipment therein, including wine held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided for in this section.

(2) *Relabeling.* (i) Persons may engage in additional labeling or relabeling of wine in containers for purposes of compliance with the requirements of this subpart or of State law only if the new labels are covered by certificates of label approval, and the relabeling will not result in the removal from the container or label of a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Persons who wish to relabel in accordance with paragraph (b)(2)(i) of this section must give prior written notice to the Director of their intent to relabel. A notice of intent to relabel wine shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the wine, and the name and address of the person conducting the relabeling activity. In addition, persons desiring to relabel wine must provide evidence that they have applied for and received a certificate of label approval, ATF F 5100.31, covering such products.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the container, after removal from customs custody, or prior to or after removal from the premises where bottled or packed, without notice to ATF, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the products.

(c) *Customs bonded warehouses.* (1) Domestic wines which have been removed without payment of tax for transfer to a Customs bonded warehouse pending exportation may be relabeled without notice to ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings which are required under part 24 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported wines held in a Customs bonded warehouse may be relabeled without notice to ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 4.40, imported beverage wine in containers shall not be released from Customs custody for consumption without a certificate of label approval.

(d) *Foreign trade zones.* (1) Domestic wines which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without notice to ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by Part 24 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported wines which have been entered into a foreign trade zone may be relabeled without notice to ATF, as long as such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 4.40, imported beverage wine in containers shall not be released from Customs custody for consumption without a certificate of label approval.

Par. 3. Section 4.80 is revised to read as follows:

§ 4.80 Exports.

With the exception of the regulations at § 4.30(b), (c), and (d), the regulations in this part shall not apply to wine exported in bond.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 5. Section 5.1 is revised to read as follows:

§ 5.1 General.

The regulations in this part relate to the labeling and advertising of distilled spirits. This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With the exception of the regulations at § 5.31(b), (c), and (d), the regulations in this part do not apply to distilled spirits for export.

Par. 6. Section 5.31 (b) is revised, and new paragraphs (c) and (d) are added to read as follows:

§ 5.31 General.

* * * * *

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, including distilled spirits held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided in this section.

(2) *Relabeling.* (i) Persons may engage in additional labeling or relabeling of distilled spirits in containers for purposes of compliance with the requirements of this subpart or of State law only if the new labels are covered by certificates of label approval, and the relabeling will not result in the removal from the container or label of a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Persons who wish to relabel in accordance with paragraph (b)(2)(i) of this section must give prior written notice to the Director of their intent to relabel. A notice of intent to relabel distilled spirits shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the distilled spirits, and the name and address of the person conducting the relabeling activity. In addition, persons desiring to relabel distilled spirits must provide evidence that they have applied for and received a certificate of label approval, ATF F 5100.31, covering such products.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without notice to ATF, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(c) *Customs bonded warehouses.* (1) Domestic distilled spirits which have been removed without payment of tax for transfer to a Customs bonded warehouse pending exportation may be relabeled without notice to ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings which are required under part 19 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported distilled spirits held in a Customs bonded warehouse may be relabeled without notice to ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 5.51, bottled distilled spirits shall not be released from Customs custody for consumption without a certificate of label approval.

(d) *Foreign trade zones.* (1) Domestic distilled spirits which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without notice to ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by part 19 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported distilled spirits which have been entered into a foreign trade zone may be relabeled without notice to ATF, as long as such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 5.51, bottled distilled spirits shall not be released from Customs custody for consumption without a certificate of label approval.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 7. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 8. Section 7.20 is amended by revising paragraph (c), and adding new paragraphs (d) and (e) to read as follows:

§ 7.20 General.

* * * * *

(c) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, including malt beverages held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided in this section.

(2) *Relabeling.* (i) Malt beverages in containers may be relabeled for purposes of compliance with the requirements of this subpart or of State law only if the new labels are covered by certificates of label approval, and the relabeling will not result in the removal from the container or label of a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Persons who wish to relabel in accordance with paragraph (c)(2)(i) of this section must give prior written notice to the Director of their intent to relabel. A notice of intent to relabel malt beverages shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person conducting the relabeling activity. In addition, persons desiring to relabel malt beverages must provide evidence that they have applied for and received a certificate of label approval, ATF F 5100.31, covering such products.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without notice to ATF, a label identifying the wholesale or retail distributor thereof or

identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(d) *Customs bonded warehouses.* Imported malt beverages held in a Customs bonded warehouse may be relabeled without notice to ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 7.31, no imported malt beverages in containers shall be released from Customs custody for consumption without a certificate of label approval.

(e) *Foreign trade zones.* (1) Domestic malt beverages which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without notice to ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by Part 25 of this chapter or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported malt beverages which have been entered into a foreign trade zone may be relabeled without notice to ATF, as long as such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 7.31, no imported malt beverages in containers shall be released from Customs custody for consumption without a certificate of label approval.

Par. 9. Section 7.60 is revised to read as follows:

§ 7.60 Exports.

With the exception of the regulations at § 7.20(c), (d) and (e), the regulations in this part shall not apply to malt beverages exported in bond.

Signed: January 10, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–997 Filed 1–11–95; 1:43 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

RIN 1010–AB81

Response Plans for Facilities Seaward of the Coast Line

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule to implement the Oil Pollution Act of 1990 (OPA) would establish requirements for spill-response plans for oil handling facilities seaward of the coast line, including associated pipelines. The proposed rule provides guidance to owners and operators for preparing and submitting these spill-response plans.

DATES: Comments must be received or postmarked by March 14, 1995.

ADDRESSES: All comments concerning this proposed rule should be mailed or hand-carried to the Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella or Lawrence Ake, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: In August 1990, Congress passed the OPA containing various provisions to strengthen oil-spill prevention efforts and oil-spill response capability. The OPA included amendments to section 311 of the Federal Water Pollution Control Act (FWPCA). The President signed Executive Order (E.O.) 12777 on October 18, 1991 (56 FR 54757), to implement these new authorities. Section 2(b)(3) of E.O. 12777 delegated to the Secretary of the Interior (Secretary) those responsibilities under section 311(j)(1)(C) of the FWPCA, requiring the Secretary to establish procedures, methods, and requirements for equipment to prevent and contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines. Under section 2(d)(3) of E.O. 12777, section 311(j)(5) of FWPCA, and section 4202(b)(4) of OPA, the Secretary is required to issue regulations requiring the owners or operators of offshore facilities, including associated pipelines, to prepare and submit response plans that ensure the availability of private spill-response personnel and equipment and to permit the operation of offshore facilities, including associated pipelines, without approved response plans if certain conditions are met. Under section 2(e)(3) of E.O. 12777 and section 311(j)(6)(A) of FWPCA, the Secretary must require periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines. The Secretary has redelegated these responsibilities to the Director, MMS.

Under OPA and E.O. 12777, MMS is to administer these new requirements for all ''offshore'' facilities in, on, or under coastal waters of the territorial sea, rivers, lakes, and other navigable waters within the States and Territories of the United States or otherwise subject to U.S. jurisdiction including State submerged lands. The MMS negotiated a redelegation of its responsibilities for ''offshore'' facilities located landward of the coast line to other Federal agencies with existing inland regulatory capabilities and responsibilities. This redelegation was published in the **Federal Register** on February 28, 1994 (59 FR 9494). Accordingly, this proposed rule addresses only facilities seaward of the coast line.

The MMS believes that adequate spill-prevention regulations meeting the requirements of OPA currently exist for facilities in the Outer Continental Shelf (OCS) at 30 CFR part 250. In addition, all States with facilities seaward of the coast line have existing programs to prevent spills. For these reasons, MMS does not propose regulations to implement the spill-prevention requirements of section 311(j)(1)(c) of the FWPCA at this time. The proposed rule requires that plan submitters provide information on the prevention methods they must utilize during operations in State waters.

The MMS will work with States on compatible spill-prevention rules for facilities in State waters seaward of the coast line. The MMS has executed a Memorandum of Understanding (MOU) with the State of Texas General Land Office and is discussing MOU's with the States of Alaska, California, and Louisiana. Further coordination is planned with States to ensure that regulations are compatible. Commenters are urged to provide comments on the types of prevention rules that should be required.

During the preparation of this notice of proposed rulemaking, MMS participated with three other Federal agencies in the drafting of the National Preparedness for Response Exercise Program (PREP). The agencies (U.S. Coast Guard, Environmental Protection Agency, Research and Special Projects

Administration, and MMS) worked with States and private industry to develop guidelines for spill-response exercises that would meet the requirements of OPA. The drill requirements set forth in this document parallel the PREP guidelines. The MMS has determined that the proposed requirements for tabletop drills for the spill management team satisfy the purpose and goal of the act's requirement that the response plan describe the periodic unannounced drills to be carried out under the plan. The tabletop exercises will drill owner or operator personnel who make decisions and organize the response to a spill. These personnel must be drilled using a spill scenario that is unannounced prior to the drill. The MMS will also periodically initiate unannounced drills to test the preparedness of owners and operators.

The MMS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on August 12, 1992 (57 FR 36032), soliciting comments through September 28, 1992. In the ANPR, MMS presented four optional methods for developing these new rules and solicited comments on the four options. The MMS received 48 comments from various individual companies and trade associations within the offshore petroleum industry, support contractors, State and local governments, and Federal agencies.

The MMS developed this proposed rule taking into account the comments received on the ANPR and the experience gained in developing and implementing the interim final rule at 30 CFR part 254. The interim final rule, covering only the spill-response portion of MMS's new authorities, and only facilities located in the OCS or in the territorial sea, was published in the **Federal Register** on February 8, 1993. The MMS is interested in receiving comments from all interested parties and especially those who have experience in developing spill-response plans in response to the interim final rule.

The MMS plans no public hearing at this time. Persons wishing to request a public hearing should make a request by writing to MMS at the address provided above. If a public hearing will aid in the development of a final rule, the date and time of the public hearing will be announced in the **Federal Register**.

Author: This document was prepared by Lawrence Ake, Engineering and Technology Division, MMS.

E.O. 12866

This proposed rule was reviewed under E.O. 12866. The proposed rule was determined to not be a significant rule under the criteria of E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this proposed rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore oil and gas activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

The collection of information contained in this proposed rule has been approved by to the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. The collection of this information has been assigned OMB clearance number 1010–0091.

Public reporting burden for this collection of information is estimated to average 106.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project (1010–0091); Washington, DC 20503.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630.

E.O. 12778

The DOI has certified to OMB that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Oil pollution, Pipelines.

Dated: November 1, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 254 is proposed to be revised as follows:

PART 254—RESPONSE PLANS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE

Sec.
254.0 Authority for information collection.
254.1 Purpose and implementation.
254.2 Definitions.
254.3 General requirements.
254.4 Submission of information.
254.5 Response plans for Outer Continental Shelf (OCS) facilities.
254.6 Worst case discharge.
254.7 Determining response equipment capacities.
254.8 Training.
254.9 Drills.
254.10 Maintenance and periodic inspection of equipment.
254.11 Equipment performance testing.
254.12 Notification requirements.
254.13 Plan revision and resubmission.
254.14 Response plans for facilities in State waters located seaward of the coast line.
254.15 Approval of plans.

Authority: 33 U.S.C. 1321.

§ 254.0 Authority for information collection.

The information collection requirements in 30 CFR part 254 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0091. The information is being collected to inform the Minerals Management Service (MMS) of owner, operator, and lessee preparations for response to potential pollution of the offshore environment. The requirement to respond is mandatory. The public reporting burden for this collection of information is estimated to average 106.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burdens indicated for a specific information collection or any other aspect of the collection of information pursuant to the provisions of this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service;

Mail Stop 2053; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project (1010–0091); Washington, DC 20503.

§ 254.1 Purpose and implementation.

(a) With this part, MMS establishes requirements for spill-response plans for facilities located seaward of the coast line, including those facilities in State water located seaward of the coast line. Each owner or operator of a facility located seaward of the coast line must have a spill-response plan that covers each facility.

(b) The provisions of the plan must be carried out whenever there is a release of oil or a hazardous substance into waters adjacent to the facility. If there is a spill, a designated qualified individual must immediately initiate actions described under the plan.

(c) No facility located seaward of the coast line may be used to handle, store, or transport oil unless a response plan has been submitted and approved, and the facility is being operated in compliance with the plan. Owners and operators of abandoned facilities must maintain a current response plan until the facility is physically removed or dismantled and the Regional Supervisor provides written notice that a response plan is no longer required.

(d) Notwithstanding the provisions of paragraph (c) of this section, a facility may continue to be used to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of the plan. In order to continue to operate a facility without an approved plan, the facility owner or operator must certify in writing to the Regional Supervisor that he has ensured by contract the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge. A copy of the contract(s) must accompany the certification.

(e) Owners or operators with spill-response plans currently approved by MMS must submit the information to comply with this part when submitting the first required annual update after [the effective date of the final rule]. The Regional Supervisor may extend this deadline up to 90 days upon request.

(f) Nothing in this section shall relieve the owner or operator from taking all appropriate actions necessary to immediately abate, contain, and remove any oil or hazardous substance spill.

§ 254.2 Definitions.

For the purposes of this part:

Adverse weather conditions means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil or hazardous substances. These include, but are not limited to: fog, inhospitable water and air temperatures, wind, sea ice, current, and sea states.

Area Contingency Plan means the Area Contingency Plan prepared and published under section 311(j) of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA).

Coast line means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. The term excludes deepwater ports and their associated pipelines as defined by the Deepwater Port Act of 1974 but includes other pipelines used for one or more of these purposes.

Hazardous substance means any substance designated pursuant to section 1321(b)(2)(A) of the FWPCA as amended and listed at 40 CFR 116.4.

Maximum extent practicable means the limits of available technology, as well as the practical limits of personnel, to respond to a worst case discharge in adverse weather.

Mobile Offshore Drilling Unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources of oil, gas, or minerals. An MODU is classified as a facility when engaged in drilling or downhole operations.

National Contingency Plan means the National Oil and Hazardous Substances Pollution Contingency Plan prepared and published under section 311(d) of the FWPCA, as amended by OPA, (33 U.S.C. 1321(d)) or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9605).

Oil means hydrocarbons produced at the wellhead in liquid form (includes distillates or condensate associated with produced natural gas), as well as oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil spill removal organization (OSRO) means an entity contracted by an owner or operator to provide spill-response equipment and/or manpower in the event of an oil or hazardous substance spill.

Outer Continental Shelf means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Owner or operator means the individual, partnership, firm, or corporation having ownership, control, or management of operations on the leased or permitted area where the facility is located or the holder of a pipeline right-of-way or a right of use and easement granted under applicable State law or the OCS Lands Act, as amended, for the area in which the facility is located.

Pipeline means pipe and any associated equipment, appurtenance, or building used or intended for use in the transportation of oil located seaward of the coast line, except those used for deepwater ports. Pipelines do not include vessels such as barges or shuttle tankers used to transport oil from facilities located seaward of the coast line.

Qualified individual means a person identified in the response plan who has the responsibility and authority to initiate spill cleanup operations, obligate funds to carry out response activities, and act as liaison with the predesignated Federal On-Scene Coordinator. The qualified individual is a member of the spill management team.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

Spill management team means the persons identified in a response plan who staff the organizational structure to manage spill response implementation.

Spill response operating team means persons who respond to spills through deployment and operation of oil-spill response equipment.

State waters located seaward of the coast line means the belt of the seas measured from the coast line and extending seaward a distance of 3 miles (except for the coast of Texas and the Gulf coast of Florida, where the State waters extend seaward a distance of 3 leagues). Exceptions to this definition may be negotiated between Federal agencies for the purpose of efficient use of Federal regulatory resources. Affected owners or operators will be notified in writing of any such exceptions.

§ 254.3 General requirements.

(a) When compliance by an owner or operator is required, such compliance

may be achieved by a facility owner, a Federal or State lessee or permittee, by an operator on behalf of a lessee or permittee, by a pipeline right-of-way holder, or by a holder of a right of use and easement.

(b) An owner or operator submitting a response plan under this part must develop a plan that is consistent with the National Contingency Plan and the appropriate Area Contingency Plan(s). Information contained in either the national plan or the appropriate area plan may be referenced for inclusion in the response plan.

(c) The response plan may be for a single lease or facility, or for a group or groups of leases or facilities of an owner or operator, including affiliates which are located in the same Region (Regional Response Plan). The plan shall cover MODU's engaged in drilling and other downhole activities on an included lease.

(1) Regional response plans must contain all the elements required of a response plan written for a facility as described in § 254.5 or § 254.14 of this part.

(2) Regional response plans may group facilities or pipelines for the purpose of calculating response times, quantities of response equipment, and developing worst case spill scenarios, as approved by the Regional Supervisor.

(3) Additional requirements for regional response plans may be specified by the Regional Supervisor.

(d) The plan must provide for response to an oil spill and a spill of other hazardous substances present at the facility.

(e) Owners or operators of pipeline facilities located seaward of the coast line which transport oil or transport condensate that has been separated from a gas prior to injection into a pipeline must prepare spill-response plans in accordance with this part.

(1) The plan shall conform to the provisions of § 254.5 of this part for pipelines located in the OCS and § 254.14 for pipelines located in State waters.

(2) *Reserved*.

(f) The contents required for each section and subsection of the plan are set forth in 30 CFR 254.5 and 254.14, as appropriate.

(g) Owners or operators of facilities submitting response plans to MMS for approval must submit the number of copies of the plan required by the regional office to the appropriate address provided in § 254.4.

§ 254.4 Submitting information.

Information submitted under this section should be sent to the appropriate MMS regional office at the address in this section:

(a) Send documentation for facilities located seaward of the coast line of Alaska to: Minerals Management Service, Regional Supervisor, Field Operations, Alaska OCS Region, 949 East 36th Avenue, Anchorage, AK 99508–4302.

(b) Send documentation for facilities in the Gulf of Mexico or Atlantic Ocean to: Minerals Management Service, Regional Supervisor, Field Operations, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394.

(c) Send documentation for facilities in the Pacific Ocean (except seaward of the coast line of Alaska) to: Minerals Management Service, Regional Supervisor, Field Operations, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064.

§ 254.5 Response plans for Outer Continental Shelf (OCS) facilities.

Owners or operators of OCS facilities must develop, submit, and maintain a spill-response plan that demonstrates an ability to respond quickly and effectively whenever oil or hazardous substances are discharged as a result of their activities. The response plan must be prepared in accordance with the following:

(a) A response plan must be divided into the sections listed in this paragraph. It must also have some easily found marker identifying each section listed in this paragraph. Alternative formats and contents are allowed if the owner or operator can demonstrate to the Regional Supervisor that they provide for equal or greater levels of preparedness.

(1) Introduction and plan contents.

(2) Emergency response action plan.

(3) Spill scenarios.

(4) Training and drills.

(5) Plan review and update procedures.

(6) Appendices:

(i) Equipment inventories.

(ii) Contractual agreements.

(iii) Dispersant use plan.

(iv) In situ burning plan.

(b) For both initial and subsequent submissions, a response plan that does not follow the format specified in paragraph (a) of this section must be supplemented with a cross-reference table to identify the location of the applicable sections.

(c) (1) The introduction and plan contents section must provide:

(i) A map showing the location of each facility covered by the plan and a description of each facility;

(ii) A table of contents;

(iii) A record of changes to record information on plan updates; and

(iv) A cross-reference table, if needed.

(2) The emergency response action plan section must include:

(i) Designation, by name or position, of a trained spill management team available on a 24-hour basis. The team must include, as a minimum, a trained qualified individual and alternate who is charged with the responsibility and is delegated authority for directing and coordinating response operations. A description of the responsibilities and authorities of each member of the spill management team shall be set forth with specificity.

(ii) Designation, by name or position, of a spill response operating team comprised of trained personnel available on a 24-hour basis and able to respond within a reasonable minimum specified time.

(iii) A planned location for a spill response operations center and provisions for primary and alternate communications systems for directing the coordinated overall response operations. Telephone and facsimile numbers should be provided and, if appropriate, the primary and secondary radio frequencies that will be used.

(iv) Procedures for the early detection of a spill and a discussion of prioritized procedures that facility personnel must use to mitigate or prevent a discharge or threat of a discharge of oil or a hazardous substance including emergency situations such as an explosion or fire.

(v) Notification procedures, including a current list of names, telephone numbers (including facsimile numbers if applicable), and addresses of the following: the qualified individual and alternate who are to receive notification of a spill; other spill response management team members; the OSRO's that the plan cites; the Federal, State, and local regulatory agencies that should be consulted to obtain site specific environmental information; and the Federal, State, and local regulatory agencies that are to be notified when a spill of oil or a hazardous substance occurs or is discovered. Response personnel; appropriate Federal, State, and local officials; and the Regional Supervisor must be notified of spills within the timeframes specified in § 254.12 of this part. The plan must provide for the use of the oil spill/hazardous substance reporting forms included in the Area Contingency Plan.

(vi) Identification of response equipment, personnel, materials, support vessels, and procedures the operator will employ in response to any type of oil discharge, including

continuous oil discharges (including a worst case scenario as defined in 30 CFR 254.6), and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). The plan must identify the location of all response equipment as well as the amount of time required to respond to a spill at the facility. Response equipment, vessels, and strategies identified in the plan must be suitable, within the limits of current technology, for the range of environmental conditions anticipated during operation of the facility, and identified personnel must be capable of operating response equipment.

(A) Owners and operators must utilize standardized, defined terms when describing the capabilities of response equipment and the environmental conditions anticipated. An example of acceptable terms would be those defined in American Society for Testing of Materials (ASTM) publication F 625, ''Standard Practice for Describing Environmental Conditions Relevant to Spill Control Systems for Use on Water,'' and ASTM F 818, ''Standard Definitions of Terms Relating to Spill Response Barriers.''

(B) The total distance of the facility from the response equipment storage area must be used to compute response times, as well as the time to secure auxiliary equipment such as workboats.

(C) The effective daily recovery capacity of the equipment identified in the plan must be computed and identified and be sufficient to respond to the worst case spill scenario to the maximum extent practicable. Effective daily recovery capacities shall be computed using the methods described in § 254.7 of this part.

(D) Vessels or vessel types used to deploy response equipment must be capable of operating and safely deploying equipment in the environmental conditions in which the equipment will be used.

(vii) Provisions for storage, transfer, and disposal of recovered oil, oil contaminated material, and other hazardous wastes.

(viii) A listing of the types and characteristics of the oil and hazardous substances produced, handled, or stored at the facility.

(3) The spill scenarios section must include:

(i) Oil-spill trajectory analyses that are specific to the area of operations shall be referenced and summarized. Owners and operators must, as a minimum, use a trajectory analysis to determine the maximum distance from the facility that oil could move in 48 hours, based on a worst case discharge and credible adverse winds and currents over a range of seasons and weather conditions. Facilities located in OCS areas for which MMS prepared a lease sale Environmental Impact Statement (EIS) may, upon approval of the Regional Supervisor, reference and summarize the 3-day conditional probabilities for a hypothetical spill site in the EIS.

(ii) Provisions for monitoring and predicting spill movement.

(iii) A listing of areas of special economic or environmental importance potentially impacted by a spill and strategies to be used for their protection. As a minimum, the list must include those areas of special economic and environmental importance listed in the appropriate Area Contingency Plan.

(A) A plan for protecting and minimizing the risk and damage to fish and wildlife resources that may be jeopardized by a spill. The plan shall include maps depicting protection strategies for areas identified as having special economic or environmental importance.

(B) *Reserved*.

(4) The training and drills section must include:

(i) Training requirements for personnel in accordance with § 254.8 of this part.

(A) The response plan must identify the training provided to each individual having responsibility under the plan. The plan must designate a location where course completion certificates or attendance records for this training will be kept. All training certificates and attendance records must be made available to any authorized MMS representative upon request.

(B) *Reserved*.

(ii) Requirements for drills in accordance with § 254.9 of this part.

(5) The plan review and update procedures section must include the policies the lessee or operator will use to meet the requirements of § 254.13 of this part.

(6) Appendices must include:

(i) Equipment inventories.

(A) An inventory of spill-response equipment, materials, and supplies which are available locally and regionally.

(B) Provisions for the inspection and maintenance of spill-response equipment in accordance with § 254.10 of this part.

(ii) Contractual agreements.

(A) A copy of any written contractual agreements with any OSRO's or spill management team members not employees of the operator that are cited in the plan. The agreements must identify and include provisions for ensuring the availability of specified personnel and equipment within the response times specified under § 254.5(c)(2)(vi).

(B) Proof of active membership in any oil spill removal cooperative that is identified in the plan. If not provided elsewhere in the plan, this section must also provide documentation showing the personnel, equipment, response times, and services provided by the cooperative.

(iii) Dispersant use plan. A dispersant use plan including an inventory and a location of the dispersants which might be proposed for use, a summary of toxicity data for each dispersant, a description of the types of oil on which each dispersant is effective, a description and location of application equipment, application procedures, and an outline of the procedures owners and operators must follow in obtaining approval for dispersant use. The dispersant use plan must be consistent with the dispersant use schedule of the National Contingency Plan and the appropriate Area Contingency Plan.

(iv) In situ burning plan. Provisions for ignition of an oil spill and the guidelines for making the decision to ignite. Guidelines must consider circumstances in which in situ burning may be appropriate, safety of personnel and property, well control, availability of fire retardant boom, and environmental effects. The plan must identify an operator's representative who has the authority to authorize ignition.

(v) Other information identified by the Regional Supervisor as needed or necessary for review and compliance.

§ 254.6 Worst case discharge.

The plan must contain a detailed scenario of a worst case discharge from the facility in adverse weather conditions, including a discharge resulting from a fire or explosion. The calculations used and the assumptions made in determining the worst case discharge must be included in the plan. A spill-response plan must describe and quantify a worst case discharge as follows:

(a) For an oil production platform facility, the plan will describe the worst case discharge as a summation of the following.

(1) The maximum capacity of all oil storage tanks and flow lines on the facility.

(2) The volume of oil calculated to leak from oil pipelines connected to the facility considering shutdown response time and the effect of hydrostatic pressure.

(3) The amount of oil possible from an uncontrolled blowout of the highest

capacity well on the platform for a period of 30 days. The calculation of the discharge volume must include an analysis of reservoir characteristics, casing/production tubing sizes, and historical production and reservoir pressure data.

(b) For exploratory drilling operations, the response plan must describe the worst case discharge as follows:

(1) The amount of oil possible from an uncontrolled blowout over a period of 30 days. The calculation of the discharge volume must include any known reservoir characteristics. If reservoir characteristics are unknown, the plan must use analog reservoirs from the area and give an explanation for the selection of the reservoir(s) used.

(2) Reserved.

(c) For a pipeline facility, the response plan must describe the worst case discharge as follows:

(1) The volume of oil equal to the pipeline system release detection time in hours, plus the shutdown response time in hours (may be based on an automatic shutdown system), multiplied by the highest hourly oil flow rate over the preceding 12-month period, plus the total volume of oil contained within the largest segregated segment of the pipe, as identified for a particular area.

(2) Reserved.

(d) For paragraph (a), (b), and (c) of this section, the plan must take into account and address adverse weather conditions for the operating area, including wave heights, currents, and weather-related visibility, as well as ice and temperature-related problems, when appropriate. The plan must cite mechanical equipment in the response inventory only when the equipment is effective in the adverse weather conditions described.

(e) For paragraph (a), (b), and (c) of this section, owners or operators may provide estimates of a worst case discharge by a group of facilities in the same geographic area, provided the example submitted represents the worst case scenario for that area.

(f) Owners or operators of facilities proposing to store, handle, transfer, process or transport oil not falling into the categories listed in paragraphs (a), (b), or (c) of this section must contact the Regional Supervisor for instructions on the calculation of a worst case discharge.

§ 254.7 Determining response equipment capacities.

(a) The plan must identify the calculated effective daily recovery capacity for the oil recovery devices listed. The effective daily recovery capacity must be calculated using 20 percent of the manufacturer's rated throughout capacity over a 24-hour period. This 20 percent efficiency factor will take into account limitations of the recovery operations due to available daylight, sea state, temperature, viscosity, and emulsification of the oil being recovered.

(b) Owners or operators wishing to use a different efficiency factor for specific oil recovery devices must submit evidence to substantiate another efficiency factor. Adequate evidence includes verified performance data measured during actual spills or test data gathered according to the provisions of § 254.11 (b) and (c) of this part.

§ 254.8 Training.

(a) The owner or operator must ensure that the spill response operating team is provided with hands-on training classes at least annually in the deployment and operation of the pollution control equipment to which it is assigned. Members of the spill response operating team and all private response personnel must be trained to meet the Occupational Safety and Health Administration's standards for emergency response operations in 29 CFR 1910.120. Those members of the spill response operating team responsible for supervising the team shall be trained annually in directing the deployment and use of response equipment.

(b) The owner or operator must ensure that the spill response management team, including the qualified individual identified in the plan, is trained annually about the location, intended use, deployment strategies, and the operational and logistical requirements of available response equipment, spill reporting procedures, oil-spill trajectory analysis, predicting spill movement, and other responsibilities they may have for the facilities under their jurisdiction.

§ 254.9 Drills.

(a) Each owner or operator must exercise the entire response plan at least once every 3 years. This requirement may be satisfied by separate exercises for segments of the plan; it is not necessary to exercise the full plan at one time. The drills must simulate conditions in the area of operations, including seasonal weather variations, to the extent practicable.

(1) The MMS will recognize and give credit for any drills conducted under this section that satisfy some component of the required triennial exercise, whether initiated by the owner or operator or a government regulatory agency.

(2) The drills should cover a range of exercise scenarios over the 3-year period simulating response to small spills, average spills, and the worst case spill scenario.

(b) The plan must provide, as a minimum, for the following types of drills:

(1) An annual unannounced spill management team tabletop exercise. The exercise must test the spill management team's organization, communication, and decisionmaking in managing a response to a spill scenario that is not revealed to team members prior to commencement of the exercise.

(2) A semiannual equipment deployment drill for each facility required by the Regional Supervisor to maintain response equipment at the facility. Each type of equipment maintained at the facility must be deployed at least once each year. Each type need not be deployed at each drill.

(3) An annual notification drill for each facility that is manned on a 24-hour basis. The exercise will test communications between facility personnel and the qualified individual as well as the ability to communicate pertinent information in a timely manner.

(c) Each owner or operator must ensure that the response equipment identified in the plan is exercised in annual deployment drills. Each type of equipment must be exercised during each triennial period. It is not necessary to deploy each piece of equipment. Certification that applicable OSRO's and oil spill removal cooperatives have deployed each type of equipment must be maintained at a location designated in the plan. A response to an actual spill may be substituted for a deployment exercise.

(d) The plan (and the yearly update) must provide a time schedule for drills with a list of any equipment to be deployed. The schedule shall provide sufficient advance notice to allow MMS personnel to witness any of the scheduled drills. Drill conditions, results, and the names of participants in the drill shall be recorded and the records maintained for 3 years at a site designated in the plan and made available to MMS personnel.

(e) The Regional Supervisor may require an increase in the frequency or a change in the location of the drills, equipment to be deployed,or deployment procedures and strategies. The Regional Supervisor may evaluate the results of drills and advise the lessee or operator of any needed changes in

response equipment, procedures, or strategies.

(f) The Regional Supervisor will periodically initiate unannounced drills to test the spill response prepardeness of owners and operators.

§ 254.10 Maintenance and periodic inspection of equipment.

(a) The spill-response equipment listed in the plan must be inspected and maintained, as necessary, to ensure optimal performance.

(b) The plan must provide for inspecting response equipment included in the plan. Inspections must be made at least monthly, and records of the inspections must be maintained for at least 2 years at a site specified in the plan.

§ 254.11 Equipment performance testing.

(a) The MMS may require testing of any spill removal equipment listed in the response plan to ensure that the equipment meets the performance standards stated in the plan. The Regional Supervisor may require testing if the equipment:

(1) Has been modified,

(2) Has been damaged and repaired, or

(3) Has a claimed effective daily recovery capacity that is inconsistent with data otherwise available to the Regional Supervisor.

(b) Testing of booms must be conducted in accordance with test criteria approved by MMS. The document ''Test Protocol for the Evaluation of Oil-Spill Containment Booms,'' available from MMS, may be used for guidance. Testing of skimmers must also be conducted in accordance with test criteria approved by MMS. The document ''Suggested Test Protocol for the Evaluation of Oil Spill Skimmers for the OCS,'' available from MMS, may be used for guidance.

(c) All testing is the responsibility of the owner or operator, who is also responsible for the accuracy of the information submitted.

§ 254.12 Notification requirements.

(a) In the event of a spill, the person designated as the qualified individual must immediately notify response personnel as well as appropriate Federal, State, and local officials.

(b) The Regional Supervisor must be notified orally within the following time limits:

(1) Within 12 hours if the spill is one barrel or less, and

(2) Without delay if the spill is more than one barrel. The qualified individual must confirm reports of spills of more than one barrel in writing.

§ 254.13 Plan revision and resubmission.

(a) Owners or operators must review their spill-response plans at least annually and submit all resulting modifications to the Regional Supervisor. If this review does not result in modifications to the plan, the facility owner or operator must inform the Regional Supervisor in writing that there are no changes.

(b) Owners or operators must submit revisions to their plans for approval at least 15 days before the effective date of the changes. Revisions are required whenever:

(1) A change occurs in the number of facilities covered by the plan;

(2) A change occurs in the OSRO designated in the plan or in the assessed capabilities of spill removal;

(3) A change occurs (in name or position) of the qualified individual or any member of the spill management team;

(4) A significant change occurs in the worst case discharge estimate, or in the type or quantity of hazardous substances handled at the facility;

(5) Any changes occur in the listings of economically important or environmentally sensitive areas identified in the Area Contingency Plan(s).

(c) Owners and operators must provide a record of the changes submitted for insertion in the introduction to the plan.

(d) The Regional Supervisor may require that a response plan be resubmitted if the plan has become outdated or if numerous modifications and revisions have made its use unnecessarily difficult.

(e)(1) The Regional Supervisor will periodically review the equipment inventories of OSRO's to ensure that sufficient equipment is available to meet the cumulative needs of the owners and operators who cite these organizations in their spill-response plans as their primary source of spill removal equipment.

(2) The MMS require an owner or operator to revise a plan at any time if the Regional Supervisor notes significant inadequacies during these reviews or during a drill or response to an actual pollution incident.

§ 254.14 Response plans for facilities in State waters located seaward of the coast line.

Owners or operators of facilities in State waters located seawater of the coast line shall comply with paragraphs (a), (b), or (c) of this section.

(a) Modify an OCS spill-response plan submitted pursuant to the requirements of 30 CFR 254.5 and approved by MMS to include facilities in State waters adjacent to an OCS Region and submit the plan to MMS for approval.

(b) Submit a response plan to the appropriate MMS office identified in § 254.4 for approval. The plan shall contain the information required in § 254.5.

(c) Submit a response plan to MMS for approval that has been developed in accordance with the laws or regulations of the State. The plan must contain all the elements required by the State and must:

(1) Be consistent with the requirements of the National Contingency Plan and appropriate Area Contingency Plan(s).

(2) Identify a qualified individual and require immediate communication between that person and appropriate Federal officials and response personnel if there is a spill.

(3) Identify any private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge as defined in § 254.6. The plan must provide a copy of any written contractual agreement with any OSRO's or spill management team members not employees of the owner or operator.

(4) Describe the training, equipment testing, periodic unannounced drills, and response actions of personnel at the facility.

(5) Describe the procedures used to periodically update and resubmit the plan for approval of each significant change.

(6) Provide the following information:

(i) A list of the facilities and leases covered by the plan and a map showing their location.

(ii) Name and address of agency to whom the plan was submitted.

(iii) Date plan was submitted.

(iv) If the plan received formal approval, the name of the approving organization, the date of approval, and a copy of the State agency's approval letter if one was issued.

(v) Identification of any regulations or standards used in preparing the plan.

(d) Plans prepared by owners or operators of facilities in State waters, under paragraphs (a), (b), or (c) of this section, shall include a description of the steps taken to prevent spills of oil or hazardous substances or mitigate a substantial threat of such a discharge. The description shall include identification of State, Federal, or industry standards with which the operator is legally required to comply or voluntarily agrees to comply. The Regional Supervisor may prescribe additional equipment or procedures for spill prevention.

(e) Owners or operators of new facilities in State waters must submit the number of copies of the response plan requested by MMS to the appropriate MMS office 60 days before commencing operations.

§ 254.15 Approval of plans.

(a) The Regional Supervisor shall approve a plan that meets the following criteria:

(1) The plan contains the information required in § 254.5 or § 254.14, as appropriate.

(2) The plan identifies a worst case scenario that accurately reflects:

(i) The risks associated with the oil or other hazardous material being produced, stored, or transported;

(ii) Any adverse environmental conditions that can be expected in the area where the oil or hazardous material is being produced, stored, or transported and any area where the oil or hazardous material could migrate following a spill; and

(iii) Any environmentally sensitive or economically important areas that could be damaged by the spill.

(3) The plan provides for equipment, personnel, procedures, training, and drills that will result in the ability to respond in a timely manner to the identified worst case spill and remove the spill to the maximum extent practicable as well as mitigate or prevent a substantial threat of such a discharge.

(4) The plan is consistent with the National Contingency Plan and all relevant Area Contingency Plans.

(5) The plan demonstrates that the responsible party has granted an identified person full authority to implement removal actions.

(b) If the Regional Supervisor determines at any time that a response plan submitted to MMS or a State is inadequate, the Regional Supervisor will specify deficiencies in the plan, and the responsible party must take action to modify the plan.

[FR Doc. 95–802 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for revised amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has submitted additional proposed changes to its guidelines for evaluating revegetation success. These guidelines describe the sampling methods and standards which Ohio proposes to use to evaluate revegetation success prior to bond release on areas with different postmining land uses. The amendments are intended to make the Ohio program as effective as the corresponding Federal regulations.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on February 13, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on February 7, 1995. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 30, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1992, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On October 21, 1993 (Administrative Record No. OH–1944), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted a final combined version of two previous program amendments, Program Amendments Number 25R and 56R (PA 25R and PA 56R). In this combined submission, Ohio proposed to revise parts of the Ohio Administrative Code (OAC) pertaining to land use and revegetation success standards. Ohio also submitted ''Guidelines for Evaluating Revegetation Success'' establishing the sampling procedures for measuring vegetative ground cover, forage yield, and tree shrub stocking.

On May 2, 1994 (59 FR 22517), the Acting Assistant Director of OSM announced his decision approving combined PA 25R and 56R with certain exceptions. In that decision, the Assistant Director required Ohio to submit a proposed amendment to modify its ''Guidelines for Evaluating Revegetation Success'' to require the species diversity, erosion control, and other applicable requirements of OAC 1501:13–9–15(B) and (C) be evaluated at the time of final bond release. The Assistant Director also required that Ohio revise the formula for determining the sample size for evaluating tree and shrub success.

By letter dated July 19, 1994 (Ohio Administrative Record OH–2032), Ohio resubmitted revised ''Guidelines for Evaluating Revegetation Success'' which were intended to address the Assistant Director's requirements in his May 2, 1994, decision on PA 25R and 56R. OSM announced its receipt of proposed PA 25R and 56R in the **Federal Register** (59 FR 38577) on July 29, 1994. The public comment period ended on August 29, 1994. The public hearing scheduled for August 23, 1994, was not

held because no one requested an opportunity to testify.

By letter dated October 21, 1994, (Administrative Record No. OH–2066), OSM provided its questions and comments to Ohio on the July 19, 1994, submission of Ohio's ''Guidelines for Evaluating Revegetation Success.'' By letter dated December 20, 1994 (Ohio Administrative Record OH–2075), Ohio resubmitted revised guidelines which are intended to address the questions and comments in OSM's October 21, 1994 letter. Ohio's new proposed changes to its guidelines are described briefly below:

(1) Ohio is adding text to require that inspectors verify that the vegetation is successfully stabilizing the soil surface from erosion when inspectors evaluate areas for final bond release.

(2) Ohio is revising the guidelines to require a minimum of 100 samples to evaluate ground cover.

(3) Ohio is correcting errors in the statistical formulas for sampling adequacy and crop productivity.

(4) Ohio is deleting references in the guidelines to ''subsamples.''

(5) Ohio is revising the guidelines to exclude the first year's yields from consideration in meeting prime farmland crop productivity.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. on January 30, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **''FOR FURTHER INFORMATION CONTACT.''** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12866

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

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–972 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 93–081]

RIN 2115–AE90]

Designation of Lightering Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting on February 16, 1995, in the New Orleans, Louisiana, area to

provide the public an opportunity to comment on its proposal to establish three lightering zones in the Gulf of Mexico. The proposed zones are more than 60 miles from the baseline from which the territorial sea of the United States is measured and will allow single hull tankers using these zones to conduct lightering operations until the year 2015. The views presented at this meeting together with written comments on the proposal will be considered by the Coast Guard in formulating a final rule.

DATES: The meeting will be held February 16, 1995, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Best Western Landmark Hotel, Mardi Gras Ballroom, 2601 Severn Avenue, Metairie, LA. Comments become part of this docket (CGD 93–081) and are available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Stephen Kantz, Oil Pollution Act (OPA 90) Staff (G–MS–A), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Regulatory History

In November 1993, the Coast Guard received several requests to establish lightering zoned in the Gulf of Mexico. On December 2, 1993, the Coast Guard published in the **Federal Register** a notice of these petitions for rulemaking and request for comment (58 FR 63544).

Currently, 33 CFR part 156 provides that the Coast Guard will consider various factors in designating lightering zones—traditional use of the area for lightering; weather and sea conditions; water depth; proximity to shipping lanes, vessel traffic schemes, anchorages, fixed structures, designated marine sanctuaries, fishing areas, and designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System; and other relevant safety, environmental, or economic data (33 CFR 156.230).

On December 16, 1993, the Coast Guard published in the **Federal Register** a notice of public meeting to solicit opinions on whether lightering zones should be established and, if so, where they should be located and what operating conditions should be mandated (58 FR 65683). A public meeting was held in Houston, Texas, on January 18, 1994. At that time, the Oil Spill Coordinator from the State of Louisiana requested that a public meeting be held in Louisiana after there was an opportunity to review any proposal by the Coast Guard to designate lightering zones.

On January 5, 1995, the Coast Guard published the notice of proposed rulemaking in the **Federal Register** (60 FR 1958). The coordinates of the three lightering zones proposed to be established are set forth in the proposed rulemaking.

Summary of the Rulemaking

By using these proposed designated lightering zones more than 60 miles from the baseline, single hull tank vessels contracted for after June 20, 1990, and older single hull tank vessels phased out by OPA 90, would be able to lighter in the U.S. Economic Exclusive Zone (EEZ) until January 1, 2015. In addition to establishing the first lightering zones designated by the Coast Guard, the proposed rulemaking would also incorporate the use of recognized industry guidelines, impose certain weather and sea state restrictions, and require compliance with U.S. work hour limitations. It would also designate three other areas within the vicinity of the ecologically sensitive Flower Garden Banks National Marine Sanctuary in which all lightering will be prohibited.

In the NPRM, the Coast Guard specifically requested comments on the practicality of also designating a smaller northern area as an additional, fourth lightering zone. The boundaries of this northern area, which would be called ''South Sabine Point,'' would consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	Longitude W.
28°30′00″	92°38′00″, thence to
28°44′00″	93°24′00″, thence to
28°33′00″	94°00′00″, thence to
28°18′00″	94°00′00″, thence to
28°18′00″	92°38′00″, and thence to the point of beginning.

This rulemaking has been determined to be a significant regulatory action under established criteria of the Department of Transportation and the Office of Management and Budget.

Meeting Procedure

Members of the public planning to make oral presentations during the meeting should call the number listed in **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting, and state their intention to speak about docket number 93–081, provide their name, and the approximate duration of their presentation. Persons making oral presentations are also encouraged to submit a copy of their remarks in writing during the meeting.

Dated: January 9, 1994.

J.C. Card,

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

[FR Doc. 95–947 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5138–2]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore Tampa, Florida, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Tampa, Florida vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

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

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Department of the Army, Jacksonville District Corps of Engineers, 400 West Bay Street, P.O. Box 4970, Jacksonville, FL 32232–0019

FOR FURTHER INFORMATION CONTACT:

Gary W. Collins, 404/347–1740 ext. 4286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a site offshore Tampa, Florida, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of ''Approved Interim and Final Ocean Dumping Sites'' was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established two sites for Tampa, Site A and Site B, as interim sites. Subsequent legal action by Manatee County and extensive field efforts have resulted in the identification of the now proposed site. The details of these events can be found in the ''Final Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Located Offshore Tampa, Florida.'' Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the Designation of An Ocean Dredged Material Disposal Site Located Offshore Tampa, Florida.'' On September 23, 1994, the Notice of Availability. (NOA) of the FEIS for public review and comment was published in the **Federal Register** (59 FR 48878 (September 23 1994)). Anyone desiring a copy of the EIS may obtain one from the addresses given above. The public comment period on the final EIS closed on October 24, 1994. The closing date was extended for 15 days due to a request by the State of Florida.

EPA received 1 comment letter on the Final EIS. The letter was from the State of Florida (dated November 18, 1994) and stated that the proposed designation was found to be consistent with the Florida Coastal Management Program.

This rule proposes the permanent designation for continuing use of the previously designated Site 4 near Tampa, Florida. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation of the Tampa ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Tampa Bay area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Tampa ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220–229) and the COE regulations (33 CFR 209.120 and 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (Section 102(a)) or conditions of designation (Section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Proposed Site Designation

The proposed site is located west of Tampa, Florida, approximately 18 nautical miles (nmi) offshore. The proposed ODMDS occupies an area of about 4 square nautical miles (nmi^2), in the configuration of an approximate 2 nmi by 2 nmi square. Water depths within the area average 22 meters (m). The coordinates of the Tampa site proposed for final designation are as follows:

27°32′27″ N 83°06′02″ W;
27°32′27″ N 83°03′46″ W;
27°30′27″ N 83°06′02″ W; and
27°30′27″ N 83°03′46″ W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)). The boundary of the proposed site is given above. The western boundary of the proposed site is located about 18 nmi offshore of Tampa, Florida. The site is an approximate 2 nmi by 2 nmi square configuration. Water depth in the area averages 22 m.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)). Many of the area's species spend their adult lives in the offshore region, but are

estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known in the Tampa area. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The proposed site is located approximately 18 nautical miles from the coast. Amenity areas for recreational fishing and diving are present throughout the nearshore region, particularly at scattered hard-bottom reefs. Some diving and fishing may occur near the site, although less frequently than at sites closer to shore. Considering the distance that the proposed disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches. Modelling performed by the EPA indicates that disposed material will not impact these areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228(a)(4)). It is anticipated that the proposed site will be used primarily for disposal of maintenance material from the federal channels leading into Tampa Bay. Maintenance dredging of the entrance channel has not occurred since it was deepened in 1985. Estimated volumes for this maintenance is expected to be about 2 million cubic yards. For each future dredging project, each disposal plan must be evaluated on a case-by-case basis to ensure that ocean disposal is the best alternative and that the material meets the Ocean Dumping Criteria in 40 CFR part 227.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the Tampa ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)). Prevailing currents parallel the coast and are generally oriented along a north-south axis. Southerly flow predominates. A dredged material dispersion study conducted by the EPA for the short-term fate of material disposed at the proposed site indicates little possibility of disposed material affecting nearby habitats. Measures as discussed in the Site Management and Monitoring Plan will be instituted during disposal operations to minimize the possibility of material being transported to any habitats of concern.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)). The proposed site has only been used to dispose of the material from the Tampa Harbor Deepening project. Subsequent monitoring of this disposal and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)). While shipping is heavy in the Tampa area, the infrequent use of this site and its distance from shore should assure that no significant disruption of either commercial shipping or recreational boating will occur. Commercial and recreational fishing activities are concentrated in inshore and nearshore waters. No mineral extraction, desalination, or mariculture activities occur in the immediate area. Scientific resources present throughout this area are not geographically limited to the proposed Tampa ODMDS or nearby waters.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)). Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)). The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)). No known natural or cultural features of historical importance occur at or in close proximity to the site.

E. Site Management

Site management of the Tampa ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed Tampa ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

F. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Tampa site as an EPA-approved ODMDS is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The Tampa ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Tampa, Florida vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not

necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a ''major'' rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis. This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Approved by:

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is proposed to be amended by adding paragrpah (h)(18) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(18) Tampa, Florida; Ocean Dredged Material Disposal Site _____ Region IV.

(i) Location:.	27°32′27″ N	83°06′02″ W.;
	27°32′27″ N	83°03′46″ W.;
	27°30′27″ N	83°06′02″ W.;
	27°30′27″ N	83°03′46″ W.

Size: Approximately 4 square nautical miles.

Depth: Approximately 22 meters.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Tampa, Florida vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 95–930 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5130–4]

Independent Nail Superfund Site Notice of Intent to Delete; National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Independent Nail Company Site from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces its intent to delete the Independent Nail (Site), located in Beaufort County, S.C., from the National Priorities List (NPL) and requests public comments on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. It has been determined that all Fund-financed response actions taken at the Site under CERCLA have been implemented. EPA, in consultation with the State of South Carolina, has determined that remedial activities conducted at the Site to date remain protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of this Site from the NPL should be submitted on or before February 13, 1995.

ADDRESSES: Comments may be mailed to: Terry Tanner, RPM, EPA–Region IV, Waste Management Division, 345 Courtland Street, N.E., Atlanta, GA 30365.

The deletion docket, which contains supporting information on EPA's decision to delete this Site from the NPL, is available for inspection Monday through Friday from 8:00 a.m. to 4:30 p.m. at the following location: U.S. EPA Record's Center, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347–0506.

An additional copy of the deletion docket is also available for viewing between 9:00 a.m. and 8:00 p.m. at the following location: Beaufort County Library, 710 Craven Street, Beaufort, SC 29902, (803) 525–7279.

FOR FURTHER INFORMATION CONTACT: Terry Tanner at 404–347–7791, X4117.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA), Region IV, announces its intent to delete the Independent Nail Site, located in Beaufort, South Carolina, from the National Priorities List (NPL) and requests comments on this deletion. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this Site for thirty days after publication of this notice in the **Federal Register**. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Independent Nail Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on March 8, 1990, establish the criteria the Agency uses to delete sites from the NPL. Section 300.425(e) of the NCP states that ''Releases may be deleted or recategorized on the NPL where no further response is appropriate. EPA shall consult with the state on proposed deletion from the NPL prior to developing the notice of intent to delete. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met'':

i. Responsible parties or other persons have implemented all appropriate response actions required; or

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the

environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site, EPA must first determine that the remedy, or existing site conditions at the sites where no action is required, is protective of public health, welfare, and the environment. In addition, § 300.425(e)(2) of the NCP states that ''No site shall be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion''.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.425(e)(3) states that ''* * * Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the hazard ranking system (HRS)''.

III. Deletion Procedures

Deletion of sites from the NPL does not in itself create, alter, or revoke any individuals rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in the management of these sites.

Upon determination that at least one of the criteria described in § 300.425(e)(1) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures have been implemented towards the deletion of this Site:

1. EPA Region IV has entered into a Superfund State Contract with the State of South Carolina to conduct operations and maintenance activities at this Site for a period of five years. The first of these activities began in November 1989. Both EPA and the State of South Carolina find that the remedy continues to provide adequate protection of human health and the environment.

2. All Operations & Maintenance activities have been completed to date. EPA will proceed toward amending the State Superfund Contract to cover any activities that become necessary if the Site deteriorates in the future.

3. EPA Region IV has recommended deletion for this Site and has prepared the relevant documents.

4. The State of South Carolina has concurred with the decision to delete this Site.

5. Concurrent with this National Notice of Intent to Delete, a notice has been published in the local newspaper in the vicinity of the Site announcing the initiation of a 30 day public comment period. The public will be asked to comment on EPA's intention to delete the Site from the NPL during this 30 day period following a review of the information included in the deletion docket.

6. EPA Region IV has prepared a Superfund Site Closeout Report and established a Regional Deletion Docket, with its placement in the local information repository.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this Responsiveness Summary, when available. A final notice of deletion will then be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Site was initially owned by the Blake and Johnson Company which manufactured screws and fasteners. An on-site lagoon was used from approximately 1969 to 1980 to dispose of wastewater containing cyanide, chromium and other waste generated during the manufacturing process. The company discharged approximately 33,000 gallons of plating wastewater per day into this lagoon.

A study performed in 1975 by the South Carolina Department of Health and Environmental Control (SCDHEC) revealed that a break in the side of the lagoon allowed wastewater to enter a drainage ditch north of the lagoon area. Analysis of a sample collected from this ditch in August 1975 showed cadmium and chromium contamination. The break and resulting discharge appear to have been a single, short term incident.

Beginning in August 1975, SCDHEC and a local engineering firm (Davis and Floyd) conducted several ground water investigations. Monitor wells were placed into the water table aquifer at various locations near the lagoon. The results of these sampling efforts indicated that the quality of the ground water was being affected by the wastes discharged to the lagoon. Chromium, lead, iron, and mercury were present in some of these water samples at concentrations in excess of drinking water standards.

In April 1980, the Blake and Johnson Company ceased operations at the Site. Two months later, Independent Nail purchased the plant. The Independent Nail Company currently operates a paneling nail coating process at the Site.

Sampling performed by SCDHEC on April 21, 1980 indicated that concentrations of chromium and lead in the ground water continued to exceed drinking water standards. The chromium level in one well was 0.210 mg/l and the lead concentration in another was 0.150 mg/l. A second sampling of the same wells by SCDHEC in May 1980 revealed that chromium levels continued to exceed drinking water standards. Lead concentrations detected during this second sampling event were below the drinking water standard. The drinking water standard (Maximum Contaminant Level) during 1980 for chromium and lead was 0.05 mg/l. Later in May 1980, SCDHEC requested that three intermediate depth (40 to 50 feet) wells be installed for monitoring. Chromium levels in all three of these wells exceeded drinking water standards when sampled in June of 1980.

A Potential Hazardous Waste Site Investigation Report and a Preliminary Assessment Report were prepared by EPA on February 26, 1981 for this Site. The Site was added to the National Priorities List in 1984.

EPA performed a Remedial Investigation/Feasibility Study on the Site During 1985. The RI was divided into two operable units with the first operable unit addressing contamination in the soil, surface water, and sediments. The second operable unit investigated groundwater contamination at the Site.

Soil contamination was found in the lagoon and areas within the fence and at two areas outside of the fence. Cadmium, chromium, cyanide, nickel, and zinc were identified as the contaminants of concern. The Risk Assessment concluded that a source control measure was necessary to reduce the threat of direct contact with contaminated soil and the inhalation of airborne contaminated dust associated with this Site.

On September 28, 1987, EPA selected a remedy to address soil contamination at this Site. The Record of Decision (ROD) for the first operable unit established soil cleanup goals for these contaminants of concern: Cadmium (2.6 mg/kg), chromium (5.3 mg/kg), cyanide (0.02 mg/kg), nickel (18 mg/kg), and zinc (1,785 mg/kg). The solidification/stabilization of 5,500 cubic yards of contaminated soil was conducted in April and May of 1988. This soil was excavated, solidified, and returned to the lagoon area. A final cover consisting of approximately 8 inches of soil was placed over the solidified material and seeded.

Operable unit two revealed that the highest concentration of chromium was present in a shallow well MW1S at a concentration of 0.058 mg/l. This value slightly exceeded the Maximum Contaminant Levels (MCL) for chromium set at 0.050 mg/l. Chromium contamination in this well was suspected to be the result of waste water discharged into the lagoon. All other contaminant concentrations were below the existing MCL, Secondary Maximum Contaminant Level (SMCL), and/or Health Advisory drinking water standards.

The ROD for Operable Unit Two, signed on August 30, 1988, outlined a No Action alternative for the groundwater at the Site. The .008 mg/l by which chromium exceeded the standard in a single well (MW–lS) was within the 20% analytical variance for Contract Laboratory Program labs. The wells were resampled on July 28–29, 1988. The highest concentration of chromium detected was .041 mg/l in MW–IS. The contaminant levels in the groundwater presented no imminent or substantial threat to human health or the environment, therefore, no groundwater treatment was necessary.

The solidification/stabilization treatment of the contaminated soil is considered a permanent remedy. No additional treatment of the solidified material is necessary, however, periodic groundwater monitoring will be conducted. EPA Region IV has entered into a Superfund State Contract with the State of South Carolina to conduct operations and maintenance activities at this Site for a period of five years. The State of South Carolina has subsequently agreed to continue with these activities beyond the five year period. EPA conducted the first of these activities on November of 1989. Both EPA and the State of South Carolina find that the remedy continues to provide adequate protection of human health and the environment.

CERCLA Section 121(c), 42 U.S.C. 9621 and 40 CFR 300.430(f)(4)(ii) requires that five year reviews be performed at sites where contaminants remain above levels that allow for unlimited use and unrestricted exposure. The first Five Year Review was completed on September 13, 1993. The results of this review indicate that the remedial activities were effective in stabilizing the contaminant source on-site. Additional five year reviews will allow EPA and the State of South Carolina to determine if the protectiveness of the remedy will be maintained over time.

EPA, in concurrence with the State of South Carolina has determined that all appropriate fund-financed responses under CERCLA at the Independent Nail Site have been completed, and no further clean-up by the responsible parties is appropriate.

Dated: November 16, 1994.

Patrick M. Tobin,

Acting Regional Administrator, Region IV, Environmental Protection Agency.

[FR Doc. 95–826 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–143]

Television Table of Allotments: Albion, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to the *Notice of Proposed Rule Making* in MM Docket No. 94–143, a summary of which was published on January 3, 1995 (60 FR 91). The *Notice* is corrected to specify reference coordinates for the proposed Channel 24 allotment at Albion, Nebraska, as 41–55–58 and 98–17–23, and a plus offset for the Channel 24 allotment.

DATES: Comments must be field by Feb. 13, 1995, and reply comments by Feb. 28, 1995.

ADDRESSES: Send comments to the Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the *Notice of Proposed Rule Making* contained an error with respect to the reference coordinates and channel offset for the proposed allotment of Channel 24 to Albion, Nebraska.

Correction of Publication

Accordingly, the publication on January 3, 1995, of the Summary of the Notice of Proposed Rule Making in MM Docket 94–143, which was the subject of FR Doc. 94–32275, is corrected as follows:

On page 91, in the first and second columns, all references to ''Channel 24'' are corrected to read ''Channel 24+.''

On page 91, in the second column, the references coordinates for Channel 24+ at Albion, Nebraska, are corrected to read ''41–55–58 and 98–17–23.''

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–1033 Filed 1–12–95; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 60, No. 9

Friday, January 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: On December 28, 1994 (59 FR 66888), a notice was published announcing the schedule of events at the Architectural and Transportation Barriers Compliance Board's meetings on Tuesday and Wednesday, January 17–18, 1995. The time of the Board meeting on Wednesday, January 18, 1995, has been changed. A revised schedule of events is published below.

DATES: The schedule of events is as follows:

Tuesday, January 17, 1995

9:30–12 Noon—State and Local Government Facilities Work Group (closed meeting)

1:30–3:30 p.m.—State and Local Government Facilities Work Group Continued (closed meeting)

3:45–5:30 p.m.—Recreational Facilities and Outdoor Developed Areas Work Group (closed meeting)

Wednesday, January 18, 1995

9:00–12 Noon—Federal Facilities Work Group (closed meeting)

12 Noon–1:30 p.m.—Board Meeting.

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–867 Filed 1–12–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 1995.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Elemental Sulphur A–122–047	
Mobil Oil Canada, Ltd., Petrosul International, Alberta Energy Co., Ltd., Husky Oil Canada, Ltd., Norcen Energy Resources, Ltd	12/01/93–11/30/94
Mexico:	
Porcelain-on-Steel Cooking Ware A–201–504	
Esmaltaciones San Ignacio, S.A. Cinsa, S.A. de C.V	12/01/93–11/30/94
Japan:	
Polychloroprene Rubber A–588–046	
Denki Kaguku, K.K., Denki Kaguku Kogyo, K.K./Hoei Sangyo Co., Ltd., Mitsui Bussan K.K., Showa Neoprene K.K., Showa Neoprene K.K./Hoei Sangyo Co., Ltd., Suzugo Corporation, Toyo Soda Mfg. Co., Ltd., Toyo Soda Mfg. Co., Ltd./Hoei Sangyo Co., Ltd	12/01/93–11/30/94
Taiwan:	
Certain Welded Stainless Steel Pipe A–583–815	
Ta Chen	12/01/93–11/30/94
The People's Republic of China:	
Porcelain-on-Steel Cooking Ware A–570–506	
Clover Enamelware Enterprise/Lucky Enamelware Factory, China National Light I/E Corp./Shanghai Branch/Amerport (H.K.)	12/01/93–11/30/94
Countervailing Duty Proceedings	
Mexico:	
Porcelain-on-Steel Cooking Ware* C–201–505	01/01/94–12/31/94

*Two requests were received for an individual company review under 19 CFR 355.22(a)(2). The Department is currently reviewing these requests to ensure that they meet the requirements for an individual company review.

Interested parties must submit applications for disclosure under administrative protection orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: January 9, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–969 Filed 1–12–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–801]

Antifriction Bearings From Italy; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 20, 1994, in *Torrington* v. *United States,* Slip Op. 94–167 (*Torrington*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy, 56 FR 31751 (July 11, 1991). The CIT had previously remanded the final results to the Department for the reconsideration of a number of issues. The CIT has now entered final judgment on all issues. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: October 30, 1994.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1993, the CIT in *Torrington* v. *United States,* Slip Op. 93–125, remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy to the Department to: (1) Add the full amount of value added tax (VAT) paid on each sale in the home market to foreign market value (FMV) without adjustment; (2) treat certain of SKF Industrie, S.p.A.'s (SKF) discounts as indirect expenses unless the manner in which they were reported met the standard for treatment as direct expenses; and (3) remove discounts paid on SKF's and FAG Cuscinetti S.p.A.'s (FAG) out-of-scope merchandise or, if not possible, disallow the discounts. The Department submitted its results of redetermination on remand to the court on September 22, 1993. On December 10, 1993, in *Torrington* v. *United States,* Slip Op. 93–234, the CIT again remanded the case to the Department to: (1) Apply Italy's VAT rate to the United States price (USP) calculated at the same point in the stream of commerce as Italy's VAT is applied for home market sales, and add the resulting amount to USP; and (2) choose appropriate best information available (BIA) for the adjustment to FAG's USP for U.S. discounts and treat the adjustment as a direct selling expense. The Department submitted its redetermination pursuant to this second remand order on January 10, 1994. On March 4, 1994, in *Torrington* v. *United States,* Slip Op. 94–37, the CIT again remanded the case for the Department (1) to implement its new VAT methodology and recalculate the VAT pursuant to the partial final judgment on the issue previously entered in the case; (2) to determine and apply BIA for the adjustment to FAG's USP for U.S. discounts; and (3) to determine whether the Department has statutory authority to adjust FMV, calculated using purchase price, for FAG's pre-sale inland freight in light of *Ad Hoc Comm. of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994). The Department submitted its results of redetermination pursuant to this third remand order on May 17, 1994. On October 20, 1994, in *Torrington,* the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the

Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decisions on July 8, 1993, December 10, 1993, and March 4, 1994, constitute decisions not in harmony with the Department's final results. Publication of this notice fulfills this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy to reflect the amended margins of the Department's redeterminations on remand, which were affirmed by the CIT.

Dated: January 9, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–968 Filed 1–12–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–307–807]

Ferrosilicon From Venezuela; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On August 24, 1994, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on ferrosilicon from Venezuela. The Department is now terminating this review.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230, telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1994, the Department published in the **Federal Register** a notice of initiation of administrative review (59 FR 43537) of the antidumping duty order on ferrosilicon from Venezuela at the request of a respondent, CVG-Venzolana de Ferrosilicio, C.A. (Fesilven). This notice stated that the Department would review merchandise sold in the United States by Fesilven during the period December 29, 1992 through May 31, 1994.

Fesilven subsequently withdrew its request for review on October 25, 1994. Under CFR 353.22(a)(5) (1994), a party requesting a review may withdraw that request no later than 90 days after the date of publication on the notice of initiation. Because Fesilven's withdrawal occurred within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for this period, the Department is now terminating this review.

This notice is published pursuant to 19 CFR 353.22(a)(5).

Dated: December 29, 1994.

Roland L. McDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 95–970 Filed 1–12–95; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 59757) of proposed addition to the Procurement List. Comments were received from the current contractor for this service. The contractor indicated that loss of the contract would have a significant impact on its business because it is concentrating on improving its better performing contracts rather than developing new business. The contractor noted that it does employ some people with disabilities, although it questioned how the nonprofit agency designated by the Committee will be able to perform the switchboard and information operations of this service using people with severe disabilities. The contractor noted that the switchboard uses lights and sounds, so sight and hearing capabilities are required, and the switchboard equipment requires dexterity to process calls efficiently. The contractor indicated that the small workroom space does not promote the use of wheel chairs or special equipment, and the requirement to respond to emergency calls makes the use of people with mental disabilities inappropriate. The contractor also expressed concerns that addition of the service to the Procurement List would dramatically increase the Government's costs to acquire the same level of service the contractor is providing, and it indicated that its contacts with the nonprofit agency showed the latter did not understand the requirements of the service.

This contract represents a very small percentage of the contractor's total sales. Even considering the impact of another switchboard service added to the Procurement List in 1992 where the commenting contractor also held the contract and allowing for a possibly greater impact because of the contractor's business plan, the level of impact on the contractor does not amount to a level which the Committee considers to be severe adverse impact.

The Committee appreciates the fact that the contractor has hired some people with disabilities to perform this contract. The nonprofit agency will consider employing these people. However, addition of the service to the Procurement List will guarantee that the service will be provided by people with severe disabilities, while a competitive contractor would be free to terminate its disabled workers for any reason.

The nonprofit agency plans to use people with physical disabilities to perform the switchboard services. It has taken into account the dexterity requirement in its staffing plans. The nonprofit agency will not hire anyone who is totally blind or totally deaf. The nonprofit agency considers the

switchboard room to be large enough to permit the use of wheelchairs, and the Government has agreed to modify the room if that proves necessary.

Nonprofit agencies are required to provide services to the Government under the Committee's program at a fair market price determined by the Committee, and the nonprofit agency in question has agreed to do so. Consequently, there will not be the dramatic increase in price the contractor predicted.

The nonprofit agency performing the service has long been a successful participant in the Committee's program. It has hired a project manager with many years of experience in telephone operations to manage the project who has established good relations with Government people at the job site. The nonprofit agency, with the assistance of its central nonprofit agency, has devised a plan of operation to meet the needs of the service. Consequently, the Committee believes that the concerns expressed by the contractor about the nonprofit agency's ability to do the job, which may have been based on an early contact with the agency, do not provide a basis for deeming the nonprofit agency incapable of performing the service.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48d and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Switchboard Operation, Department of Veterans Affairs Medical Center, 4300 West 7th Street, North Little Rock, Arkansas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–961 Filed 1–12–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List—Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 22, November 18, 28 and December 10, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 37465, 59758, 60782 and 64932) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48d and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

Commodities

Cleaning Compound
7930–01–398–0942
7930–01–398–0943
7930–01–398–0945
7930–01–373–8846
7930–01–373–8847
7930–01–373–8850
7930–01–398–0946

Military Resale Commodity

Refill, Mop, Dust
M.R. 985

Services

Commissary Shelf Stocking and Custodial, Fort Shafter, Hawaii

Janitorial/Custodial, E.C. Gathings Federal Building and U.S. Courthouse, 600 S. Main Street, Jonesboro, Arkansas

Janitorial/Custodial, Navy Post Graduate School, Weather Forecast Office Building 712, 21 Grace Hopper Avenue, Monterey, California

Janitorial/Custodial, U.S. Army Publication Center, 1655 Woodson Road, Overland, Missouri

Janitorial/Grounds Maintenance, Naval Industrial Reserve Ordnance Plant, Rochester, New York

Patient Escort Service, Veterans Administration Medical Center, 508 Fulton Street, Durham, North Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–962 Filed 1–12–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48d) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pad, Scouring and Holder
7920–00–841–7537
7920–01–162–6064
7920–01–222–7798
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Food Service, Patrick Air Force Base, Florida
NPA: Brevard Achievement Center, Inc., Rockledge, Florida

Janitorial/Custodial for the following locations:
Federal Building & U.S. Courthouse, 1118 24th Avenue, North, Tuscaloosa, Alabama
Federal Building & U.S. Courthouse, Alabama & 17th Streets, Jasper, Alabama
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama

Janitorial/Custodial, Des Moines International Airport, Air National Guard Base, Des Moines, Iowa
NPA: Goodwill Industries of Central Iowa, Des Moines, Iowa

Janitorial/Custodial, Basewide, Fort Drum, New York
NPA: Jefferson County Chapter, NYSARC, Watertown, New York

Janitorial/Custodial, NISE East Building, 4600 Marriot Drive, North Charleston, South Carolina
NPA: Goodwill Industries of Lower South Carolina, Inc., Charleston, South Carolina

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48d) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Paper, Teletypewriter Roll
7530–00–019–6674
7530–00–142–9038
7530–00–943–7076
7530–00–019–7267

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–963 Filed 1–12–95; 8:45 am]

BILLING CODE 6820–33–P

COMMISSION ON IMMIGRATION REFORM

Central Texas Roundtables

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of commission roundtables.

This notice announces two roundtables to be held by the U.S. Commission on Immigration Reform in Austin, TX on January 18, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. An interim report, U.S. Immigration Policy: Restoring Credibility, was issued on September 30, 1994; the final report is due in 1997.

The roundtable participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The first roundtable will examine the economic and labor impacts of immigration on Texas, with a focus on the Austin-San Antonio Area. The Commission seeks to gain greater understanding of the effects of immigrants on the region's labor market (both high- and low-skill labor), the impact of employment-based immigration on high-tech industry, and immigration in the context of NAFTA.

The second roundtable will focus on the effects of immigration on social and community relations in central Texas. Issues involving absorption of immigrants into the local community, naturalization and civic participation of immigrants, and the effect of immigrants on public services will be addressed.

DATE: January 18, 1995.

TIME: 9 am–12:30 pm (Economic and Labor Impacts); 2 pm–5 pm (Social and Community Relations).

ADDRESSES: Hyatt Regency Austin on Town Lake, Texas Rooms 6 and 7, 208 Baron Springs Drive, Austin, TX 78704, 512–480–2038.

FOR FURTHER INFORMATION: Paul Donnelly, (202) 673–5348.

Dated: January 3, 1995.

Susan Martin,
Executive Director.

[FR Doc. 95–851 Filed 1–12–95; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Clearance Request for Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that a contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions where the value was $500,000 or less. The $500,000 threshold was adopted after surveying the major civilian research and development (R&D) agencies, whose data suggested that an average R&D contract was $250,000 to $300,000; commensurate with other clause thresholds (*e.g.,* small business subcontracting), the $500,000 threshold was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2.7* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *1,100;* responses per respondent, *1*; total annual responses, *1,100;* preparation hours per response, *2.7;* and total response burden hours, *2,970.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *9,000;* hours per recordkeeper, *3;* and total recordkeeping burden hours, *27,000.*

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: December 16, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–926 Filed 1–12–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF THE DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: March 16–17, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–841 Filed 1–12–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of the Army

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Projects and Activities Associated With Future Programs at Aberdeen Proving Ground

AGENCY: Department of the Army, DOD.

ACTION: Notice of Intent.

SUMMARY: In accordance with Public Law 91–190, the National Environmental Policy Act of 1969, the Draft Environmental Impact Statement (DEIS) is being prepared to evaluate environmental implications of future decisions regarding operation of Aberdeen Proving Ground. The DEIS will focus on impacts of planned future activities at Aberdeen Proving Ground; development alternatives for the installation Master Plan; development potential of the installation in terms of environmental carrying capacity; and specific concerns regarding risk. Issues to be considered in the proposed action include acceptance of those new programs projected for the installation to include modernization or removal of outdated facilities, and improvements to infrastructure, utilities and service necessary to accommodate the new missions and changes in existing test and evaluation missions. All missions on the installation will be considered including the Combat Systems Test Activity, the Chemical and Biological Defense Command and the Army Research Laboratory. The Army will conduct several small group scoping workshops prior to preparing the Environmental Impact statement. The first step will be to determine the appropriate scope of issues, activities and alternatives to be addressed. Among the anticipated areas to be evaluated are public health risks and public safety, noise, shock and vibration, water quality, air quality, hazardous materials management and disposal, biological resources including threatened and endangered species social and economic effects, and historic and archaeological resources. During the scoping process, the Army will ask other agencies that have regulatory interest in Aberdeen Proving Ground to participate in scoping.

DATES: Written public comments and suggestions can be submitted by February 13, 1995 to the address shown below.

ADDRESSES: Commander, Aberdeen Proving Ground Support Activity, ATTN: STEAP–SH–ER (Edward L. Newell, Jr.) Aberdeen Proving Ground, Maryland 21005–5423.

FOR FURTHER INFORMATION CONTACT: Mr. Edward L. Newell, Jr., (410) 278–6756.

Dated: January 4, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 95–866 Filed 1–12–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for Proposed Construction at Camp Atterbury, Edinburgh, Indiana

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: This Notice of Intent is for the preparation of a Draft Environmental Impact Statement (DEIS) for proposed Army National Guard projects at Camp Atterbury, Edinburgh, Indiana. The proposal includes renovation and rehabitiation of existing facilities, range improvements, demolition and construction of facilities, and development of ranges.

Lead Agencies are: The Military Department of Indiana and the National Guard Bureau.

Various alternatives have been developed for consideration regarding the proposed projects at Camp Atterbury. The following constitutes a list of those alternatives to be considered in the DEIS:

(1) No action,

(2) Continued use and improvement of facilities and

(3) Alternative locations off-site.

Resource categories that will be analyzed include: physical environment, water quality, groundwater, air quality, biological resources, land use, socioeconomic, noise, and cultural resources.

SCOPING: The Military Department of Indiana will conduct public scoping meetings relating to the proposed actions. Public participation in the EIS process is essential to assist the decision maker in defining the scope of analysis considered in the DEIS.

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments on this proposed action for consideration by the National Guard Bureau. Information that would assist the National Guard Bureau in analyzing the potential significant environmental consequences are solicited. This includes information on other environmental studies planned or competed in the area of the Camp Atterbury; other alternatives; potential impacts associated with the proposed action; and recommended mitigation measures.

Concerned individuals and agencies may express their views either by writing to the designated point of contact or participating in public

scoping meetings to be held at a convenient location near Camp Atterbury. The date, time and location for the meetings will be announced through letters, public notices, display advertisements and released to newspapers of general circulation a minimum of 15 days prior to the meeting. Those wishing to provide information or data relevant to the environmental analysis of the proposed actions or alternatives are encouraged to do so at the public scoping meetings.

Upon completion, the DEIS will be available to the public. The avilability of this document will be announced by means of public notices so that all interested parties may review and comment on the document. A public hearing to solicit public response to the analysis will also be scheduled.

ADDRESSES: Interested parties can also furnish written comments or materials to Lieutenant Colonel Jack Fowler, Camp Atterbury, Edinburgh, Indiana, 46124, 1–800–730–1333 or (812) 526–1345.

Dated: January 4, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety, And Occupational Health) OASA (IL&E).

[FR Doc. 95–905 Filed 1–12–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule and agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. Also, it describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Monday, January 30 and Tuesday, January 31.

ADDRESSES: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Marsha Harper, Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans was established under Executive Order 12900 on February 22, 1994. The Commission is established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. The meeting of the Commission is open to the public. The Agenda includes:

January 30, 1995, Monday, 9 a.m.–5 p.m. Commission will continue work toward its goals and priorities by implementing a two day Strategic Planning Session.

January 31, 1995, Tuesday, 9 a.m.–5 p.m. Commission will continue a second all day Strategic Planning Session.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative For Hispanic Education at 600 Independence Avenue, SW., Room 6442, Washington, DC 20202 from the hours of 9 a.m.–5 p.m.

Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs, Department of Education.

[FR Doc. 95–1035 Filed 1–12–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–17–000, et al.]

Cowley Ridge Wind Power Company, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Cowley Ridge Wind Power Company Inc.

[Docket No. EG95–17–000]

On December 30, 1994, Cowley Ridge Wind Power Company Inc. (the ''Applicant'') with its principal place of business at 1400, 350—7th Avenue SW., Calgary, Province of Alberta, Canada, filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is engaged exclusively in the business of owning and operating a wind power generating facility at Cowley Ridge in the Province of Alberta, Canada, with a capacity of approximately 18.9 MW (the ''Facility''). All of the Facility's electricity is and will continue to be sold at wholesale, pursuant to two long-term power sales agreement (20 years in each case), to TransAlta Utilities Corporation, a privately-owned public utility company in the Province of Alberta, Canada.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cowley Ridge Partnership

[Docket No. EG95–18–000]

On December 30, 1994, Cowley Ridge Partnership (the ''Applicant'') with its principal place of business at 1400, 350—7th Avenue SW., Calgary, Province of Alberta, Canada, filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is engaged exclusively in the business of owning and operating a wind power generating facility at Cowley Ridge in the Province of Alberta, Canada, with a capacity of approximately 18.9 MW (the ''Facility''). All of the Facility's electricity is and will continue to be sold at wholesale, pursuant to two long-term power sales agreement (20 years in each case), to TransAlta Utilities Corporation, a privately-owned public utility company in the Province of Alberta, Canada.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company

[Docket No. EL88–1–006]

Indiana Michigan Power Company

[Docket Nos. ER88–31–005 and ER88–32–005]

Take notice that on December 28, 1994, Indiana Michigan Power Company (I&M) tendered a compliance filing, pursuant to the Commission's June 3, 1992 Opinion and Order on Initial Decision, in the above-referenced dockets, which addressed, among other things, the appropriateness of periodic reviews of nuclear decommissioning costs and funding.

I&M states that copies of the filing were served upon its jurisdictional customers, the Indiana Utility Regulatory Commission, Michigan Public Service Commission and all parties of record.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–286–000]

Take notice that New England Power Company on December 22, 1994, tendered for filing a revised Service Agreement between New England Power Company and Boston Edison Company for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–315–000]

Take notice that PacifiCorp on December 21, 1994, tendered for filing revisions to Exhibit B and Exhibit D of the General Transfer Agreement between

PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp Rate Schedule FERC No. 237.

PacifiCorp requests a waiver of prior notice and that an effective date of November 1, 1994 be assigned to the revised Exhibit.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company Susquehanna Electric Company

[Docket No. ER95–316–000]

Take notice that on December 21, 1994, PECO Energy Company (PECO) tendered for filing on behalf of itself and Susquehanna Electric Company (SECO) (1) an Agreement among PECO, its subsidiaries Conowingo Power Company (Conowingo) and SECO, and Delmarva Power & Light Company (DPL) dated May 24, 1994, which supplements the Tri-Partite Agreement (TPA) among PECO, SECO and Conowingo, on file as PECO Rate Schedule F.P.C. No. 36 and SECO Rate Schedule F.P.C. No. 2, and (2) Notices of Cancellation of those Rate Schedules.

PECO states that the Agreement provides for the existing terms and conditions of the TPA to govern the sale of capacity and energy to DPL to serve the full requirements of Conowingo from the date of sale of Conowingo to DPL until February 1, 1996. PECO requests that the Commission permit the Agreement to become effective on the closing of the Conowingo stock transaction between PECO and DPL. PECO also requests expedited treatment and Commission acceptance of the Agreement on or before the date the Commission accepts the Joint Application filed under Docket No. EC95–3. PECO requests that the Notices of Cancellation for PECO Rate Schedule F.P.C. No. 36 and SECO Rate Schedule F.P.C. No. 2 become effective on the later of February 1, 1996 or the closing of the Conowingo stock transaction between PECO and DPL.

PECO states that a copy of this filing has been sent to SECO, Conowingo and DPL and will be furnished to the Pennsylvania Public Utility Commission, Maryland Public Service Commission, Delaware Public Service Commission and Virginia State Corporation Commission.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Alabama Power Company

[Docket No. ER95–318–000]

Take notice that on December 22, 1994, Alabama Power Company (APCo), tendered for filing information concerning the adoption of certain accounting methods for accumulated deferred income taxes benefits other than pensions as set forth in the Statement of Financial Accounting Standard No. 109 by the Financial Accounting Standards Board.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER95–319–000]

Take notice that on December 22, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and MidCon Power Services Corp. (MidCon). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows MidCon to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on MidCon and the Public Service Commission of Wisconsin.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–320–000]

Take notice that on December 22, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No, 130, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this increase take effect as of January 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–321–000]

Take notice that on December 22, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of December 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Fitchburg Gas and Electric Light Company

[Docket No. ER95–322–000]

Take notice that on December 22, 1994, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont for the sale of up to a 8 MW (winter maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. The capacity rate to the charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont

and the Massachusetts Department of Public Utilities.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. PSI Energy, Inc.

[Docket No. ER95–323–000]

Take notice that on December 22, 1994, PSI Energy, Inc. (PSI), tendered for filing as Supplement No. 5 to PSI Rate Schedule FERC No. 253 an amendment to the Transmission and Local Facilities Ownership, Operation and Maintenance Agreement (T&LP Agreement) among PSI, Wabash Valley Power Association (WVPA) and the Indiana Municipal Power Agency (IMPA). This amendment is being filed in compliance with ordering Paragraph (N) of the Commission's Order in *Cincinnati Gas & Electric Co. and PSI Energy, Inc.*, 69 FERC ¶ 61,005 (1994), which required the filing of agreements implementing certain settlements reached in that proceeding. The amendment is expected to lower charges collected by PSI under the T&LP Agreement. PSI has requested that the amendment be made effective as of October 24, 1994, the date of the merger between PSI Resources, Inc. and Cincinnati Gas & Electric Company.

Copies of this filing have been served on the Indiana Utility Regulatory Commission, WVPA, IMPA, the Public Utility Commission of Ohio and the Public Service Commission of the State of Kentucky.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. PSI Energy, Inc.

[Docket No. ER95–324–000]

Take notice that on December 22, 1994, PSI Energy, Inc. (PSI), tendered for filing as Supplement No. 33 to PSI Rate Schedule FERC No. 234 an amendment to the Power Coordination Agreement (IMPA PCA Agreement) between PSI and the Indiana Municipal Power Agency (IMPA). This amendment is being filed in compliance with ordering Paragraph (N) of the Commission's Order in *Cincinnati Gas & Electric Co. and PSI Energy, Inc.*, 69 FERC ¶ 61,005 (1994), which required the filing of agreements implementing certain settlements reached in that proceeding. The amendment will not have any impact on the charges collected by PSI under the IMPA PCA Agreement. PSI has requested that the amendment be made effective as of October 24, 1994, the date of the merger between PSI Resources, Inc. and Cincinnati Gas & Electric Company.

Copies of this filing have been served on the Indiana Utility Regulatory Commission, IMPA, the Public Utility Commission of Ohio and the Public Service Commission of the State of Kentucky.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PSI Energy, Inc.

[Docket No. ER95–325–000]

Take notice that on December 22, 1994, PSI Energy, Inc. (PSI), tendered for filing as Supplement No. 32 to PSI Rate Schedule FERC No. 233 an amendment to the Power Coordination Agreement (WVPA PCA Agreement) between PSI and Wabash Valley Power Association (WVPA). This amendment is being filed in compliance with ordering Paragraph (N) of the Commission's Order in *Cincinnati Gas & Electric Co. and PSI Energy, Inc.*, 69 FERC ¶ 61,005 (1994), which required the filing of agreements implementing certain settlements reached in that proceeding. The amendment will not have any impact on the charges collected by PSI under the WVPA PCA Agreement. PSI has requested that the amendment be made effective as of October 24, 1994, the date of the merger between PSI Resources, Inc. and Cincinnati Gas & Electric Company.

Copies of this filing have been served on the Indiana Utility Regulatory Commission, WVPA, the Public Utility Commission of Ohio and the Public Service Commission of the State of Kentucky.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southern California Edison Company

[Docket No. ER95–333–000]

Take notice that on December 23, 1994, Southern California Edison Company (Edison) tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Anaheim (Anaheim), FERC Rate Schedule No, 246, and associated Firm Transmission Service Agreement (FTS Agreement):

1995 Supplemental Agreement Between Southern California Edison Company And City of Anaheim For The Integration Of Anaheim's Entitlement In San Juan Unit 4

Edison—Anaheim 1995 San Juan Unit 4 Firm Transmission Service Agreement Between Southern California Edison Company And City of Anaheim

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate and provide firm transmission service for Anaheim's San Juan Unit 4 resource. Edison seeks waiver of the 60 day prior notice requirements and requests the Commission to assign to the agreements an effective date of January 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER95–335–000]

Take notice that on December 23, 1994, Tampa Electric Company (Tampa Electric), tendered for filing individual Letter Agreement with the City of Lake Worth Utilities, Florida Municipal Power Agency, fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Utility Board of the City of key West, and the Cities of Lakeland, Starke, Tallahassee, and Vero Beach, Florida. The Letter Agreements extend the terms of existing Letters of Commitment between Tampa Electric and each of the other utilities under interchange Service Schedule J (Negotiated Interchange Service).

Tampa Electric proposes an effective date of January 1, 1995, for the Letter Agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on each of the other parties to the Letter Agreements and the Florida Public Service Commission.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Appalachian Power Company

[Docket No. ER95–341–000]

Take notice that on December 28, 1994, American Electric Power Service Corporation (AEPSC), tendered for filing a transmission service agreement, dated December 1, 1994, (TSA). The TSA, executed by the City of Danville, Virginia (Danville) and Appalachian Power Company (APCO), provide for service to be made available to Danville pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. An effective date of December 1, 1994, was requested for both agreements.

A copy of the filing was served upon the Danville and the Virginia State Corporation Commission.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER95–342–000]

Take notice that on December 28, 1994, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations the Articles of Incorporation (Articles) of Western Systems Coordinating council, Inc. (WSCC) dated March 8, 1994 and the WSCC Agreement and Bylaws (WSCC Agreement), dated December 2, 1994.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of March 8, 1994 be assigned to the Articles and that an effective date of December 2, 1994 be assigned to the WSCC Agreement.

Copies of this filing were supplied to all WSCC members, the Public Utility Commission of Oregon, the Public Utilities Commission of California and the Utah Public Service Commission.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER95–343–000]

Take notice that on December 22, 1994, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entities:

1. Snohomish Public Utilities District;
2. Electric Clearinghouse, Inc.; and
3. Gulfstream Energy

A copy of this filing has been served on the above listed entities and the Arizona Corporation Commission.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota)

Northern States Power Company (Wisconsin)

[Docket No. ER95–344–000]

Take notice that on December 22, 1994, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tender and request the Commission to accept two Transmission Service which provide for Limited and Interruptible Transmission Service to Wisconsin Electric Power Corporation (WEP).

NSP requests that the Commission accept for filing both Transmission Service Agreements effective on January 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Rule 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota)

Northern States Power Company (Wisconsin)

[Docket No. ER95–345–000]

Take notice that on December 22, 1994, Northern States Power company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept a Transmission Service Agreement with Rainbow Energy Marketing Corporation (Rainbow) which provides for Interruptible Transmission Service.

NSP requests that the Commission accept this Transmission Service Agreement effective on January 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Rule 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Electric Power Company

[Docket No. ER95–346–000]

Take notice that on December 22, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and AES Power Company (AES). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on AES and the Public Service Commission of Wisconsin.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Central Vermont Public Service Corporation

[Docket No. ER95–347–000]

Take notice that on December 27, 1994, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS does not plan to file a Forecast 1995 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Southern Company Services, Inc.

[Docket No. ER95–348–000]

Take notice that on December 28, 1994, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power company (collectively referred to as Southern Companies) filed a Service Agreement dated as of December 6, 1994 between Tampa Electric Company and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Indiana Gas and Electric Company

[Docket No. ER95–349–000]

Take notice that on December 28, 1994, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing a supplement to Rate Schedule FPC–29 under which it sells standby electrical power to Alcoa Generating Corporation (AGC). This filing requests that Rate Schedule FPC–29 be made a permanent rate for the sell of standby electrical power to AGC. The supplement to the Rate Schedule seeks to make the rate permanent, but will result in no rate increase or decrease or revenue change. Southern Indiana has requested a waiver of the minimum sixty (60) day notice requirement. The only effected customer is the purchaser, AGC. Southern Indiana and AGC are parties to a written Letter Agreement executed on December 14, 1993, which Letter Agreement extended the term of Rate Schedule FPC–29 to and including January 16, 1995. Southern Indiana and AGC request that the Commission make the rate specified in Rate Schedule FPC–29 permanent, which rates were previously approved by the Commission under Docket No. ER94–916–000.

The reason for this filing is to finalize the agreement between Southern Indiana and AGC regarding a long term rate under Rate Schedule FPC–29. This filing is therefore mutually beneficial.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 17, 1995, the date service scheduled to commence under the permanent Rate Schedule FPC–29.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. White Oak Energy Company L.L.C.

[Docket No. QF95–122–000]

On December 28, 1994, White Oak Energy Company L.L.C. (Applicant), of 101 South Main, Suite 301, Decatur, Illinois 62523–1210 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the small power production facility will be located in Lockport, Illinois and will consist of a combustion turbine generator, a steam turbine generator and a heat recovery boiler. The maximum net electric power production capacity will be of 126 MW. The primary energy source will be petroleum coke. Installation of the facility is expected to commence on or before December 31, 1999.

Comment date: 30 days after the date of publication of this notice in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

27. White Oak Energy Company L.L.C.

[Docket No. QF95–123–000]

On December 28, 1994, White Oak Energy Company L.L.C. (Applicant), of 101 South Main, Suite 301, Decatur, Illinois 62523–1210 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the small power production facility will be located in Joliet, Illinois and will consist of a combustion turbine generator, a steam turbine generator and a heat recovery boiler. The maximum net electric power production capacity will be of 126 MW. The primary energy source will be petroleum coke. Installation of the facility is expected to commence on or before December 31, 1999.

Comment date: 30 days after the date of publication of this notice in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–858 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–15–000, et al.]

The Power Generation Co. of Trinadad & Tobago Limited, et al. Electric Rate and Corporate Regulation Filings

January 5, 1995.

Take notice that the following filings have been made with the Commission:

1. The Power Generation Company of Trinidad and Tobago Limited

[Docket No. EG95–15–000]

On December 22, 1994, The Power Generation Company of Trinidad and Tobago Limited, 6A Queens Park West, First Floor, Port of Spain, Trinidad, West Indies (the''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (''EWG'') status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged directly in owning and operating eligible facilities located in Trinidad and Tobago: the 236 MW Penal Plant, located at Penal, in the ward of Siparia, County of St. Patrick, consisting of two simple cycle gas turbines and a combined cycle generating unit comprised of two gas turbines, one heat recovery steam generator, and one steam turbine; the 634 MW Point Lisas Plant, located at Point Lisas Industrial Estate in the ward of Couva, County of Caroni, consisting of ten simple cycle turbines; and the 308 MW Port of Spain Plant, located in the city of Port of Spain, consisting of four steam turbine and two simple cycle gas turbine generator units. The facilities are all in commercial operation. The facilities are gas fired; the Port of Spain Plant also has the capability to use fuel oil as a back-up.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cardinal Power of Canada, L.P.

[Docket No. EG95–16–000]

On December 30, 1994, Cardinal Power of Canada, L.P. (''Cardinal''), 242 Henry Street, P.O. Box 70, Cardinal, Ontario, Canada KOE–1EO, filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for a new determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Cardinal is a limited partnership formed under the laws of the State of Delaware and registered to do business in Ontario, Canada. Cardinal owns, operates and maintains a 150 MW natural gas-fired cogeneration facility located in Cardinal, Ontario, Canada (the ''Facility''). Cardinal is engaged directly and exclusively in the business of owning and operating the Facility and selling electric energy at wholesale. The Facility began commercial operation in May, 1994.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Power Co.

[Docket No. ER95–289–000]

Take notice that on December 14, 1994, Duke Power Company (Duke) tendered for filing copies of estimated billing information for calendar year 1995 pursuant to which the Southeastern Power Administration will be billed by Duke under Article II.1 of the Settlement Agreement in Docket No. ER90–315–000.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER95–308–000]

Take notice that on December 19, 1994, Niagara Mohawk Power Corporation tendered for filing a Notice of Withdrawal of its Borderline Sales Agreement with the Village of Richmondville.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER95–309–000]

Take notice that Appalachian Power Company (APCo), on December 21, 1994, tendered for filing with the Commission new Electric Service Agreements that were executed on December 1, 1994, by APCo and its following wholesale customers:

a. Black Diamond Power Company—East Hartland
b. Black Diamond Power Company—Elkhurst
c. Black Diamond Power Company—Sophia
d. Elk Power Company—Clay
e. Elk Power Company—Reed's Fork
f. Elkhorn Public Service Company—Crozier #4
g. Elkhorn Public Service Company—Elkhorn
h. Kimball Light & Water Company
i. Union Power Company—Mullens
j. Union Power Company—Pierpont
k. Union Power Company—Rhodell
l. United Light & Power Company
m. War Light & Power Company

The agreements are intended to replace the existing service agreements between APCO and the companies listed above, which expired on November 30, 1994.

APCo proposes an effective date of December 1, 1994, and states that a copy of its filing was served on the affected customers and the Public Service Commission of West Virginia.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–310–000]

Take notice that on December 21, 1994, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of January 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–311–000]

Take notice that on December 21, 1994, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 127 a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of January 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER95–312–000]

Take notice that on December 21, 1994, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Delmarva Power & Light Company (DPL), dated May 24, 1994.

PECO states that the Agreement sets forth terms and conditions for the sale of capacity and energy over approximately a 10 year period. PECO requested that the Commission permit the Agreement to become effective on the closing date of the sale of Conowingo Power Company stock by PECO to DPL, which is the subject of a Joint Application at Docket No. EC95–3. PECO also requests expedited treatment and Commission acceptance of the Agreement on or before the date the Commission approves the aforementioned Joint Application filed under Docket No. EC95–3.

PECo states that a copy of this filing has been sent to DPL and will be furnished to the Pennsylvania Public Utility Commission, Maryland Public Service Commission, and Virginia State Corporation.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–313–000]

Take notice that on December 21, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Delmarva Power and Light Company (Delmarva).

Con Edison states that a copy of this filing has been served by mail upon Delmarva.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Power, Inc.

[Docket No. ER95–314–000]

Take notice that Entergy Power Inc. (EPI) on December 21, 1995, tendered for filing a Monthly Purchase and Sale Agreement with AES Power, Inc.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission notice requirements in Section 35.11 of the Commission's regulations.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–317–000]

Take notice that on December 21, 1994, Southern California Edison Company (Edison), tendered for filing the following operating procedure between Sacramento Municipal Utility District (SMUD) and Edison, in accordance with the terms of the 1988 Edison-SMUD Power Sale Agreement (Agreement):

Operating Procedure No. 2 for Edison-SMUD 1988 Power Sale Agreement (Procedure No. 2).

In addition, to setting forth details for scheduling and dispatching Operating Capacity and deliveries of Associated Energy under the terms of the Agreement, Procedure No. 2 also provides for coordination between the 1988 and 1994 Power Sale Agreements between Edison and SMUD.

Copies of the filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Colmac Energy, Inc.

[Docket No. QF86–856–001]

On December 28, 1994, Colmac Energy, Inc. (Colmac), of Mecca, California submitted for filing an application for recertification of a facility as a qualifying facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be

located near Mecca, California. The Commission previously certified the facility as a qualifying small power production facility, *Colmac Energy, Inc.*, 37 FERC ¶ 62,034 (1986). The instant application for recertification is due to a change in the fuel to be used by the facility.

Comment date: Thirty days after the date of publication in the **Federal Register**, 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. 95–859 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–137–000, et al.]

Williston Basin Interstate Pipeline Company, et al.; Natural Gas Certificate Filings

January 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP95–137–000]

Take notice that on December 28, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed request with the Commission in Docket No. CP95–370–000 pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon a town border station under the blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the Ward Road Town Border Station (Ward Station), located in Burleigh County, North Dakota, which has provided service to Montana-Dakota Utilities Company (Montana-Dakota). Williston Basin states that Montana-Dakota because of an existing station, Missouri River Border Station and the North Bismarck Border Station possess sufficient capacity to provide reliable service to Montana-Dakota and therefore propose to abandon Ward Station, which would consist of a 14′ × 16′ building, regulators, valves and station piping. The fence enclosing the facilities and a mainline valve setting would remain at the site for emergency use. Williston Basin further states that the abandonment of this border station will not affect Williston Basin's peak day or annual transportation to Montana-Dakota.

Comment date: February 21, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP95–140–000]

Take notice that on December 30, 1994, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95–140–000 a request pursuant to §§ 157.205, 157.212, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216(b)) for authorization to relocate a delivery point that serves one of its existing firm transportation customers, Arkla, a division of NorAm Energy Corp. under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to relocate the delivery point to Arkla that serves customers in the town of Alica, Arkansas from MRT's Main Line No. 1 to MRT's Main Line No. 2. MRT states that the relocation of the delivery point to MRT's Main Line No. 2 will not result in any change in the total daily or annual quantities of natural gas MRT is authorized to transport for Arkla pursuant to its existing Transportation Service Agreement.

Comment date: February 21, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–141–000]

Take notice that on December 30, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–141–000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation service Columbia rendered in accordance with its Rate Schedule X–112, a best efforts transportation service of 500 Dth/day, for West Virginia Wesleyan College (Wesleyan) in Upshur County, West Virginia until August, 1993, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, Columbia states that the gas originated from wells located in Barbour County, West Virginia which were purchased by Weslyan in an attempt to reduce energy costs for the school. Columbia received the gas at an existing point of receipt on its Line 8000 in Belington, West Virginia and transported it to existing points of interconnection between Columbia and Columbia Gas of West Virginia, Inc. in Upshur County, West Virginia for subsequent delivery to Wesleyan. Columbia states that the transportation authority is no longer required as the transportation agreement has been terminated and Columbia is currently providing Wesleyan Part 284 Interruptible Transportation Service.

Comment date: January 26, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–857 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–98–000]

Columbia Gas Transmission Corp.; Notice of Petition For Approval of Stipulation

January 9, 1995.

Take notice that on December 20, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving the stipulation entered into by Columbia and Ozark Transmission System (Ozark) on December 9, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under a transportation contract, Contract No. MS–27534–AR, between Columbia and Ozark through the payment of a negotiated Exit Fee by Columbia to Ozark.

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the Exit Fee paid to Ozark.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 30, 1995. Reply comments should be filed on or before February 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–865 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–112–000, Docket No. EL95–17–000]

Entergy Services, Inc., et al.; Initiation of Proceeding and Refund Effective Date

January 10, 1995.

Take notice that on January 6, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–17–000 under section 206 of the Federal Power Act.

The reform effective date in Docket No. EL95–17–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 95–906 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–17–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

January 9, 1995.

Take notice that on January 3, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective February 2, 1995:

Fourth Revised Sheet No. 601
Sixth Revised Sheet Nos. 602 through 605
Fourth Revised Sheet No. 606.

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective February 2, 1995.

Natural states that copies of the filing are 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 a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–862 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–120–000]

NorAm Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

January 9, 1995.

Take notice that on January 3, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, fourth Revised Volume No. 1, the following revised tariff sheets with an effective date of February 1, 1995:

1st Revised Original Sheet No. 230

Original Sheet No. 230A
1st Revised Original Sheet No. 231
Original Sheet No. 231A
1st Rev Original Sheet No. 232
Original Sheet No. 232A

NGT states that these revised tariff sheets modify the curtailment provisions (Section 10.8 of the General Terms and Conditions) to comply with the provisions of the settlement in NGT's Docket No. RP93–3–000 proceeding which required NGT to make a limited Section 4 filing to implement tariff provisions providing for compensation to those persons that experienced a gas supply curtailment.

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 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before January 17, 1995. 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. 95–863 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01

[Docket No. ER95–64–000, Docket No. EL95–15–000]

South Carolina Electric & Gas Company, et al.; Initiation of Proceeding and Refund Effective Date

January 10, 1995.

Take notice that on January 6, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–15–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–15–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 95–907 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–301–000]

Stingray Pipeline Co.; Notice of Informal Settlement Conference

January 9, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on January 18, 1995, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c) (1994), or any participant, as defined by 18 CFR 385.102(b) (1994), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations at 18 CFR 214 (1944).

For additional information, please contact Warren C. Wood at (202) 208–2091 or Marc G. Denkinger at (202) 208–2215.

Lois D. Cashell,

Secretary.

[FR Doc. 95–864 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–15–004]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

January 9, 1995.

Take notice that on January 3, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Second Sub First Revised Sheet No. 503
Second Sub First Revised Sheet No. 504

Texas Eastern states that on December 14, 1994, it filed tariff sheets in compliance with the Commission's November 30, 1994 order in Docket No. RP95–15 (November 30 Order). Subsequently, pursuant to further conversations with Brooklyn Union Gas Company, Texas Eastern states that it has concluded that, in the context of the customer-specific operational flow orders contemplated by Section 4.3(L), the parenthetical expression ''(reflecting any reduction attributable to applicable customer-specific operational flow orders)'' is not necessary. Accordingly, such phrase has been deleted in these second substitute tariff sheets.

The proposed effective date of the tariff sheets is December 1, 1994, as required by the November 30 Order.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern 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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–860 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR95–4–000]

Union Oil Company of California, dba Unocal v. Cook Inlet Pipe Line Co.; Notice of Complaint

January 9, 1995.

Take notice that on December 22, 1994, Union Oil Company of California, dba Unocol (Unocal), filed a complaint against Cook Inlet Pipe Line Company (CIPL). Unocal states that CIPL's Tariff Sheet No. 21 which became effective on December 1, 1994, and the rate increase set forth thereon, are unjust and unreasonable in violation of section 1(5) of the Interstate Commerce Act (ICA), unjustly discriminatory in violation of section 2 of the ICA, unduly and unreasonably preferential in violation of section 3 of the ICA, and cause undue preference to intrastate transportation and undue prejudice to interstate transportation in violation of section 13(4) of the ICA.

Unocal requests that the Commission (1) investigate and hold a hearing concerning the lawfulness of Sheet No. 21; (2) determine and prescribe a just and reasonable rate to replace the rate set forth on Sheet No. 21; (3) suspend the operation of Sheet No. 21 pending investigation and hearing for the maximum period of seven months, and to the extent Sheet No. 21 is allowed to remain effective, direct CIPL to keep accurate account in detail of all rates and charges collected by reason of the filing of Sheet No. 21, (4) order CIPL to pay reparations to Unocal for any and all amounts paid by Unocal by operation of Sheet No. 21 above what the Commission determines to be the just and reasonable rate; and (5) order

such other further and additonal relief as the Commission deems just.

Any person desiring to be heard or to protest said complaint 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 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before February 8, 1995. Protests will be considered by the Commission in determining the 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. Answers to this complaint are due on February 8, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–861 Filed 1–12–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4718–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed January 02, 1995 Through January 06, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950000, DRAFT EIS, FRC, WA, Nisqually Hydroelectric Project (FERC. No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA, Due: March 14, 1995, Contact: Ed Meyer (202) 208–7998.

EIS No. 950001, DRAFT EIS, GSA, NY, U. S. Rainbow Bridge Plaza Renovation, Implementation, Niagara County, NY, Due: February 27, 1995, Contact: Peter A. Sneed (202) 264–3581.

EIS No. 950002, DRAFT EIS, COE, OR, Willamette River Temperature Control Study, Construction of Selective Withdrawal Structure (SWS) in McKenzie River Subbasin, OR, Due: February 27, 1995, Contact: Lynne Hamilton (503) 326–7730.

EIS No. 950003, FINAL EIS, AFS, OR, Buzzard Project Area Timber Sale and Road Construction, Implementation, Umatilla National Forest, Walla Walla Ranger District, Union and Wallowa Counties, OR, Due: March 01, 1995, Contact: Tom Reilly (509) 522–6090.

EIS No. 950004, DRAFT SUPPLEMENT, FTA, CA, Bay Area Rapid Transit District (BART) Transportation Improvements, San Francisco to San Francisco International Airport Extension, Updated and Additional Information, Approval, Funding, COE Section 404 and Possible FHWA Encroachment Permits Issuance, San Mateo County, CA, Due: March 13, 1995, Contact: Robert Hom (415) 744–3116.

EIS No. 950005, FINAL EIS, EPA, TX, Eagle Pass Coal Mine Project, New Source NPDES and COE Section 404 Permits Issuance, Maverick County, TX, Due: February 20, 1995, Contact: Norm Thomas (214) 665–2260.

EIS No. 950006, FINAL EIS, USA, TT, Theater Missile Defense (TMD) Extended Test Range, Demonstration and Operation, Missile Flight Test, Implementation, United States, Republic of the Marshall Islands and Wake Island, Pacific, Due: February 13, 1995, Contact: Creat Spears (703) 693–1745.

Amended Notices.

EIS No. 940467, DRAFT EIS, NRC, NM, Crownpoint Uranium Solution Mining Project, Construction and Operation, Leasing and Licensing, McKinley County, NM, Due: February 28, 1995, Contact: Joe Holonich (301) 415–6643. Published FR -11–16–94 - Review period extended.

Dated January 9, 1995.

William D. Dickerson,

Director, Federal Agency Liaison Division, Office of Federal Activities.

[FR Doc. 95–916 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4719–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 12, 1994 Through December 16, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–J61093–MT Rating EO2, Red Lodge Mountain Ski Area Master Development Plan, Special-Use-Permit Approval or Denial, Custer National Forest, Beartooth Ranger District, Carbon County, MT.

SUMMARY: EPA expressed environmental objections regarding potential adverse impacts associated with cumulative impacts of dewatering, increased erosion and sedimentation, and increased wastewater pollutant loads to Willow Creek. EPA believed that project modifications to avoid dewatering of streams should be developed. EPA is also concerned about the adequacy of the water quality and wetlands impact assessment and believed that additional information is needed to fully assess all potential impacts of the management actions.

ERP No. D–AFS–L65165–ID Rating EO2, Sloan-Kennally Timber Sale, Harvesting and Regenerating Timber Stands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID.

SUMMARY: EPA expressed environmental objections with the proposed action based on the cumulative impacts of additional nutrient and sediment loading to waters which already exceed water quality standards (303(d) listed) in the Cascade Reservoir watershed.

ERP No. D–NPS–L61200–WA Rating LO, Lake Chelan National Recreation Area General Management Plan, Implementation, Chelan County, WA.

SUMMARY: EPA expressed a lack of objections to the Draft EIS and recommended that the Final EIS stress the importance of the general management plan remaining consistent with the Total Maximum Daily Load for phosphorus.

ERP No. D–NPS–L64043–WA Rating LO, Elwha River Ecosystem Restoration, Implementation, Olympic National Park, Clallam County, WA.

SUMMARY: EPA supported the proposed action to remove both the Elwha and the Glines Canyon Dams and their associated infrastructure. However EPA recommended that the FEIS include a detailed mitigation plan for wetlands and that adequate monitoring of water quality take place.

ERP No. D–USN–E11035–SC Rating EC2, Charleston Naval Base Disposal and Reuse, Implementation, Charleston and Dorchester Counties, SC.

SUMMARY: EPA expressed environmental concerns on the proposed Community Reuse Plan based on a lack of a sufficient wetland mitigation plan, proposed community impacts due to an

access corridor, destruction of a migrating bird habitat, air quality impacts, identification of radioactive material, preservation of cultural resources and the condition of the existing wastewater treatment system.

Final EISs

ERP No. F–AFS–L99004–AK, Exxon Valdez Oil Spill Restoration Plan, Programmatic EIS, Implementation, Prince William Sound, Gulf of Alaska, AK.

SUMMARY: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. FS–BLM–L67032–WA, Kettle River Key Project Expansion, Lamefoot Mine Site Mining and Milling Operations, Plan of Operation Approval, Ferry County, WA.

SUMMARY: EPA expressed environmental concerns regarding groundwater contamination, changes in hydrology and effluent guidelines for the NPDES permits.

Other

ERP No. LD–AFS–E61070–KY Rating LO, Daniel Boone National Forest, Wild and Scenic Rivers Study, Six Rivers for Inclusion in the National Wild and Scenic Rivers System, Suitability or Non-Suitability, Jackson, Laurel, McCreary, Pulaski and Whitley Counties, KY.

SUMMARY: EPA had no objections to the preferred alternative.

Dated: January 9, 1995.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 95–915 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–U

[OPP–30377; FRL–4928–9]

Receipt of Applications for Pesticide Registration for Transgenic Plant Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications from Ciba-Geigy Corporation and Mycogen Plant Sciences to register transgenic plant pesticides. These will make the third and fourth application for registration of a transgenic plant pesticide under section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, in which a plant has been genetically altered to produce a pesticide. Because of its uniqueness the Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be submitted by February 13, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30377] and the (File Symbols 66736–R and 68467–R) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet L. Andersen, Acting Director, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703–308–8712).

SUPPLEMENTARY INFORMATION: EPA received applications from Ciba-Geigy Corporation (Ciba Seeds), 3054 Cornwallis Road, P.O. Box 12257, Research Triangle Park, NC 27709 and Mycogen Plants Sciences, 4980 Carroll Canyon Road, San Diego, CA 92121 to register the transgenic plant pesticide B.t.k. CryIA(b) Insect Control Protein as Produced in Corn and B.t.k. CrylA(b) Insect Control Protein as Produced in Corn (EPA File Symbols 66736–R and 68467–R) respectively, containing the new active ingredient *Bacillus thuringiensis* delta-endotoxin as produced in corn by a cryIA(b) gene and its controlling sequences as found on plasmid vector pClB4431 0.0001 - 0.0018 percent of total plant protein.

The CryIA(b) plant pesticide protein in corn plants is derived from transgenic tranformation event 176, and is encoded by a synthetic crylA(b) transgene and its controlling sequences as found on plasmid vector pClB4431. The CryIA(b) protein produced in these plants is a truncated form of the CrylA(b) protein produced by *Bacillus thuringiensis* subsp. *kurstaki* strain HD1. Corn plants producing this protein are protected against the European corn borer (*Ostrinia nubilalis*) larvae.

When using the hybrid seed corn containing cryIA(b) transgene, additional insecticides should not be appplied to the crop to control European corn borer. These plants are tolerant to glufosinate ammonium herbicide and this herbicide is not currently registered for use on corn.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 6, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–931 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30378; FRL–4929–1]

Consep, Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by February 13, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30378] and the registration/file number, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet L. Andersen, Acting Director, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703–308–8712).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 56336–RT. Applicant: Consep, Inc., 213 Southwest Columbia St., Bend, OR 97702. Product name: Consep SPRA4 Peach Twig Borer Pheromone Sprayable. Insecticide. Active ingredients: (*E*)-5-decenyl acetate at 46.20 percent and (*E*)-5-decenol at 9.60 percent. For tree nut crops and other crops; for the control of peach twig borer.

2. File Symbol: 56336–RL. Applicant: Consep, Inc. Product name: Checkmate Peach Twig Borer (PTB) Technical Pheromone. Insecticide. Active ingredients: (*E*)-5-decenyl acetate at 77 percent and (*E*)-5-decenol at 16.00 percent. For use in manufacturing or formulation only.

3. File Symbol: 56336–RA. Applicant: Consep, Inc. Product name: Check-mate PTB Dispenser. Insecticide. Active ingredients: (*E*)-5-decenyl acetate at 7.92 percent and (*E*)-5-decenol at 1.65 percent. For tree nut crops and other crops; for the control of peach twig borer.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 6, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–932 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30000/59; FRL–4918–8]

Propoxur (Baygon, Sendran); Proposed Decision Not to Initiate a Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Proposed Decision Not To Initiate a Special Review.

SUMMARY: This Notice announces EPA's proposed decision not to initiate a Special Review of the insecticide propoxur (Baygon, Sendran; 2-isopropoxy-phenyl-*N*-methylcarbamate). The Special Review was originally proposed on the basis of potential carcinogenic risks to applicators and home residents from the registered uses. After evaluating new exposure and carcinogenicity data, and in light of voluntary cancellation and label amendment actions which eliminated those uses posing the greatest concern, EPA believes that the estimated risks do not warrant initiation of Special Review.

DATES: Written comments must be received on or before March 14, 1995.

ADDRESSES: Submit three copies of written comments, bearing the document control number ''OPP–30000/59,'' by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm 1132, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI), and so marking on the cover of each copy submitted. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Two complete copies should be submitted with section(s) claimed CBI clearly marked, and numbered consecutively throughout the text. The third copy should have the claimed CBI section(s) excised and numbered consecutively (as in the two complete copies) without modifying the remaining text. The propoxur public docket has been open for public inspection since February 1992. An index of propoxur documents, information supporting this proposed action and any submitted comment or part of a comment is available for public inspection and copying in the Public Docket, Rm. 1132 at the Virginia address given above. Office hours are from 8

a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Review Manager, Environmental Protection Agency (7508W), 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, 3rd Floor, Arlington, VA 22202, (703) 308–8033.

SUPPLEMENTARY INFORMATION: EPA announces its proposed decision not to initiate a Special Review of propoxur. EPA has re-evaluated the concerns raised in its March 22, 1988 preliminary notification letter to registrants (Refs. 1), along with other relevant information and the regulatory actions taken since the preliminary notification. Based on this re-evaluation, EPA has determined that a Special Review of propoxur is not warranted at this time.

I. Introduction

A. Chemical Background

Propoxur is the common name for 2-isopropoxy-phenyl-*N*-methylcarbamate, a carbamate insecticide for the control of insects and other arthropods inside and outside of buildings and on pets. The holders of the two U.S. technical registrations of propoxur, Baygon and Sendran, are Miles Inc., Agriculture Division (formerly Mobay Corp., Agricultural Chemical Division), and Miles Inc., Animal Health Division (formerly Mobay Corp., Animal Health Division) respectively. Miles Inc. is a subsidiary of Bayer, AG, Germany. Approximately 100 companies hold active registrations for intermediate and/or end-use products in which propoxur is an active ingredient (a.i.). There are approximately 200 registrations for formulations containing propoxur, including 2 technical products, Baygon (96 percent) and Sendran (94 percent), and 19 formulation intermediates.

End-use propoxur products provide contact kill and residual control of a wide variety of common indoor insects, such as ants and cockroaches. Propoxur formulations are also sold for the control of fleas and ticks on pets. In addition, propoxur-containing products are sold for limited outdoor uses. For example, it is used in wasp and hornet sprays, and application to and around building surfaces and foundations, patios, driveways, and sidewalks. Propoxur products are sold as wettable powders, emulsifiable concentrates, aerosols, total-release aerosol foggers, ready-to-use (RTU) liquids, granular baits, enclosed baits, impregnated or controlled release strips and shelf paper. Wettable powders and emulsifiable concentrates (diluted and mixed with water) and RTU liquids can be applied using a compressed air sprayer in both household and non-household settings. Pest Control Operators (PCOs) use emulsifiable concentrates, wettable powders, and granular products. Pet-use products are sold as aerosol sprays, collars, and dab-ons. There are a number of propoxur insecticides which contain other active ingredients such as dichlorvos (DDVP), piperonyl butoxide, pyrethrins, allethrin, and *N*-octyl bicycloheptene dicarboximide. EPA estimates that combined indoor and outdoor household uses (applied by both residents and PCOs) account for 80 to 92 percent of total propoxur usage in the United States. PCOs apply approximately 6 percent to 9 percent of the total propoxur used in homes. Residents of single family homes, condominiums and apartments are the primary users of propoxur products sold as aerosols or RTU liquids. There is limited use (up to about 8 percent) of propoxur in commercial establishments.

B. Legal Background

1. *Statute.* A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without ''unreasonable adverse effects on the environment'' (FIFRA section 3(c)(5)), that is, without causing ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide'' (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is at all times on the proponent of initial or continued registration. If, at any time, EPA determines that a pesticide no longer meets this standard for registration or reregistration, the Administrator may cancel the registration under sections 3 or 6 of FIFRA.

2. *Special Review process.* EPA initiates a Special Review when it determines that a pesticide meets or exceeds one or more of the risk criteria set out in the regulations (40 CFR 154.7). The Special Review process is described in 40 CFR part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During a Special Review, EPA: (1) announces and describes EPA's finding that use of the pesticide meets one or more of the risk criteria set forth in 40 CFR 154.7; (2) establishes a public docket; (3) proposes a regulatory decision; (4) solicits comments from the public on the issues and proposed regulatory decision of the Special Review, and from the Secretary of Agriculture and the FIFRA Scientific Advisory Panel on the Agency's analysis and proposed decision; (5) reviews and responds to all significant comments submitted within the stated time frame; and (6) makes a final regulatory decision based on the risks and benefits associated with each use of the pesticide.

Prior to formal initiation of a Special Review, a preliminary notification is sent to registrants and applicants for registration pursuant to 40 CFR 154.21 announcing that the Agency is considering commencing a Special Review.

If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will not conduct a Special Review, it is required under 40 CFR 154.23 to issue a proposed decision to be published in the **Federal Register**. This Notice is being issued under 40 CFR 154.23. A period of not less than 30 days is to be provided for public comment on the Proposed Decision Not To Initiate a Special Review. Subsequent to receipt and evaluation of comments on the Proposed Decision Not To Initiate a Special Review, the Administrator is required by 40 CFR 154.25 to publish in the **Federal Register** a final decision regarding whether or not a Special Review will be conducted.

C. Regulatory Background

1. *Data Call-In (DCI) Notices.* EPA issued DCI Notices to various propoxur registrants in 1987, 1988, 1989, and 1992. Following these DCIs, registrants either voluntarily cancelled or deleted from labels certain uses, as follows: all propoxur-containing dusts; all outdoor uses (except for the following limited uses: application to the exterior of buildings and around foundations, patios, driveways, and sidewalks); ready-to-use (RTU) liquids applied with trigger pump sprayers; and certain pet uses including dips and shampoos. Miles Inc., the registrant of technical propoxur, submitted five acceptable studies that EPA used in its exposure assessments (PCO and post-application exposures from crack and crevice treatments using compressed air sprayers, residential applicator (RA) exposure using aerosol sprays, PCO exposure from granular bait uses, and applicator exposure from pet aerosols).

2. *Notification of registrants.* On March 22, 1988, pursuant to 40 CFR 154.21(a), EPA issued a private (''Grassley-Allen'') notification to propoxur registrants that the Agency

was considering a Special Review of propoxur (Ref. 1). EPA was concerned with propoxur's potential cancer risk to applicators when applying propoxur indoors and outdoors, to occupants of treated buildings, and from treating pets with propoxur. EPA's concern was based on a 1984 study which reported increases in the incidences of malignant and benign tumors in the urinary bladders of both male and female rats, an increase in incidence of uterine tumors in female rats, and the early onset and increased incidence of hyperplasia of the urinary bladder in these rats. EPA classified propoxur as a Group B2 (probable human) carcinogen. EPA noted that data from the 1987 DCI would be used to refine estimates of risk, and that the registrants' responses to this notification would be considered in its determination whether to initiate a Special Review.

3. *1990 Notice of Intent to Suspend, and 1991 Settlement Agreement.* On October 15, 1990, EPA sent a Notice of Intent to Suspend (NOITS) to Miles Inc. and the five manufacturing-use producers for failure to comply with the terms of the December 14, 1987 DCI regarding certain exposure studies. The requirements of the 1987 DCI were legally binding only for those companies who received the DCI. As a result, only their products were subject to the NOITS. Miles Inc. requested a hearing concerning the NOITS, and subsequently reached a settlement with EPA on June 28, 1991. The agreement noted that Miles Inc. had recently submitted new studies to address the data requirements for indoor pressurized aerosol and granular bait products. EPA agreed to issue a new DCI requiring end-use registrants to submit exposure studies not committed to by Miles Inc., such as a trigger pump spray study. If no other end-use registrant committed to generate data to support these uses, Miles Inc. would amend its labels for its manufacturing-use products to prohibit the unsupported uses. On August 12, 1991, after accepting the aerosol spray and PCO granular bait studies submitted by Miles Inc., EPA withdrew the NOITS on all of the registered products of manufacturing-use producers which these two studies supported. RTU liquid products applied with trigger-pump sprayers subject to the NOITS remained suspended. Subsequently, all registrants with these products amended their propoxur end-use product labels to delete use of RTU liquids with trigger-pump sprayers.

II. Estimation of Propoxur Cancer Risks to RAs, PCOs, and Residents of Treated Buildings

Since the 1988 notification to registrants that EPA was considering a Special Review of propoxur, the Agency has refined its risk assessments. The current risk assessment is discussed in this unit.

A. Hazard Identification — Carcinogenicity

1. *Animal carcinogenicity studies*— a. *Rat studies.* In a 1984 2–year rat chronic feeding/carcinogenicity study, propoxur was administered in a standard European diet (Altromin 1321) to SPF Wistar rats, at concentrations of 0, 200, 1,000, or 5,000 ppm propoxur. At the 1–year interim sacrifice, there was an increased incidence of urinary bladder epithelial hyperplasia in the two highest dose groups of male and female rats. There was also a urinary bladder papilloma in 1 of the 10 highest dose males. Animals that died, were moribund, or were sacrificed at term also had dose-related increases in the degree and extent of urothelial hyperplasia. Highly significant increases in urinary bladder papillomas, carcinomas and combined papillomas/carcinomas (67 to 75 percent verses 0 percent in the controls) were observed in male and female rats at the highest dietary exposure level (5,000 ppm) in this study. Bladder tumors are considered to be relatively rare in rodents, especially in the absence of silica crystalline deposits. Additionally, there was an increased incidence of uterine carcinoma (not statistically significant at $p > 0.05$) in females at the highest dose level. However, it appeared that this tumor had a tendency to develop earlier and/or grow more rapidly than the control group. The urinary bladder findings of the 1984 carcinogenicity study were confirmed in a subsequent 2–year study completed in 1988 with female Wistar rats on an Altromin diet. There were significant increases in urinary bladder papillomas and combined papillomas/carcinomas at the three highest dose levels tested (3,000, 5,000 and 8,000 ppm) and in carcinomas at the highest dose level. The dose-related trends for papillomas, carcinomas and combined papillomas/carcinomas were also significant. Also, the observed hyperplasia of the urinary bladder was dose-and time-dependent. However, a significant comparative pair-wise increase in uterine tumors was not observed in this study.

b. *Mouse studies.* In a 1982 2–year mouse carcinogenicity feeding study, male and female CF1/W74 mice were fed propoxur at dose levels up to 6,000 ppm. No adverse effects on the bladder were noted. Similarly, in a 1988 1–year mouse feeding study, where up to 8,000 ppm propoxur in an Altromin diet was administered to female NMRI mice, no histopathological changes were observed. In a 1992 B6C3F1 mouse carcinogenicity/feeding study using up to 8,000 ppm propoxur in an Altromin diet, there was a dose-related increase in bladder epithelial hyperplasia (classified as minimal and diffuse in all instances) at 2,000 and 8,000 ppm (not at 500 ppm), but no indication of any carcinogenic effect involving the urinary bladder. However, the study did show a dose-related trend of increased incidence of hepatocellular adenomas in males.

c. *Other animal studies.* In a 1988 study, female Syrian hamsters were fed up to 8,000 ppm propoxur in an Altromin diet for 1 year without histopathological effects involving the urinary bladder. In a 1984 1–year dog feeding study, no adverse urinary bladder effects were reported using dose levels up to 1,800 ppm. Also, in a 1985 13–week oral gavage study with Rhesus monkeys, no adverse urinary bladder effects were noted after feeding 40 mg/kg/day of propoxur.

2. *Other studies— a. Metabolism and biotransformation.* Miles Inc. has submitted results of a number of biotransformation studies conducted on different mammalian species (rat, mouse, hamster, monkey, and human). Propoxur is extensively metabolized (more than 10 metabolites have been identified) and many of the metabolites are excreted in the urine. Because propoxur is so completely metabolized, there is very little or no parent compound in urine. One of the metabolites is 1,2-dihydroxybenzene (''M1'' or catechol). In the rat, approximately 7 percent to 20 percent of propoxur is degraded to catechol. Catechol, at high dose levels administered by gavage, has been shown to induce cancer in the glandular stomach of rats. Three other metabolites of propoxur of structural interest are: 2-isopropoxyphenol (''M2''), 2-isopropoxylphenyl-hydroxy-methylcarbamate (''M5''), and 1-hydroxy-2-isopropoxy-4-nitrobenzene (''M9A''). ''M9A'' has a nitro-group added to the phenyl ring of metabolite ''M2,'' and Miles Inc. has proposed that it is formed in the stomach. In human data (Ref. 2), the glucuronide conjugate of ''M2'' was the predominant metabolite found, with trace levels of ''M9A.'' Based on the Agency's current knowledge, none of the metabolites

would appear to be of carcinogenic concern.

b. *Mutagenicity.* Propoxur and its metabolites, including catechol, have not been shown to produce detectable gene mutations, with the exception of ''M5'' (equivocal or weakly positive in the Ames assay for *Salmonella typhimurium* strain TA1535). While propoxur appears to give no indications of clastogenic activity in *in vitro* studies submitted by Miles Inc., one published study shows increased incidence of sister chromatid exchange and micronuclei in human lymphocytes following *in vitro* exposure to propoxur. Propoxur also induces S-phase mitosis in bladder epithelial cells suggesting an effect on cell proliferation. The ''M1'' metabolite, catechol, has been shown to be genotoxic in several published studies, including *in vivo* tests, primarily via a clastogenic mechanism. The presence of the ''M9A'' metabolite suggests a possible nitrosation mechanism; the *N*-nitroso derivative of propoxur is a known mutagenic compound. Overall, the indications are that there is, at most, only weak genotoxicity associated with propoxur and/or its metabolites. It is noteworthy that dietary exposure to propoxur has been shown to result in an increased incidence of S-phase in rat urinary bladder epithelial cells (not a genotoxic effect) suggesting that the rat urinary bladder tumors may originate from increased cell proliferation.

c. *Effects of diet and urinary pH on the bladder.* Miles Inc. has submitted a number of studies relating to the effects of diet and urinary pH on the bladder. In a 15–week feeding study, female Wistar rats received 8,000 ppm propoxur in Altromin diet, with or without addition of 2 percent ammonium chloride. Without the ammonium chloride, the urinary pH was more basic by approximately 2 pH units. At termination, hyperplasia of the urinary bladder was present in 8/14 rats not receiving ammonium chloride and in 1/15 rats receiving it. In two other studies with rats given a casein semi-synthetic diet (No. 1/0) and propoxur at 8,000 ppm for 4.8 or 14 weeks, and at 3,000 or 8,000 ppm propoxur for 100 weeks, no histopathologic changes in the urinary bladder were reported. These studies appear to support Miles Inc.'s position that development of the urinary bladder hyperplasia (and subsequent tumor occurrence in rats) is associated not only with administration of propoxur but also with the diet and possibly its effects on urinary pH.

3. *Findings and recommendations of EPA's Scientific Advisory Groups.* In the September 4, 1986 Peer Review of propoxur, the Peer Review Committee reviewed the evidence of carcinogenicity of propoxur from the 1984 rat feeding/carcinogenicity study, and other toxicological data on the chemical. The Peer Review Committee reviewed the carcinogenic potential for classification, and concluded that there was sufficient evidence of carcinogenicity to classify propoxur to Group B2 (Probable Human Carcinogen). The classification was supported by the unusually high incidence of bladder neoplasia, the relative rarity of the bladder tumor in rats, early onset of hyperplasia and papilloma of the bladder, and the somewhat uncommon finding of bladder tumors in the absence of crystalline (usually silica) deposits.

In the second Peer Review of propoxur held on December 6, 1990, the Carcinogenicity Peer Review Committee reviewed the evidence for the Group C Classification of propoxur by the Carcinogen Assessment Group of EPA's Office of Research and Development. The Peer Review Committee agreed to defer discussion of the classification of propoxur until the data from the 1988 rat carcinogenicity study had been reviewed.

In the October 3, 1991 third Peer Review of Propoxur, the Carcinogenicity Peer Review Committee concluded ''that there was insufficient evidence to change the classification of propoxur (Group B2 carcinogen) and method of quantification'' at this time. However, the Committee stated that if a species- and diet-specific effect could be established, and if the genotoxic mode of action were dismissed for propoxur, then ''the use of the conventional low-dose quantitative risk assessment method (Q_1*) might not be appropriate.'' The Committee suggested that ''studies designed to further investigate the mechanism of action and genotoxic potential'' of propoxur be performed. Specifically, the Committee suggested a re-cutting of the bladder sections and that a pathologist (with expertise in bladder neoplasia) read these and re-read the original bladder slides from the 1988 female rat study. The Committee suggested that a pathologist look at sections from all groups for uterine pathology from the same study. The Agency also suggested historical control data from the registrant's testing facility and information on the diet composition (Altromin 1321 compared to other diets). In addition, to better understand possible mechanistic considerations and relate them to the Agency's regulatory position on propoxur, Miles Inc. was advised to clarify propoxur's genotoxic potential and to resolve the discrepancy created by the two dietary regimens.

Miles Inc. has responded, in part, to the suggestions of the third Carcinogenicity Peer Review Committee. The Agency has discussed with the registrant the mechanisms by which the urinary bladder tumors are triggered and the possible relationship of uterine tumors to dietary propoxur. The findings will be evaluated by the Carcinogenicity Peer Review Committee after all the suggested data have been submitted. EPA does not expect that the peer review will conclude that the carcinogenicity of propoxur is a more serious concern than today's document concludes.

4. *Evaluation of carcinogenicity data—Hazard finding.* Following the October, 1991 Peer Review, EPA re-evaluated (Ref. 3) the rat urinary bladder tumor rates from the l984 2–year feeding study. As there was no statistical evidence of increasing mortality with increasing doses of propoxur, the unit risk estimate could be obtained using a linearized Multi-Stage model for each sex group of rats. The resulting unit risk estimates for both males and females were then combined to obtain a geometric mean. The Agency estimated the human equivalent potency (Q_1*) of propoxur to be 3.7×10^{-3} (mg/kg/day)$^{-1}$. The Q_1* represents the 95 percent upper bound confidence limit of tumor induction likely to occur from a given dose of a carcinogen. It is emphasized, that if the mechanism(s) by which the urinary bladder tumors develop in rats involves a threshold level, and/or if these tumors are species-specific, then the risk to humans would be less than indicated by this Q_1*.

5. *Uncertainties in propoxur's role In carcinogenesis.* To date, there is no clear indication as to how propoxur produces hyperplasia and tumors. Bladder tumors are rare in rats, particularly in the absence of crystalline (silica) deposits. It has been suggested that silica deposits may in some way participate in bladder tumor formation, especially in the presence of a diet that may alter the pH of urine in the bladder. It is emphasized that there is no indication of silica deposits in the urinary bladders of rats fed propoxur. However, there may be other factors associated with induction of hyperplasia or the formation of tumors, such as enhancement of the cellular response to growth factors. In addition, the role and relative contributions of the parent compound and its metabolites to the process are unknown.

Miles Inc. has taken the position that propoxur is non-genotoxic, and that an ''epigenetic'' mechanism, such as that

involving dietary exposure to sodium saccharin, is likely to be responsible for the formation of rat urinary bladder tumors in chronic animal feeding studies. Chronic dietary exposure to sodium saccharin at appropriate levels leads to urothelial hyperplasia and subsequent bladder tumors in rats. However, silica microcrystals are found in the urinary bladder of rats fed sodium saccharin and these are absent in rats fed propoxur.

Miles Inc. recently reported on the results of a preliminary scanning electron microscopy study designed to determine if silica crystalline deposits occur in the urinary bladders of propoxur-treated rats and their possible role in inducing hyperplasia and tumors as mediated by the diet and urinary pH. No silica crystalline deposits were observed. The registrant has maintained its previous position of a non-genotoxic mechanism for propoxur-induced cell proliferative response in the rat bladder, but added that propoxur may act like a mitogen (that is, it promotes increased cell division, but does not, by itself, alter cell DNA). It is not known whether a complex interaction of weak or moderate genotoxic activity, cell proliferation and cytotoxicity in the urinary bladder results in tumor formation, or whether cell proliferation alone can cause this effect. Miles Inc. has indicated that it is studying whether there are genotoxic effects in the urinary bladder. In the absence of this information, which might indicate a threshold effect, and for purposes of this risk assessment, EPA has used the linear multistage model that it typically uses.

The Agency has received data from Miles Inc. which indicates the elevated incidence (8/48 or 16.7 percent) of uterine carcinomas observed at 5,000 ppm in a 2–year rat study was within the range (0/50 to 10/50) observed for historical control groups in a series of 32 chronic feeding studies in rats. The overall incidence of uterine carcinomas and/or adenocarcinomas was 163/2,107, or 7.7 percent.

Until propoxur is reviewed again by the Carcinogenicity Peer Review Committee and concludes differently, propoxur remains classified as a B2 carcinogen for which the carcinogenic potency has been quantified at 3.7×10^{-3} $(mg/kg/day)^{-1}$.

B. Exposure

The estimates of exposure for Pest Control Operators (PCOs), Residential Applicators (RAs), and residents of treated homes are discussed below and displayed in Table 1 below.

1. *Applicator exposure*. The main routes of human exposure to propoxur are through dermal contact with and inhalation of residues. Residues may be found on surfaces to which propoxur has been applied. However, propoxur may volatilize or evaporate during and following application, and be deposited onto other, untreated interior surfaces of a building. Inhalation exposure occurs from contact with propoxur vapors or dust during and following application of propoxur products. PCOs and RAs are exposed primarily during the mixing, loading, and application of propoxur products to the interior or around the exterior of buildings. Kennel workers and pet owners are exposed while treating animals. Residents of treated buildings are exposed to airborne and surface residues following application. EPA assessed human exposure to propoxur using data obtained from several sources, including studies submitted by Miles Inc. in response to the 1987 DCI, data from the technical literature, and surrogate data. The exposure data and the related estimates are discussed below.

a. *Crack and crevice study of PCO exposure*. Crack and crevice treatments are among the most popular propoxur uses for indoor pest control. In response to the December 14, 1987 Data Call-in (DCI) requirement, Miles Inc. submitted an acceptable crack and crevice study of PCO exposure (Ref. 4), in which Miles Inc. monitored the dermal and inhalation exposures of three PCOs as they treated five homes each. In this study, PCOs used a compressed air sprayer to apply a wettable powder formulation of propoxur, diluted to 1.1 percent active ingredient (a.i.), to cracks and crevices and as a limited broadcast treatment. The PCOs wore chemical-resistant gloves, cotton/polyester coveralls over a long sleeved shirt and long pants, and leather boots. Dermal exposure was monitored using gauze patches inside and outside clothing. Levels of residues on PCOs' hands were measured using an ethanol handwash. Inhalation exposure was measured by using personal sampling devices located in the applicator's breathing zone. (Inhalation exposure was found to be negligible compared to dermal.)

(1) *Wettable powders*. To estimate PCO exposure to wettable powders, EPA supplemented the crack and crevice data with additional assumptions as follows: the average PCO weighs 70 kg, works 8 hours per day over a 20–year working-life of a 70–year life-span, and handles 924 oz. a.i. per year. Dermal absorption was assumed to be 50 percent. Dermal exposure was estimated at 5.2×10^{-3} mg/kg/day (Ref. 5).

(2) *Ready-to-Use (RTU) liquids*. EPA determined that RTU liquid products are applied at rates similar to the wettable powder formulations, and residues are not expected to be higher or more persistent than those from the wettable powder formulation. For this reason, EPA determined the results of the crack and crevice exposure assessment for wettable powders should be used to estimate PCO exposure during application of RTU liquids (Refs. 5, 6 and 7). Thus, exposure was estimated at 5.2×10^{-3} mg/kg/day.

b. *Granular bait study*. Granular baits are formulated as dry pellets, usually containing 2 percent propoxur. They can be scattered on paper, pasteboards, or on the floor at a rate of about 4 oz per 500 to 1,000 square feet areas. Baits are used near baseboards, in closets, under sinks and refrigerators, around structures, patios, sidewalks and other places where insects may be. Miles Inc. submitted an acceptable study of PCO exposure to granular products. In this study, PCOs wore gloves, long-sleeved shirts, cotton trousers, and baseball caps over normal clothing which consisted of denim or cotton trousers, long-sleeved shirts and shoes while applying 2 percent granular baits by hand to a 2 to 3 foot wide band around driveways, sidewalks, patios, and flower beds, at the prescribed label rate of 4 oz per 1,000 square feet (0.08 oz. a.i./1000 sq. ft.). The granules were applied by three PCOs, each of whom carried a 5 pound carton of the bait in one hand while scattering the material with the other hand. Dermal exposure was measured using gauze patches worn both inside and outside the clothing and on the front of the cap. Hand exposure was measured from an ethanol handwash. Airborne residues were determined by drawing air from the breathing zone through filters using calibrated personal sampling pumps. Propoxur residues were not detected in most of the samples analyzed for dermal or respiratory exposure. Similarly, propoxur was not detected in hand washes after removal of the protective gloves. Because of the large numbers of samples with non-detectable values, EPA determined under these conditions that the exposure would be negligible for PCOs (Refs. 6, 7, and 8).

c. *Aerosol pet spray study*. A number of pressurized aerosol spray products are formulated for use directly on dogs and cats. The amount of a.i. in the products varies from 0.25 percent to 1 percent propoxur. In response to the 1987 DCI requirement, Miles Inc. submitted an acceptable aerosol pet spray study (Ref. 10). In this study, exposures of five workers using a 0.025 percent aerosol spray of propoxur were measured at each of three different

locations as each worker applied the spray to 20 dogs. All treatments were conducted indoors. Each dog was treated for 1 to 2 minutes. The elapsed time for each replicate ranged from 45 to 90 minutes per worker. Each worker wore a shirt with long or short sleeves and pants, but no other protective clothing. Urine was collected from each subject over a 24 hour period and analyzed for the propoxur metabolite isopropoxyphenol (IPP) (This is the same as 2-isopropoxyphenol or M2 discussed in Unit II.A.2.(a) of this document.) After reviewing the literature, EPA concluded that the total absorbed dose of propoxur is determined by adjusting the amount of IPP excreted by the following factors: the percent of propoxur excreted, the percent IPP is of all metabolites, and the relative molecular weights of the parent and the metabolite IPP (Refs. 10, 11, and 12).

(1) *Kennel workers.* An exposure estimate is not presented here because the Agency does not believe pet aerosol products are routinely used by kennel workers. The Agency believes that kennels are more likely to use shampoos or dips because they are more effective in getting rid of fleas and ticks. Shampoos are preferred to other formulations because they wash away dirt, fleas, and ticks in addition to the pesticidal action. Also, they are believed to be easier on the animal. Aerosols and trigger-pump sprays are sometimes used when a pet owner declines to have a pet shampooed or dipped. There are no propoxur shampoos or dips registered, and as noted elsewhere in this document, propoxur may no longer be applied with trigger-pump sprayers.

(2) *Pet owners.* In order to calculate lifetime exposure for pet owner applicators, EPA supplemented the mean exposure data from the aerosol exposure study with the following additional assumptions. Pet owners were assumed to weigh 70 kg, wear long sleeved shirts and long pants during application, and treat 1 dog four times per year over a 70–year lifetime (Refs. 6, 7, 12, 13, and 14). Exposure was estimated at 6.4×10^{-3} mg/kg/day per application day.

d. *Aerosol spray study of Residential Applicator (RA) exposure.* In response to the 1987 DCI, Miles Inc. submitted a study of residential applicator exposure (Ref. 15). In this study, a 16 oz. aerosol can containing 1 percent a.i. was sprayed into cracks, crevices, baseboards, under sinks, and in other places where insects might be found. A total of 15 sets of data were collected. Applicators wore long sleeved shirts, long pants, shoes, and baseball caps. Dermal exposure data were gathered from gauze patches attached both outside and inside the clothing and on the cap. Hand exposure data were gathered from an ethanol handwash. Respiratory exposure data were gathered from microfilters contained in a cassette attached to the lapel of the applicator.

(1) *RA exposure to aerosols.* EPA used additional assumptions to calculate exposure as follows: the RA weighs 70 kg, breathes 1.7 m^3 of air per hour, uses up the entire can of aerosol with each use, uses four cans per year, and during application wears a short sleeve shirt, shorts, and shoes, which EPA believes is a reasonable clothing scenario. Residues below the level of detection were assumed to be present at one-half the level of detection. The RA was assumed to apply propoxur every year from age 18 to age 70. RAs were exposed for 1 hour per application through dermal and inhalation exposure. (Respiratory exposure estimates were found to be negligible compared to dermal exposure.) Dermal absorption was assumed to be 50 percent because a homeowner applicator is assumed to remain in the residence following application. Exposure was calculated at 2.1×10^{-4} mg/kg/day (Refs 6, 7, 16, 17, 18, and 19).

(2) *Outdoor uses.* EPA also considered RA exposures for outdoor application of propoxur aerosols, which are designed to eradicate hornet and wasp nests around buildings and homes. These insects commonly nest in eaves of buildings and underneath building structures with overhangs. These products are generally equipped with a delivery system that will allow the operator to apply the aerosol at a safe distance from the nest. An applicator of these formulations of propoxur is likely to be exposed for a shorter time than would occur with indoor use products. It is also likely that the volatile formulations would dissipate more quickly than similar formulations used indoors. Thus, the exposure and corresponding risk from outdoor aerosol uses can be expected to be lower than is estimated for those used in indoor treatments (Ref. 15).

(3) *RTU liquid application by RAs.* EPA has used the aerosol spray study to calculate the maximum exposure RAs incur when applying RTU liquids with a compressed air sprayer to cracks and crevices. EPA assumed that the RA would wear a short sleeved shirt, shorts, shoes, and no gloves and would apply an RTU liquid four times per year. Only dermal exposure data were used to calculate exposure, because inhalation was considered to be negligible. Exposure was estimated at 2.1×10^{-4} mg/kg/day. If the RA applicator wears clothing similar to a PCO, that is, long sleeved shirt, long pants, and gloves, exposure would be less (Refs. 6, 7, 12, 16, 17, 18, 19, 20, and 21).

(4) *Granular products applied by RAs.* Some granular products are registered for use in and around the home (including limited outdoor application to driveways, sidewalks, patios, and foundations). These products are applied indoors by pouring from a paper container into a tray which is then placed under refrigerators, by lightly applying the product to floor under sinks or refrigerators, or by application to cracks and crevices that are inaccessible to children. They are not applied by general broadcast treatment indoors or in large quantities. While there are no quantitative data addressing this use scenario, EPA believes that potential dermal exposure would not exceed that received from an aerosol spray can while wearing a long sleeve shirt and long pants. Respiratory exposure would be negligible (Ref. 9). Exposure from the limited outdoor applications is not expected to be greater than indoor exposure. The limited outdoor use still permitted (application to sidewalks, patios, foundations, and driveways) is expected to present negligible exposure to RAs.

e. *Other applicator exposure estimates.* PCO and RA exposures from total release aerosol foggers, impregnated strips, shelf paper, enclosed or containerized baits, pet dab-ons, and tick and flea collars have not been estimated but are believed to be negligible (Ref. 6).

2. *Post application exposure.* Residents of homes are exposed from post-application exposures, through dermal and inhalation routes of exposure. Home residents may also be exposed while treating household pets.

a. *Crack and crevice study of post-application exposure.* In response to the 1987 DCI, Miles Inc. submitted an acceptable study of post application residential exposure following a crack and crevice and limited structural surface treatment by commercial applicators in five homes using Baygon 70 WP insecticide diluted to a label rate of 1.1 percent a.i. (Ref. 22). The material was applied as a coarse spray to cracks, crevices, baseboards and other areas treated for insect control using a compressed air sprayer. An average of 1.2 oz of a.i. was applied to each house. Surface residues and air levels of propoxur were measured at intervals of up to 48 hours after treatment. Eighteen samples of each of three types of surfaces were monitored: vinyl tile squares represented floors and counters,

nylon carpet squares represented carpet and fabric squares represented furniture. Transferable residues were measured by wiping the sample surfaces with gauze pads. Residue levels from different rooms were pooled for each type of material. The maximum geometric mean of all the measured surface residues for a given surface type was used to represent the measured residue for that surface, at the specified time intervals. Airborne residues were determined by drawing air through a sampling apparatus for 1 hour periods at designated intervals. Exposures were calculated for three age categories of residents: an infant, a 12 year old child, and an adult. The infant was assumed to weigh 7.5 kg, have a body surface area of 4.8 ft^2, and have a respiratory volume of 0.5 m^3/hr. The child was assumed to weigh 40.5 kg, have a body surface area of 14.8 ft^2, and have a respiratory volume of 0.9 m^3/hr. The adult was assumed to weigh 70 kg, have a body surface area of 21 ft^2, and have a respiratory volume of 1.0 m^3/hr. In addition, they were assumed to be exposed 24, 15, and 15 hours/day, respectively. Assumptions about clothing were not specified; rather dermal exposure was expected to occur over 50 percent of the body surface. Individuals were assumed to contact a 50 square foot contact area in a 4–hour interval. Exposure was assumed to occur 365 days/year.

(1) *Crack and crevice*. To calculate exposure following application of wettable powders to cracks and crevices, EPA assumed that 64 oz. of a 1.1 percent solution by weight (total of 0.73 oz.) would be applied once a year for cleanout treatment and 16 oz. of a 0.5 percent solution by weight (total of 0.083 oz.) would be applied 11 times a year for maintenance treatments. Residents were assumed to be exposed 365 days per year over a 70–year lifetime. Dissipation was assumed to be 60 percent, and dermal absorption was assumed to be 50 percent of the residue on skin surfaces, because dermal absorption increases with length of time exposed (Refs. 7, 18, 23, and 24).

To calculate concentrations of propoxur in the air of treated houses, EPA pooled air concentration data for all rooms to yield an average air concentration of 5.1 $\mu g/m^3$. Absorption by the inhalation route was assumed to be 100 percent. The hours/day of inhalation exposure were the same as for dermal exposure. Total dermal and inhalation exposure was calculated at 2.8×10^{-4} mg/kg/day (Ref. 23).

EPA realizes exposure could also arise from an oral route. For example, residues could settle on food preparation surfaces or on food. Another potential source of oral exposure could arise from residues on toys or other similar items. In 1989, EPA reviewed the Miles study which measured amounts of propoxur found on surfaces following crack and crevice residential treatment, but the exposure assessment did not address potential oral exposure. At this time EPA does not have a methodology to derive estimates of oral exposure based on residues on these surfaces, food, or toys (Ref. 22). EPA believes that if it were possible to quantify oral exposure resulting from residential use of propoxur, it is unlikely it would greatly change the exposure estimates for this chemical.

(2) *RTU liquids*. Using the wettable powder exposure assessment, EPA also estimated post application exposure following 12 applications per year of a 0.5 percent RTU product by a PCO (Ref. 23). Reducing this exposure threefold, EPA estimated post application exposure following four applications per year of a 0.5 percent RTU liquid propoxur product by an RA. Exposure was estimated at 9.3×10^{-5} mg/kg/day (Ref. 19).

(3) *Aerosols*. Miles Inc. elected not to submit an aerosol spray study for post-application human exposure to aerosol products, so EPA used the post application exposure data from the crack and crevice spray study as a surrogate. EPA adjusted the crack and crevice data to reflect the quantity of a.i. applied during application of a 16 oz. can of 1 percent propoxur aerosol four times per year for 70 years. Total dermal and inhalation exposure was estimated at 5.7×10^{-5} mg/kg/day (Refs. 20 and 25).

(4) *Total release aerosol foggers*. To estimate post application exposure from total release aerosol foggers, EPA used the assumptions of the exposure assessment developed for post application exposure following aerosol use. Thus, the total release aerosol fogger (and also the aerosol) exposure assessment is based on the crack and crevice data. EPA believes it is reasonable to use the crack and crevice data to estimate total release aerosol fogger exposure for the following reasons. First, the crack and crevice study showed that residues are found throughout the house even though a limited area was treated. A similar distribution of residues would be expected with total release aerosol foggers. Second, the total amount of material released in a total release aerosol fogger is much less than the total amount applied in a crack and crevice application. Third, residues would be deposited on surfaces that people rarely contact, such as ceilings. Exposure (dermal and inhalation) was estimated at 5.7×10^{-5} mg/kg/day (Refs. 6, 20, and 25).

b. *Pest strip study*. After Miles Inc. submitted an unacceptable post application exposure study (Ref. 26), EPA updated a 1985 exposure assessment for impregnated strips. This assessment was based on a study in the technical literature (Ref. 27).

(1) *Pest strips*. EPA assumed that dermal exposure is negligible and 100 percent of propoxur inhaled by the individual is absorbed. Furthermore, the individual was assumed to be exposed 24 hours/day, 365 days/year for 70 years of an average lifetime, and the strips replaced when efficiency diminishes (Refs. 6, 7, and 28). EPA believes these exposure estimates are conservative because the only remaining registrations for pest strips are in areas where human exposure is minimal, such as communications boxes. Inhalation exposure was estimated at 1.1×10^{-4} mg/kg/day.

(2) *Tick and flea collars*. The registrants were not required to submit data on residents' post application exposure to the propoxur found in tick and flea collars. Using data from the impregnated strips study, EPA estimated exposure to residents from surrogate data based on propoxur pest strips (Ref. 26) and dogs. EPA assumed that respiratory absorption is 100 percent, and the exposure is constant over a 70-year lifetime. Inhalation exposure was estimated at 6.3×10^{-6} mg/kg/day (Refs. 6, 7, and 28).

c. *Other post application exposure estimates*. Residents' (including children's) post application exposures from shelf paper, enclosed or containerized baits, and other pet products, including dab-ons and aerosols, have not been estimated but are believed to be negligible (Refs. 6 and 19). EPA believes post application exposure to granular products will not exceed that from aerosol and would probably be much less. (Ref. 9)

TABLE 1.—PROPOXUR USES AND EXPOSURE ESTIMATES FOR PCOS, RAS, KENNEL WORKERS, PET OWNERS, AND RESIDENTS OF TREATED HOMES

Use	Applicator Exposure (mg/kg/day)	Resident Post Application Exposure (mg/kg/day)
Crack and Crevice.		
PCO Application	5.2×10^{-3} [a]	2.8×10^{-4} [a,b]
RA Application	2.1×10^{-4} [a]	9.3×10^{-5} [a,b]
Aerosols.		
RA Application	2.1×10^{-4} [a]	5.7×10^{-5} [a,b]
Granular Baits.		
PCO Application	negligible	negligible
RA Application	negligible	negligible
Pet Aerosols.		
Pet Owner Application	6.4×10^{-3}	negligible
Total Release Aerosol Foggers.		
RA Application	negligible	5.7×10^{-5} [a,b]
Pest Strips.		
RA Application	negligible	1.1×10^{-4}
Shelf Paper.		
RA Application	negligible	negligible
Enclosed or Containerized Baits.		
PCO Application	negligible	negligible
RA Application	negligible	negligible
Pet Dab-ons.		
RA Application	negligible	negligible
Pet Tick and Flea Collars.		
RA Application	negligible	6.3×10^{-6}

[a] Dermal absorption is assumed to be 50 percent.
[b] Dermal contact area is assumed to be 50 sq. ft.

C. Risk Assessment

1. *Non-dietary exposure.* Using the exposure estimates discussed above and the Q_1* for propoxur, EPA determined the excess lifetime cancer risks to applicators and residents of treated homes. The risks are displayed in Table 2 below. Total residential risks do not exceed the Agency's level of concern. The Agency's policy for applicator risk is that risk should be as close to negligible as possible. The risk for PCOs applying propoxur to cracks and crevices is 5.4×10^{-6}. Labels require PCOs to wear coveralls, long sleeved shirts, long pants, boots, and chemical resistant gloves. The Agency believes there are no other reasonable protective clothing requirements which can be required to reduce the risk further. Thus, this level of risk is in compliance with the Agency's worker risk policy. In addition, the Agency recently adopted a policy to incorporate a unified interspecies scaling factor (Ref. 29) when estimating the Q_1*. This factor adjusts the Q_1* by a ratio of body surface to body weight. Its exact value depends on the animal test species used. The risks set forth in the following Table 2 have not been calculated using this new scaling factor. If they had, the risk would be approximately one third lower.

TABLE 2.—PROPOXUR USES AND EXCESS LIFETIME CANCER RISKS FOR PCOS, KENNEL WORKERS, RAS, PET OWNERS, AND RESIDENTS OF TREATED HOMES.

Use	Applicator Risk	Resident Post Application Risk	Total Residential Risk[a]
Crack and Crevice.			
PCO Application	5.4×10^{-6}	1.0×10^{-6}	1.0×10^{-6}
RA Application	7.8×10^{-7}	3.4×10^{-7}	1.1×10^{-6}
Aerosols.			
RA Application	7.8×10^{-7}	2.1×10^{-7}	9.9×10^{-7}
Granular Baits.			
PCO Application	negligible	negligible	negligible

TABLE 2.—PROPOXUR USES AND EXCESS LIFETIME CANCER RISKS FOR PCOS, KENNEL WORKERS, RAS, PET OWNERS, AND RESIDENTS OF TREATED HOMES.—Continued

Use	Applicator Risk	Resident Post Application Risk	Total Residential Risk[a]
RA Application	negligible	negligible	negligible
Pet Aerosols.			
Pet Owner Application	2.6×10^{-7}	negligible	2.6×10^{-7}
Total Release Aerosol Foggers.			
RA Application	negligible	2.1×10^{-7}	2.1×10^{-7}
Pest Strips.			
RA Application	negligible	4.1×10^{-7}	4.1×10^{-7}
Shelf Paper.			
RA Application	negligible	negligible	negligible
Enclosed or Containerized Baits.			
PCO Application	negligible	negligible	negligible
RA Application	negligible	negligible	negligible
Pet Dab-ons.			
RA Application	negligible	negligible	negligible
Pet Tick and Flea Collars.			
RA Application	negligible	2.3×10^{-8}	2.3×10^{-8}

[a] When application is by PCO, total residential risk includes only risk from post application exposure as the PCO is assumed to have left the treated house. When application is by RA, total residential risk includes both RA risk and post application risk, as the RA is assumed to stay in the treated house.

2. *Evaluation of the use of propoxur in food handling establishments.* Propoxur is registered to control pests in food-handling establishments. For example, propoxur products are labeled for crack and crevice application in food areas of food handling establishments. If applications in these areas result in residues of propoxur on food, a food additive regulation would be required to be established under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) to cover expected levels of residues on treated food and allow their legal entry into interstate commerce. Miles Inc. filed a petition (9H5199, dated 10/16/78) which stated that crack and crevice applications in food areas of handling establishments resulted in residues on food. Miles, Inc. further proposed a food additive regulation of 0.2 ppm propoxur on all foods.

Section 409 of the FFDCA contains a provision called the Delaney Clause which specifically provides that, with limited exceptions, no additive is deemed safe if it has been found to induce cancer in man or animals. (21 U.S.C. 348(c)(5)).

The Delaney Clause has been interpreted as baring the establishment of food additive regulations for any pesticides that have been found to induce cancer in animals or humans, regardless of the level of risk.(*Les v. Reilly 968 F2d935 (9th Cir 1992) Cert Denied*, 113 S. Ct. 1361 (1993).

Because propoxur has been determined to induce cancer within the meaning of the Delaney clause (Ref. 30), the necessary food additive regulation cannot be established. In accordance with EPA's policy and regulations, (see 40 CFR 152.112(g)) requiring coordination of its FIFRA and FFDCA authorities, EPA will propose cancellation of the use of propoxur in food areas of food handling establishments in the near future.

3. *Risk to children.* In 1993 the National Academy of Sciences (NAS) reported on pesticides in the diets of infants and children (Ref. 31). While it did not consider specifically children's risks arising from exposure to propoxur, it raised a number of issues about children's risk from exposure to pesticides in general. This section will discuss some of these issues as they relate to the risk assessment set forth in this document.

a. *Hazard assessment.* The NAS study notes that children may be more or less susceptible to the effects of pesticides. In terms of the propoxur hazard assessment, a question may be raised about whether children metabolize propoxur differently or whether children are more or less sensitive to propoxur's toxic end point—proliferation of urinary bladder epithelial cells. The studies reviewed for the propoxur hazard assessment were largely performed and accepted by the Agency before the results of the NAS study were available. They do not address these issues. EPA's general approach when addressing gaps in scientific knowledge is to build conservatism into risk assessments to protect children and other sensitive populations. EPA used its conservative (in terms of protecting human health) model of estimating carcinogenic potency. It represents the 95 percent upper bound confidence limit of tumor induction likely to occur from a given dose. EPA has chosen this approach to provide a margin of safety for uncertainties in characterizing the carcinogenic response, for the existence of more sensitive individuals, such as children, in the exposed population and for possible synergism of pesticides and metabolites. For this reason, EPA believes the estimates of cancer risk are conservative. In the review of the toxicology studies in unit II.A. of this document, EPA has noted the possibility that the Carcinogenicity Peer Review Committee may re-evaluate propoxur after all the suggested data have been submitted. EPA does not expect that the peer review will conclude that the carcinogenicity of propoxur is a more serious concern than today's document concludes.

For the future, EPA is taking additional steps to determine whether children are more or less susceptible to the effects of pesticides. EPA is in the

process of planning new research and reviewing its risk assessment methods so that it can better evaluate how these residues affect children.

b. *Dietary exposure.* The NAS Report raised a concern about children's exposure to pesticide residues in the diet. As noted in unit II.C.2. of this document, EPA will propose that the use of propoxur in food handling establishments will be cancelled in the near future.

c. *Non-dietary exposure.* The NAS Report also pointed out that non-dietary sources of pesticides should be considered when estimating total exposure of children. The propoxur exposure assessment considers children and infant's exposure explicitly in assessing post application exposure. For example, the post application exposure assessment considered, for both infants and children separately, different ratios of skin to body weight, different respiratory volumes, and different times spent in a treated house. In terms of the propoxur exposure assessment, a question may be raised about children's exposure to residues from ingested household dust, pets wearing flea collars, or sprayed pets. Presently, EPA does not have a methodology for measuring ingested household dust. EPA believes exposure from flea collars is primarily inhalation, this source of exposure is captured in the exposure assessment, and the risk is small (10^{-8}). Children's exposure to pets treated with aerosol sprays has not been specifically measured. However, the pet owner applicator exposure assessment assumes pets will be treated four times per year for every year of a 70–year lifetime. EPA believes it is unlikely that children will be routinely treating household pets for fleas, and thus believes this exposure estimate is very conservative.

For the future, EPA is initiating a residential research strategy to support development of exposure monitoring and assessment of test guidelines, based on the unique behavior of infants and children, including dermal contact with treated surfaces, hand-to-mouth contact, and object-to mouth contact as well as other modes of exposure. The goal is to develop comprehensive guidelines for assessing exposure to pesticides both inside residences and in other settings, such as yards. EPA would like to set appropriate times for returning to treated residences. The research strategy will also compare exposures of the suburban child and the inner city child who may be exposed to structural pesticide residues carried by ventilation systems. EPA is also working with industry to establish a Task Force to conduct studies and collect more data on residential exposures.

d. *Children's risk.* Overall, EPA believes the conservative assumptions built into the hazard and exposure assessments have given good estimates of risk to the general population, and in so doing have also been protective of children. EPA is planning additional research in this area. If, in the future, based on new data or methodologies, the risk picture changes, EPA will reconsider this proposed decision not to initiate this Special Review.

D. Unsupported Uses, Risk Reduction, and Amendments to DCIs

No registrant of propoxur end-use products committed to generate trigger pump sprayer data in response to the 1992 DCI. EPA believes that the liquid is likely to drip from the sprayer onto the applicator's fingers, and without data, this exposure and risk cannot be quantified and could be of concern. Accordingly, registrants have either voluntarily cancelled this use pattern or have amended their labels to delete use of ready-to-use liquids with trigger pump sprayers.

IV. Comments Received on the Preliminary Notifications

Comment. In a letter dated March 22, 1988, EPA notified the registrants that it was considering a Special Review of propoxur based on carcinogenicity concerns and the estimated risks posed to PCOs and the general public. In responses dated April 26, 1988 and May 16, 1988, Miles Inc. stated that it already has committed to support the continued registration of propoxur products in response to the 1987 DCI; that EPA should consider all data before deciding on initiating a Special Review of propoxur; and that the bladder carcinogenic effect was species-specific for the rat and Miles Inc. would provide additional data to support its claim. Miles Inc. also urged the Agency not to initiate its Special Review of propoxur without first reviewing the data to be generated by Miles Inc. to satisfy the data requirements outlined in the 1987 propoxur DCI. Also, Miles Inc. suggested that EPA review its cancer classification of propoxur as a Group B2 carcinogen.

Response. EPA has concluded its review of the studies submitted by Miles Inc. to comply with the 1987 DCI. The effects of the voluntary cancellation of and label amendments deleting use of RTU liquids with trigger pump sprayers were considered. EPA has determined that the risks to PCOs and the general public for the remaining registrations of propoxur are likely to present negligible short-term or long-term human risk. In addition, the registrant has submitted some additional information relating to the carcinogenicity of propoxur. When all the requested data has been submitted, EPA will reconvene a peer review panel to review all the carcinogenicity data relating to propoxur.

V. EPA's Proposed Decision Regarding Special Review

EPA notified propoxur registrants in 1988 that the Agency was considering a Special Review of propoxur. Because of propoxur's Group B2 (probable) human carcinogen classification and wide-spread uses of the pesticide in homes, EPA was concerned with the potential long-term health hazards from prolonged exposures associated with the application of certain indoor formulations. However, since then, EPA has refined the risk assessment. In addition, registrants have cancelled those product registrations and deleted or amended label uses for which EPA had risk concerns. For these reasons, the Agency now concludes that the remaining uses of propoxur products are likely to present negligible short-term or long-term human risk. Therefore, the Agency is proposing not to initiate a Special Review of propoxur at this time.

EPA based its regulatory decision on propoxur entirely on the available information in its exposure database and the result of its risk assessments, which are based on conservative assumptions and the conservative linearized multi-stage model of carcinogenic potency. EPA has concluded that it can issue this regulatory decision in the absence of more conclusive data to resolve the question of diet and species specificity of propoxur in inducing bladder effects in animals, or to resolve the issue on propoxur's suggested activity as a non-genotoxic or ''threshold'' carcinogen. The Agency believes that the issues surrounding the mechanism of carbamate-induced carcinogenicity are complex, and may be a subject of considerable scientific debate for the future.

VI. Executive Order 12898 on Environmental Justice

In accordance with the Executive Order on Environmental Justice, EPA has reviewed this proposed decision and found it does not result in any adverse environmental effects (including human health, social and economic effects) on minority communities and low-income communities.

VII. Public Record and Opportunity for Comment.

EPA has established a public docket (OPP–30000/59) for the propoxur Pre-Special Review. This public record includes: (1) this Notice; (2) any other notices pertinent to the propoxur Special Review; (3) non-Confidential Business Information (CBI) documents and copies of written comments submitted to EPA in response to the pre-Special Review registrant notification, (4) any other Notice regarding propoxur submitted at any time during the Pre-Special Review process by persons outside government; (5) a transcript of all public meetings held by EPA for the purpose of gathering information on propoxur; (6) memoranda describing each meeting held on propoxur between EPA personnel and persons outside government during the Pre-Special Review process; and (7) a current index of materials in the public docket. Additional information about the docket may be found in the section on addresses at the beginning of thisnotice.

EPA is providing a 60–day period for registrants, applicants, and interested persons to comment on the risks associated with indoor and pet uses of propoxur products, and on EPA's proposed decision not to initiate a Special Review of propoxur. Written comments must be submitted by March 14, 1995, and must be identified by the docket number (OPP–30000/59). Comments should be sent to the address provided at the beginning of this notice.

VIII. References

The documents referred to in this Notice are listed below. Copies are available in the Public Docket. Information about the Public Docket is available in the ADDRESSES unit at the beginning of this notice.

(1) Letter from D. Campt, Director, Office of Pesticide Programs, to propoxur registrants, dated March 22, 1988.

(2) Eben, A. ''Studies on Transformation of Propoxur in Humans,'' dated June 1, 1987, Accession Number 406297–4, Data Evaluation Report (DER) No. 6858.

(3) Memorandum from B. Fisher, HED, to B. Backus, HED, titled Propoxur (Baygon) Qualitative Risk Assessment, Revised and Quantitative Risk Assessment-Two-Year SPF Rat Dietary Study, dated April 21, 1992.

(4) Memorandum from D. Jaquith, HED, to D. Edwards, RD, titled Review of Propoxur Exposure Studies Submitted by Mobay Corporation in Response to Data-Call-In Notice (HED Project Nos. 9–1935, 9–1936, 9–1937, 9–1938, 9–1939) and Current Estimates of Exposure for Other Scenarios, dated February 7, 1990.

(5) Memorandum from E. Budd, HED, to J. Gallagher, SRRD, titled Propoxur: Carcinogenic Risk Assessment for Pest Control Operators Treating Indoor Sites (Utilizing Dermal Absorption Data) (Crack and Crevice Study) dated January 24, 1991, updated August 14, 1992.

(6) Memorandum from E. Budd, HED, to D. Chen, SRRD, titled Propoxur: Quantitative Risk Assessments for Remaining End-Use Formulations Listed in OREB Memorandum of November 6, 1992, dated February 8, 1993.

(7) Memorandum from D. Jaquith, HED, to D. Chen, SRRD titled Refinement of Exposure Analysis for Propoxur, dated November 6, 1992.

(8) Memorandum from D. Jaquith, HED, to D. Edwards, RD, titled Review of Repeated Exposure Study Addressing Application of a 2 percent propoxur bait (HED Project No. 1–1471) dated November 15, 1991.

(9) Memorandum from D. Jaquith, HED, to A. Sibold, SRRD, titled Exposures to Propoxur from Granular Baits Applied in and around Homes dated May 24, 1994.

(10) Memorandum from D. Jaquith, HED, to D. Edwards, RD, titled Review of Repeat Exposure Study for Propoxur Pet Spray Products (HED Project No. 2–0491) dated July 15, 1992.

(11) Memorandum from Byron Backus, HED, to McCall/Whitby, HED, titled Used of Measurements of 2-Isopropoxyphenol in Human Urine Samples to Determine Exposure and Absorption of Propoxur, dated June 28, 1994.

(12) Memorandum from David Jaquith, HED, to Deborah McCall, HED, titled Response to Questions from SRB Regarding Propoxur, dated July 13, 1994.

(13) Memorandum from E. Budd, HED to D. Chen, SRRD, titled Propoxur: Carcinogenic Risks for Individuals Apply a 0.25 Percent Aerosol Spray to Pets. dated August 14, 1992.

(14) Memorandum from Deborah McCall, HED to Ann Sibold, SRRD, titled Propoxur: Revisions to Carcinogenic Risk Estimates for Commercial Workers and Homeowners Exposed to Pet Sprays, dated July 25, 1994.

(15) Memorandum from D. Jaquith, HED, to D. Chen, SRRD, titled Review of Repeat Exposure Study for Propoxur Aerosol Spray (HED Project No. 1/1208), dated July 29, 1991.

(16) Memorandum from K. Whitby, HED, to D. Chen, SRRD, titled Propoxur (Baygon) Carcinogenic Risk for Homeowners Applying 1 percent Aerosol Spray Products, dated September 1, 1992.

(17) Memorandum from D. Jaquith, HED, to D. Chen, SRRD, titled Classification of Propoxur Use Sites and Expansion of Exposure Matrix for Aerosol Uses, dated August 11, 1992.

(18) Memorandum from D. Jaquith, HED, to D. Chen, SRRD, titled Errors in Exposure Analysis for Propoxur, dated November 18, 1992.

(19) Memorandum from Deborah McCall, HED, to Ann Sibold, SRRD, titled Propoxur: Revised Lifetime Risk Numbers for Ready-to-Use Sprays, dated August 12, 1994.

(20) Memorandum from D. Jaquith, HED, to D. Chen, SRRD, titled Post-Application Exposures of Residents to Propoxur Applied as an Aerosol Spray, dated November 1, 1991.

(21) Memorandum from David Jaquith, HED, to Deborah McCall, HED, titled Clarification of Resident Applicator Exposures from Ready to Use (RTU) Formulations of Propoxur, dated August 5, 1994.

(22) Memorandum from D. Jaquith, HED, to D. Edwards, RD, titled Review of Study Estimating Resident Exposure to Propoxur Following Crack and Crevice Treatment (HED project No. 9–1936) dated November 15, 1989.

(23) Memorandum from E. Budd, HED, to D. Chen, SRRD, titled Propoxur: Revised Carcinogenic Risk Assessment for Residents of Homes Following Crack and Crevice Treatments (Utilizing Refined Exposure Analysis Provided OREB in Memoranda of November 6, 1992 and November 18, 1992), dated December 8, 1992.

(24) Memorandum from D. Jaquith, HED, to J. Gallagher, SRRD, titled Adjustments to Post Application Exposure Assessment for Residents of Homes treated with Propoxur (HED Proj. No. 1–0222), dated February 27, 1991.

(25) Memorandum from E. Budd, HED, to D. Chen, SRRD, titled Propoxur: Revised Carcinogenic Risk Assessment for Residents of Homes Following Treatments with a 1 percent Aerosol Product (Utilizing Refined Exposure Analysis Provided by OREB in Memoranda of 11/6/92 and 11/18/92), dated December 8, 1992.

(26) Memorandum from S. Knott, HED, to D. Edwards, RD, titled review of Post Application Exposure from Indoor Pest Strips Containing Propoxur (HED Project No. 9–1540) dated August 2, 1989.

(27) Jackson, M.D. and Lewis, R.G., (1981) Insecticide Concentrations in Air after Application of Pest Control Strips. Bull Environm Contam Toxicol 27:122–125.

(28) Memorandum from C. Lunchick, EAB, to Jay Ellenberger, RD, and Robert Zendzian, HED, titled Exposure Assessment for Propoxur (Baygon) dated January 8, 1985.

(29) Memorandum from Penelope Fenner-Crisp, HED, to Bill Burnam, Hugh Pettigrew, and Kerry Dearfield, titled Deriving Q*s Using the Unified Interspecies Scaling Factor, dated July 8, 1994.

(30) Memorandum from Stephanie Irene, HED to Louis P True, Jr., SRRD, and Stephen Johnson, RD, titled Propoxur - Carcinogencity in Animals, dated December 14, 1994.

(31) National Research Council (U.S.). Committee on Pesticides in the Diets of Infants and Children, Pesticides in the Diets of Infants and Children. copyright 1993 by the National Academy of Sciences.

List of Subjects

Environmental protection, chemcals, pesticides and pest.

Dated: December 30, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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FEDERAL HOUSING FINANCE BOARD

[No. 95–N–01]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR Part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the fourth quarter review (1994–95 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Fourth Quarter Review:* February 28, 1995.

Due Date For Public Comments on Members Selected in Fourth Quarter Review: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board currently reviews all FHLBank System members that are subject to CRA once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Fourth Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106		
Eagle Federal Savings Bank	Bristol	CT
Nutmeg Federal Savings and Loan Association	Danbury	CT
Union Savings Bank of Danbury	Danbury	CT
Advest Bank	Hartford	CT
Jewett City Savings Bank	Jewett City	CT
MidConn Bank	Kensington	CT
Naugatuck Valley S&LA, Inc.	Naugatuck	CT
The People's Savings Bank of New Britain	New Britain	CT
New Haven Savings Bank	New Haven	CT
Newtown Savings Bank	Newtown	CT
First County Bank	Stamford	CT
Dime Savings Bank of Wallingford	Wallingford	CT
Winsted Savings Bank	Winsted	CT
Brookline Savings Bank	Brookline	MA
Boston Federal Savings Bank	Burlington	MA
Cambridgeport Savings Bank	Cambridge	MA
Canton Cooperative Bank	Canton	MA
Fitchburg Savings Bank, FSB	Fitchburg	MA
Family Mutual Savings Bank	Haverhill	MA
Lowell Co-operative Bank	Lowell	MA
Natick Federal Savings Bank	Natick	MA
New Bedford Institution for Savings	New Bedford	MA
Colonial Federal Savings Bank	Quincy	MA
Quincy Savings Bank	Quincy	MA
Heritage Cooperative Bank	Salem	MA
Salem Five Cents Savings Bank	Salem	MA
Shirley Co-operative Bank	Shirley	MA
Stoneham Savings Bank	Stoneham	MA
Bay State Savings Bank	Worcester	MA
First Citizens Bank	Presque Isle	ME
Concord Savings Bank	Concord	NH
Lancaster National Bank	Lancaster	NH
First National Bank of Portsmouth	Portsmouth	NH
Fleet National Bank	Providence	RI

Member	City	State
Brattleboro Savings and Loan Association	Brattleboro	VT
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103rd Floor, New York, New York 10048		
West Essex Savings Bank, SLA	Caldwell	NJ
Cape Savings Bank, SLA	Cape May Courthouse	NJ
Commerce Bank,N.A.	Cherry Hill	NJ
First Constitution Bank	Cranbury	NJ
Delanco Savings & Loan Association	Delanco	NJ
Columbia Savings Bank, SLA	Fair Lawn	NJ
Haven Savings Bank, SLA	Hoboken	NJ
First Federal Savings Bank of Delaware	Palisades Park	NJ
First Home Savings Bank, fsb	Pennsville	NJ
First S&L Association of Sea Isle City	Sea Isle City	NJ
Manasquan Savings Bank	Wall Township	NJ
Wawel Savings Bank, SLA	Wallington	NJ
First DeWitt Savings Bank, FSB	West Caldwell	NJ
Crest Savings and Loan Association	Wildwood Crest	NJ
Amsterdam Savings Bank, FSB	Amsterdam	NY
Bridgehampton National Bank	Bridgehampton	NY
Reliance Federal Savings Bank	Garden City	NY
Tompkins County Trust Company	Ithaca	NY
Bankers Federal Savings Bank, FSB	New York	NY
Fourth Federal Savings Bank	New York	NY
National Bank and Trust Company of Norwich	Norich	NY
Adirondack Bank, A FSB	Saranac Lake	NY
Walden Federal Savings & Loan Association	Walden	NY
City & Suburban Federal Savings Bank	Yonkers	NY
Western Federal Savings Bank	Magyaguez	PR
Ponce Federal Bank, FSB	Ponce	PR
Federal Home Loan Bank of Pittsburgh—District 3, 601 Grant Street, Pittsburgh, Pennsylvania 15219–4455		
Iron Workers Savings and Loan Association	Aston	PA
Madison Bank	Blue Bell	PA
National Bank of Boyertown	Boyertown	PA
Union Building & Loan Association	Bridgewater	PA
First Financial Savings Bank, PaSA	Downingtown	PA
Elverson National Bank	Elverson	PA
Community Bank and Trust Company	Forest City	PA
The Dime Bank	Honesdale	PA
Indiana First Savings Bank	Indiana	PA
Russell National Bank	Lewistown	PA
First Commercial Bank of Philadelphia	Philadelphia	PA
Roxborough-Manayunk Federal Savings Bank	Philadelphia	PA
Brentwood Federal Savings & Loan Association	Pittsburgh	PA
PNC Bank, N.A.	Pittsburgh	PA
Schuylkill Savings & Loan Association	Schuylkill Haven	PA
Somerset Trust Company	Somerset	PA
Peoples National Bank of Central Pennsylvania	State College	PA
Mechanics Savings and Loan Association	Steelton	PA
Commonwealth Federal Savings Bank	Valley Forge	PA
Compass Federal Savings Bank	Wilmerding	PA
Sovereign Bank, FSB	Wyomissing	PA
Beckley Federal Savings Bank	Beckley	WV
Peoples Bank of Bluewell	Bluewell	WV
One Valley Bank, N.A.	Charleston	WV
Hancock County Savings Bank, FSB	Chester	WV
Citizens National Bank of Elkins	Elkins	WV
National Bank of West Virginia	Morgantown	WV
First West Virginia Bank, N.A.	Wheeling	WV
Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348		
SouthTrust Bank of Alabama, N.A.	Birmingham	AL
Jacobs Bank	Scottsboro	AL
Pointe Federal Savings Boca	Raton	FL
Compass Bank	Jacksonville	FL
Interamerican Bank, FSB	Miami	FL
First National Bank of Naples	Naples	FL
Bayside Federal Savings & Loan Association	Port Charlotte	FL
Seaboard Savings Bank, FSB	Stuart	FL
Bankers First Savings Bank, FSB	Augusta	GA

Member	City	State
Bainbridge National Bank	Bainbridge	GA
First Federal Savings Bank of Brunswick	Brunswick	GA
West Georgia National Bank	Carrollton	GA
First South Bank of Coweta County, N.A	Newman	GA
Quitman Federal Savings & Loan Association	Quitman	GA
Vidalia Federal Savings and Loan Association	Vidalia	GA
Arundel Federal Savings Bank	Baltimore	MD
Atlantic Federal Savings Bank	Baltimore	MD
Golden Prague Federal S&L Association	Baltimore	MD
Hopkins Federal Savings Bank	Baltimore	MD
Madison Square Federal Savings Bank	Baltimore	MD
Sequoia Federal Savings Bank	Bethesda	MD
Patapsco Federal Savings & Loan	Dundalk	MD
Farmers & Mechanics National Bank	Frederick	MD
Columbian Bank, FSB	Havre de Grace	MD
Suburban Federal Savings Bank	Landover Hills	MD
Heritage Savings Bank, FSB	Lutherville	MD
Odenton Federal Savings & Loan Association	Odenton	MD
Tri-County Federal Savings Bank of Waldorf	Waldorf	MD
Washington Savings Bank, FSB	Waldorf	MD
Community Savings Bank, SSB	Burlington	NC
First State Savings Bank, SSB	Burlington	NC
Cherryville Federal S&L Association	Cherryville	NC
Citizens Savings Inc., SSB	Concord	NC
First Federal Savings Bank	Dunn	NC
Home Federal Savings and Loan	Fayetteville	NC
Hillsborough Savings Bank, SSB	Hillsborough	NC
First FS&LA of Lincolnton	Lincolnton	NC
Richmond Savings Bank, SSB	Rockingham	NC
Home Savings, SSB	Thomasville	NC
Tryon Federal Savings and Loan Association	Tryon	NC
Home Savings Bank, SSB	Washington	NC
Abbeville Savings & Loan Association	Abbeville	SC
The Savings Bank of Beaufort County, FSB	Beaufort	SC
First FS&LA of Cheraw	Cheraw	SC
Citizens Building and Loan Association	Greer	SC
Mutual Savings and Loan Association, FA	Hartsville	SC
Pee Dee Federal Savings Bank	Marion	SC
First FS&LA of Walterboro	Walterboro	SC
Caroline Savings Bank	BowlingGreen	VA
First FS&LA of Martinsville	Martinsville	VA
Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598 Cincinnati, Ohio 45201		
Ashland Federal Savings and Loan Association	Ashland	KY
Home Federal Savings and Loan Association	Ashland	KY
First American National Bank	Bowling Green	KY
First National Bank of Columbia	Columbia	KY
First National Bank & Trust Company of Corbin	Corbin	KY
Kentucky Federal Savings and Loan Association	Covington	KY
Liberty National Bank of Northern Kentucky	Erlanger	KY
Greensburg Deposit Bank & Trust Company	Greensburg	KY
Madisonville Building and Loan Association	Madisonville	KY
Owensboro National Bank	Owensboro	KY
Pikeville National Bank and Trust Company	Pikeville	KY
Lincoln Federal Savings Bank	Stanford	KY
Commercial Bank	West Liberty	KY
Peoples Bank, N.A.	Ashtabula	OH
Citizens Federal Savings and Loan	Bellefontaine	OH
Citizens Savings Bank	Canton	OH
Castalia Banking Company	Castalia	OH
Mercer Savings Bank	Celina	OH
The Cheviot Building and Loan Company	Cheviot	OH
Bramble Federal Savings and Loan Association	Cincinnati	OH
Cincinnati Federal Savings & Loan Association	Cincinnati	OH
Deer Park Federal Savings & Loan Association	Cincinnati	OH
Enterprise Federal S&L Association	Cincinnati	OH
Seven Hills Savings Association	Cincinnati	OH
Cuyahoga Savings Association	Cleveland	OH
National City Bank, Cleveland	Cleveland	OH
Ohio Savings Bank	Cleveland	OH
The Home Loan and Savings Company	Coshocton	OH
Covington Savings and Loan Association	Covington	OH
Citizens Federal Bank, FSB	Dayton	OH

Member	City	State
Northern Savings and Loan Company	Elyria	OH
Genoa Savings and Loan Company	Genoa	OH
Indian Village FS&LA	Gnadenhutten	OH
American Community Bank, N.A.	Lima	OH
Home Builders Association	Lynchburg	OH
Mutual Federal Savings Bank of Miamisburg	Miamisburg	OH
Clermont Savings Bank	Milford	OH
First National Bank of Pandora	Pandora	OH
Century Federal Savings Bank	Parma	OH
Farmers Bank and Saving Company	Pomeroy	OH
The Ravenna Savings Bank	Ravenna	OH
People's Savings Association	Sharonville	OH
Capital Bank, N.A.	Sylvania	OH
Versailles Savings and Loan Company	Versailles	OH
First Federal Savings and Loan Association	Wooster	OH
Wayne Savings and Loan Company	Wooster	OH
Home Savings and Loan Company	Youngstown	OH
Athens Federal Savings and Loan Association	Athens	TN
First National Bank & Trust Company	Athens	TN
AmSouth Bank of Tennessee	Chattanooga	TN
Lawrenceburg Federal S&L Association	Lawrenceburg	TN
Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205–0060		
Workingmens Federal Savings Bank	Bloomington	IN
Mutual Building and Loan Association	Franklin	IN
Calumet National Bank	Hammond	IN
First FS&LA of Hammond	Hammond	IN
First Indiana Bank, a FSB	Indianapolis	IN
Kentland Federal Savings and Loan Association	Kentland	IN
Perpetual Federal Savings & Loan Association	Lawrenceburg	IN
Citizens National Bank of Madison	Madison	IN
Mishawaka Federal Savings	Mishawaka	IN
American National Bank and Trust Company	Muncie	IN
First FS&LA of Peru	Peru	IN
West End Federal Savings Bank	Richmond	IN
Indiana Federal Bank for Savings	Valparaiso	IN
Great Lakes Bancorp, a FSB	Ann Arbor	MI
Mutual Savings Bank, FSB	Bay City	MI
First Federal of Michigan	Detroit	MI
D&N Bank, a FSB	Hancock	MI
Hastings Savings and Loan, FA	Hastings	MI
First National Bank of Iron Mountain	Iron Mountain	MI
Community First Bank	Lansing	MI
Wolverine Federal Savings and Loan Association	Midland	MI
Sturgis Federal Savings Bank	Sturgis	MI
First Savings Bank	Three Rivers	MI
Standard Federal Savings Bank	Troy	MI
Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601		
Chesterfield Federal Savings & Loan Association	Chicago	IL
First Cook Community Bank, FSB	Chicago	IL
Peoples Federal S&LA of Chicago	Chicago	IL
Second Federal Savings and Loan Association	Chicago	IL
Security Federal Savings & Loan Association of Chicago	Chicago	IL
Southwest Federal S&LA Association of Chicago	Chicago	IL
Standard Federal Bank for Savings	Chicago	IL
Central Federal Savings and Loan Association	Cicero	IL
MidAmerica Federal Savings Bank	Clarendon Hills	IL
DeWitt County Federal S&L Association	Clinton	IL
First Federal Bank, FSB	Colchester	IL
Harvard Federal Savings & Loan Association	Harvard	IL
Suburban Federal Savings Bank, FSB	Harvey	IL
A.J. Smith Federal Savings Bank	Midlothian	IL
Security Savings and Loan Association	Monmouth	IL
King City Federal Savings Bank	Mt. Vernon	IL
Rantoul First Bank, s.b.	Rantoul	IL
First Federal Savings Bank	Rockford	IL
Amity Federal Bank for Savings	Tinley Park	IL
Baraboo Federal Bank, FSB	Baraboo	WI
Cumberland Federal Bank, FSB	Cumberland	WI
East Wisconsin Savings and Loan Association	Kaukauna	WI
Columbia Savings and Loan Association	Milwaukee	WI

Member	City	State
Reliance Savings Bank	Milwaukee	WI
St. Francis Bank, F.S.B.	Milwaukee	WI
State Bank of Mt. Horeb	Mount Horeb	WI
Marquette Savings Bank, SA	West Allis	WI
KeySavings Bank, SA	Wisconsin Rapids	WI
Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309		
First Federal Savings Bank	Carroll	IA
Citizens Federal Savings Bank	Davenport	IA
Iowa Savings Bank, FSB	Des Moines	IA
Midland Savings Bank, FSB	Des Moines	IA
Washington FS&LA	Washington	IA
First Federal, FSB	Hutchinson	MN
Norwest Bank Minnesota West, N.A	Moorhead	MN
Home Federal Savings Bank	Spring Valley	MN
Wells Federal Bank, A FSB	Wells	MN
Community First National Bank of Wheaton	Wheaton	MN
Worthington FS&LA	Worthington	MN
First Missouri National Bank	Brookfield	MO
Investors Federal Bank & Savings Association	Chillicothe	MO
Boone National Savings & Loan Association, FA	Columbia	MO
Ozarks Federal Savings and Loan Association	Farmington	MO
St. Francois County S&LA	Farmington	MO
Hardin Savings Association	Hardin	MO
Kirksville Federal Savings Bank	Kirksville	MO
Macon Building and Loan Association	Macon	MO
Quarry City Savings and Loan Association	Warrensburg	MO
Metropolitan Federal Bank, fsb	Fargo	ND
Norwest Bank North Dakota, N.A.	Fargo	ND
Home Federal Savings Bank	Sioux Falls	SD
Federal Home Loan Bank of Dallas—District 9, 5605 North MacArthur Boulevard, 9th Floor, Dallas/Forth Worth, Texas 75261–9026		
First Financial Bank, fsb	El Dorado	AR
Fordyce Bank and Trust Company	Fordyce	AR
Forrest City Savings & Loan Association	Forrest City	AR
City National Bank of Fort Smith	Fort Smith	AR
Pine Bluff National Bank	Pine Bluff	AR
Federal Savings Bank	Rogers	AR
First National Bank and Trust Company	Rogers	AR
First National Bank	Siloam Springs	AR
St. Tammany Homestead Association	Covington	LA
Teche Federal Savings Bank	Franklin	LA
Florida Parishes Homestead Association	Hammond	LA
LBA	Lafayette	LA
Mutual Savings and Loan Association	Metairie	LA
Guaranty Savings and Homestead Association	New Orleans	LA
Hibernia Homestead and Savings Association	New Orleans	LA
Ponchatoula Homestead Association	Ponchatoula	LA
Ruston Building and Loan Association	Ruston	LA
Amory Federal Savings & Loan Association	Amory	MS
Britton & Koontz First National Bank	Natchez	MS
First Federal Bank for Savings	Starkville	MS
The Bank of New Mexico	Albuquerque	NM
First Federal Savings & Loan	Las Cruces	NM
First National Bank of Athens	Athens	TX
First National Bank of Bridgeport	Bridgeport	TX
Beal Banc, S.A.	Dallas	TX
Mercantile Banc and Trust, A SA	Dallas	TX
Liberty Savings Association	Houston	TX
MetroBank, N.A.	Houston	TX
Post Oak Bank	Houston	TX
Texas Capital Bank, N.A.	Houston	TX
First Federal Savings and Loan Association	Littlefield	TX
Bank of Livingston	Livingston	TX
Plains National Bank	Lubbock	TX
Inter National Bank	McAllen	TX
Mineola Federal Savings and Loan Association	Mineola	TX
Commercial National Bank in Nacagdoches	Nacagdoches	TX
Western National Bank	Odessa	TX
Orange Savings and Loan Association	Orange	TX
Fort Bend FS&LA of Rosenberg	Rosenberg	TX
Kelly Field National Bank	San Antonio	TX

Member	City	State
Smithville Savings and Loan Association	Smithville	TX
Sulphur Springs Savings & Loan Association	Sulphur Springs	TX
First National Bank in Bosque County	Valley Mills	TX
South Texas Savings Bank, FSB	Victoria	TX
Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601		
Del Norte Federal Savings & Loan Association	Del Norte	CO
Centennial Savings Bank, FSB	Durango	CO
Park National Bank	Estes Park	CO
Home Savings Bank	Chanute	KS
Landmark Federal Savings Bank	Dodge City	KS
Gardner National Bank	Gardner	KS
First Kansas Federal Savings Association	Osawatomie	KS
Custer Federal Savings and Loan Association	Broken Bow	NE
First National Bank and Trust Company	Broken Arrow	OK
First Bank Claremore, FSB	Claremore	OK
American Bank and Trust	Edmond	OK
Liberty Federal Savings Bank	Enid	OK
Fairview Savings and Loan Association	Fairview	OK
First National Bank and Trust Company of Muskogee	Muskogee	OK
Osage FS&LA of Pawhuska	Pawhuska	OK
Stillwater FSB	Stillwater	OK
Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666		
Placer Savings Bank	Auburn	CA
Great Western Bank	Chatsworth	CA
Enterprise Savings & Loan	Compton	CA
Glendale Federal Bank, FSB	Glendale	CA
Hawthorne Savings & Loan Association	Hawthorne	CA
Highland Federal Bank, a FSB	Los Angeles	CA
Downey Savings & Loan Association	Newport Beach	CA
Universal Bank, fsb	Orange	CA
CenFed Bank, a FSB	Pasadena	CA
Provident Savings Bank, fsb	Riverside	CA
Continental Savings of America, a FS&LA	San Francisco	CA
Pan American Savings Bank	San Mateo	CA
New Horizons Savings & Loan Association	San Rafael	CA
National Bank of Southern California	Santa Ana	CA
Surety Federal Savings Bank	Vallejo	CA
Quaker City Federal Savings & Loan Association	Whittier	CA
Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693		
First Federal Bank of Idaho, FSB	Lewiston	ID
First FS&LA of Montana	Hamilton	MT
Empire Federal Savings & Loan Association	Livingston	MT
Pioneer Bank, A FSB	Baker City	OR
Evergreen FS&LA	Grants Pass	OR
Klamath First Federal S&L Association	Klamath Falls	OR
Olympus Bank, A FSB	Salt Lake City	UT
Riverview Savings Bank, FSB	Camas	WA
Heritage Bank, A MSB	Olympia	WA
Olympia Federal Savings & Loan Association	Olympia	WA
First FS&LA of Port Angeles	Port Angeles	WA
Metropolitan FS&LA of Seattle	Seattle	WA
Washington Mutual, A FSB	Seattle	WA
Yakima Federal Savings and Loan Association	Yakima	WA
American National Bank of Rock Springs	Rock Springs	WY
Tri-County Federal Savings Bank	Torrington	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than February 28, 1995.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than February 28, 1995.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The

FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Date: January 9, 1995.

By the Federal Housing Finance Board.

Nicolas P. Retsinas,

HUD Secretary's Designee to the Board.

[FR Doc. 95–887 Filed 1–12–95; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Aries Freight Systems, Inc., 16554 Air Center Blvd., Bldg. C, Houston, TX 77032, Officers: John Daniel McIntyre, Jr., CEO, Jeffrey Lee McIntyre, President, Daniel Henry Fagerstrom, Vice President

Skyway International Cargo, Inc., 28551 Southfield Road, Suite B, Lathrup Village, MI 48076, Officers: Habib Fakhouri, President, George Majdalani, Vice President

Solano International, 347 Third Avenue, Bellmawr, NJ 08031, Paula (A.K.A. Penny) Solano, Sole Proprietor

Amerasa Rapid Transit USA Inc., dba Focus 21 Forwarding, 1440 Broadway, #606, Oakland, CA 94612, Officers: Richard Eber, President, Bin Li, Stockholder

Blue Sky, Blue Sea Company dba International Shipping Company (USA), 169 Frelinghuysen Avenue, Newark, NJ 07114, Officers: Ali Aelaei, President, Asad Ferasat, Vice President

Sunway International, Inc., 2531 Ambling Circle, Crofton, MD 21114, Officers: Qun Wu Yao, Vice President, Bangxiong Zhou, Vice President

Overseas Express Services, 8901 S. LaCienega Blvd., Suite 205A, Inglewood, CA 90301, Abdulrazak Morgan Farah, Sole Proprietor

Blue Sky Blue Sea, Inc. dba International Shipping Company, Cargo Building 68, JFK International Airport, Jamaica, NY 11430, Officers: Asad Ferasat, President, Vahe Mekertichian, Vice President

L.A. Matrix, Inc., 20815 S. Belshaw, Carson, CA 90749, Officers: Douglas Cruikshank, Co-President, Ronald S. Cruse, Co-President

Bay Area Matrix, Inc., 14072 Catalina Street, San Leandro, CA 94577, Officers: Douglas Cruikshank, Co-President, Ronald S. Cruse, Treasurer

Dated: January 10, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–959 Filed 1–12–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Report to Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: This report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives has been prepared by the Federal Reserve Board pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991. Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must also contain an explanation of the reasons for any discrepancy in such accounting or capital standards.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202)/728–5883), Norah M. Barger, Manager (202/452–2402), Gerald A. Edwards, Jr., Assistant Director (202/452–2741), Robert Motyka, Supervisory Financial Analyst (202/452–3621), Nancy J. Rawlings, Senior Financial Analyst (202/452–3059), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551.

Introduction and Overview

This is the fifth annual report [1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) and the Office of Thrift Supervision (OTS).[2] Section One of the report focuses on differences in the agencies' capital standards; Section Two discusses differences in accounting standards. The remainder of this introduction provides an overview of the discussion contained in these sections.

Capital Standards

As stated in the previous reports to the Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies and the OTS adopted a risk-based capital framework that was based upon the international capital accord (Basle Accord) developed by the Basle Committee on Banking Regulations and Supervisory Practices (referred to as the Basle Supervisors' Committee) and endorsed by the central bank governors of the G–10 countries.

The risk-based capital framework establishes minimum ratios of total and

[1] The first two reports prepared by the Federal Reserve Board were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The third and fourth reports were made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System as well as all bank holding companies. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

Tier 1 (core) capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital equal to at least 8 percent, and Tier 1 capital equal to at least 4 percent, of risk-weighted assets after a phase-in period that ended on December 31, 1992. Tier 1 capital is principally comprised of common shareholders' equity and qualifying perpetual preferred stock, less disallowed intangibles, such as goodwill. The other component of total capital, Tier 2, may include certain supplementary capital items, such as general loan loss reserves and subordinated debt. The risk-based capital requirements are viewed by the three banking agencies and the OTS as minimum standards, and most institutions are expected to, and generally do, maintain capital levels well above the minimums.

In addition to specifying identical ratios, the risk-based capital framework implemented by the three banking agencies includes a common definition of regulatory capital and a uniform system of risk weights and categories. While the minimum standards and risk weighting framework are common to all the banking agencies, there are some technical differences in language and interpretation among the agencies. The OTS employs a similar risk-based capital framework, although it differs in some respects from that adopted by the three banking agencies. These differences, as well as other technical differences in the agencies' capital standards, are discussed in Section One of this report.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. As discussed in Section One, the three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, somewhat different standards.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In this regard, Section One contains discussions of the banking agencies' efforts during the past year to achieve uniformity with respect to the capital treatment of the sale of assets with recourse, implementation of proposed amendments made by the Basle Supervisors' Committee to the Basle Accord, and the capital treatment of assets to address recent accounting changes issued by the Financial Accounting Standards Board (FASB).

In addition, the agencies have continued to coordinate efforts in revising the risk-based capital requirements as required by provisions of section 305 of FDICIA to take into account interest rate risk and risks arising from concentrations of credit and nontraditional activities. With regard to interest rate risk, the agencies, on the basis of public comments received, are considering a revision to their notice of proposed rulemaking issued on September 14, 1993, that is expected to be issued sometime in the near future. With regard to the risks arising from concentrations of credit and nontraditional activities, in 1994 the Federal Reserve, FDIC, and OTS approved uniform final rules. These rules will become effective once the OCC's final rule has been approved, as it is expected to be in the near future.

During 1994, one difference between the risk-based capital guidelines of the three banking agencies and the OTS was eliminated. The difference concerned the treatment of multifamily mortgages. The three banking agencies had placed such mortgages in the 100 percent risk category, while the OTS had permitted a 50 percent risk weight for multifamily mortgage loans secured by buildings with 5–36 units with at least an 80 percent loan-to-value ratio and 80 percent occupancy rate. Late last year and early this year, the three banking agencies and OTS adopted uniform amendments to their rules to implement section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991. This Act mandated the lowering under the risk-based capital framework of the risk category for multifamily loans meeting certain criteria to 50 percent.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies are substantially consistent, aside from a few limited exceptions, with generally accepted accounting principles (GAAP) as they are applied by commercial banks.[3] The uniform bank Call Report serves as the basis for calculating risk-based capital and leverage ratios, as well as for other regulatory purposes. Thus, material differences in regulatory accounting and reporting standards among commercial banks and FDIC-supervised savings banks do not exist.

The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is generally consistent with GAAP. The TFR differs in some respects from the bank Call Report in that, as previously mentioned, there are a few areas in which the bank Call Report departs from GAAP. A summary of the differences between the bank Call Report and the TFR is presented in Section Two.

As in the past, the agencies are continuing interagency efforts to reduce paperwork and regulatory burdens. The Federal Reserve has taken a leadership role in coordinating these efforts in developing supervisory guidance to further improve regulatory reporting requirements. For example, during 1994 Federal Reserve and FASB officials have met to discuss major accounting issues affecting the banking industry, as well as the remaining few differences between GAAP and regulatory reporting standards. The agencies are also working on projects that are intended to refine and improve policies and address the few reporting differences that currently exist between the banking agencies and the OTS. On December 21, 1993, the three banking agencies and the OTS, under the auspices of the FFIEC, issued an interagency policy statement on the allowance for loan and lease losses (ALLL). The policy statement, which was developed on an interagency basis to provide comprehensive guidance on the ALLL, is consistent with GAAP. The agencies are also coordinating actions to reduce the possibility that new differences in accounting and reporting policies may arise. In this regard, the agencies recently adopted the same regulatory reporting requirements for FAS 114, a new accounting standard covering loan impairment that becomes effective in 1995.

Section One

Differences in Capital Standards Among Federal Banking and Thrift Supervisory Agencies

Overview

Leverage Capital Ratios

The three banking agencies employ a leverage standard based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated

[3] In those cases where bank Call Report standards are different from GAAP, the regulatory reporting requirements are intended to be more conservative than GAAP.

institutions to meet a minimum Tier 1 capital ratio of 3 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4 to 5 percent, depending upon an organization's financial condition.

As required by FIRREA, the OTS has established a 3 percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions. However, the OTS has not yet finalized a new leverage rule, which has been under consideration for some time. This leverage rule is intended to conform to the leverage rules of the three banking agencies. The differences that will exist after the OTS has adopted its new standard pertain to the definition of core capital. While this definition generally conforms to Tier 1 bank capital, certain adjustments discussed in this report apply to the core capital definition used by savings associations. In addition, core capital as currently defined by the OTS includes qualifying supervisory goodwill. By the end of 1994, such goodwill will be phased out of thrift core capital. Therefore, beginning with the first quarter of 1995, the treatment of goodwill for thrift institutions will be consistent with that of the banking agencies.

Risk-Based Capital Ratios

The three banking agencies have adopted risk-based capital standards consistent with the Basle Accord. These standards, which were fully phased in at the end of 1992, require all commercial banking organizations to maintain a minimum ratio of total capital (Tier 1 plus Tier 2) to risk-weighted assets of 8 percent. Tier 1 capital includes common stock and surplus, retained earnings, qualifying perpetual preferred stock and surplus, and minority interests in consolidated subsidiaries, less goodwill. Tier 1 capital must comprise at least 50 percent of the total risk-based capital requirement. Tier 2 capital includes such components as general loan loss reserves, subordinated term debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. Risk-weighted assets are calculated by assigning risk weights of 0, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies.

All the banking agencies view the risk-based capital standard as a minimum supervisory benchmark. In part, this is because the risk-based capital standard focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to changes in interest rates. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to operate with capital levels well above the minimum risk-based and leverage capital requirements.

Efforts to Incorporate Non-Credit Risks

The Federal Reserve has for some time been working with the other U.S. banking agencies and the regulatory authorities on the Basle Supervisors' Committee to develop possible methods to measure and address certain market and price risks. In April, 1993, the Basle Supervisors' Committee issued a consultative paper that addresses, among other items, proposals to include certain risks into the framework of the Basle Accord. These include interest rate risk arising from imbalances between the maturity of debt instruments held as assets and issued as liabilities and market risk associated with holdings of traded debt and equity securities. One important reason for addressing these risks on an international level is to develop supervisory approaches that do not undermine the competitiveness of U.S. banking organizations.

Aside from this initial international effort, the OTS capital standards for some time have taken into account interest rate risk, and, in August, 1992, the FRB, OCC, and FDIC sought public comment on a proposed framework for incorporating into their capital standards interest rate risk, as required under section 305 of FDICIA. In response to concerns raised and recommendations made by commenters, on September 14, 1993, the three banking agencies issued for public comment a substantially modified proposal on interest rate risk. Throughout 1994, the agencies have been meeting to review the public comments and consider the alternative approaches offered by the commenters. It is anticipated that the banking agencies will issue a revised notice of proposed rulemaking in early 1995 that will provide certain modifications and enhancements to the proposal to address concerns expressed by public commenters. The approach ultimately adopted by the banking agencies could differ from that already taken by the OTS.

Section 305 of FDICIA also requires the banking agencies to amend their risk-based capital rules to take into account concentrations of credit risk and nontraditional activities. The agencies proposed an amendment implementing this requirement in February, 1994. On August 3, 1994, the Federal Reserve approved an amendment to its risk-based capital guidelines to identify explicitly concentrations of credit risk and an institution's ability to manage them as important factors in assessing an institution's overall capital adequacy. The amendments also indicate that an institution's ability to adequately manage the risks posed by nontraditional activities affects its risk exposure.

Recent Interagency Efforts

In addition to coordinating efforts to incorporate noncredit risks, the agencies worked together during 1994 to issue proposals for public comment that would amend the agencies' respective risk-based capital standards with respect to: (1) The sale of assets with recourse; (2) the recognition of bilateral netting arrangements for derivative contracts; (3) higher capital charges for long-dated derivative contracts and reduced capital charges for the potential future exposure of contracts that are affected by netting arrangements; and (4) the definition of the OECD-based group of countries for the purpose of specifying country transfer risk. The agencies also coordinated efforts to make modifications in their capital guidelines in light of recent changes in accounting standards.

Recourse

The agencies issued a joint proposal on May 24, 1994, that would amend their respective risk-based capital guidelines with regard to assets sold with recourse and direct credit substitutes. This publication, which included a notice and an advanced notice of proposed rulemakings, was a culmination of several attempts by the agencies to resolve important differences on this issue. The notice of proposed rulemaking is intended to allow banking organizations to maintain lower amounts of capital against low-level recourse transactions. The advanced notice of proposed rulemaking is a preliminary proposal to use credit ratings to match the risk-based capital assessment more closely to an institution's relative risk of loss in certain asset securitizations. The comment period for these proposals

ended on July 25, 1994. The agencies are reviewing the comments received.

Bilateral Netting Arrangements

In response to industry recommendations, and pursuant to the consultative paper the Basle Supervisors' Committee issued in April, 1993, the staffs of the four agencies in 1994 made uniform proposals to amend their risk-based capital standards to recognize bilateral netting arrangements associated with interest and exchange rate contracts. To qualify for netting treatment, netting arrangements would have to genuinely reduce credit risk and be legally enforceable in all relevant jurisdictions as evidenced by well-founded and reasoned legal opinions. A final rule on this matter was adopted by the Board on December 2, 1994, and the other agencies are expected to issue final rules in the near future.

Derivative Contracts and Recognizing the Effects of Netting on Potential Future Exposure

The agencies worked together on proposing amendments to their respective risk-based capital guidelines that are based on proposed revisions to the Basle Accord that the Basle Supervisors' Committee initiated in July 1994. The Board issued for public comment, on August 22, 1994, a proposed rulemaking that would: (1) increase the capital charge for the potential future counterparty exposure of interest and exchange rate contracts that are over five years in remaining maturity, as well as of equity, precious metals, and other commodity-related contracts; and (2) recognize the effects of bilateral netting arrangements in calculating the potential future exposure for contracts subject to qualifying netting arrangements. The agencies have been coordinating their efforts to review the public comments and to draft final rules on these proposals. The final amendments to the agencies' risk-based capital standards are contingent upon an endorsement by the G–10 Governors of a final revision to the Basle Accord.

Country Transfer Risk

In July 1994, the G–10 Governors announced their intention to modify the Basle Accord in 1995 with regard to country transfer risk. Specifically, it was agreed to revise the definition of the OECD-based group of countries[4] that are accorded a preferential risk weight. The revision would retain the OECD-based group of countries as the principle criterion for preferential risk weight status, but exclude for five years any country that reschedules its external sovereign debt. The Board and the OCC issued a joint notice of proposed rulemaking on October 14, 1994, that seeks public comment on an amendment to their respective risk-based capital guidelines. The FDIC and OTS expect to issue similar proposals in 1995.

Capital Impact of Recent Changes to Accounting Standards

Recently, FASB issued pronouncements concerning new and modified financial accounting standards. The adoption of some of these standards for regulatory reporting purposes had the potential of affecting the definition and calculation of regulatory capital. Accordingly, the staffs of the agencies worked together to propose uniform regulatory capital responses to such accounting changes. Over this past year, the agencies dealt with the accounting issues, described below.

FAS 115, ''Accounting for Certain Investments in Debt and Equity Securities.''

The staffs of the four agencies met this year to discuss the public comments received in response to proposed amendments, issued in 1993 and early 1994, to their respective risk-based capital standards that would include in Tier 1 capital the net unrealized changes in value of securities available for sale for purposes of calculating the risk-based and leverage capital ratios of banking organizations. The proposals, which were in response to the recently adopted FAS 115, also requested comment on several alternative approaches, one of which was to not adopt FAS 115 for capital purposes. On November 10, 1994, the FFIEC recommended to the agencies that they not adopt FAS 115 for capital purposes. Acting on this recommendation, the Board, on November 30, 1994, adopted a final rule effective December 31, 1994. Under the final rule, institutions are generally directed not to include in Tier 1 capital the component of common stockholders' equity, net unrealized holding gains and losses on securities available for sale that was created by FAS 115. The other agencies are expected to issue similar rules in the near future.

FAS 109, ''Accounting for Income Taxes.''

The agencies issued in 1993 proposals to limit the amount of deferred tax assets includable in calculating Tier 1 capital. Under the proposals, certain deferred tax assets are limited to the lesser of 10 percent of Tier 1 capital or the amount of such assets the institution expects to realize in the subsequent year. On November 18, 1994, the FFIEC recommended that the agencies finalize these proposals. The agencies are preparing to issue final rules that will be made effective early in 1995.

FAS 114, ''Accounting by Creditors for Impairment of a Loan.''

On May 17, 1994, the agencies issued a joint request for comment regarding certain implementation issues arising from the agencies' recent adoption for regulatory reporting purposes of FAS 114. FAS 114 presents a methodology for calculating the loan loss reserve for certain loans that is based on present value considerations. Through the FFIEC, the agencies, on November 18, 1994, announced a decision that the current reporting of nonaccrual loans would be maintained and the allowances calculated under FAS 114 are to be reported as part of the general allowance.

Specific Capital Differences

Differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain collateralized transactions

On December 23, 1992, the Federal Reserve Board issued an amendment to its risk-based and leverage capital guidelines that lowers from 20 to 0 percent the risk category for collateralized transactions meeting certain criteria. This preferential treatment is only available for claims collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. In addition, a positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim.

As reported in last year's report, the OCC, on August 18, 1993, issued a proposal for public comment that would also lower the risk weight for certain collateralized transactions. At the time of this report, a final rule has not been approved. The FDIC and OTS are considering similar proposals.

Equity Investments

In general, commercial banks that are members of the Federal Reserve System

[4] The OECD-based group of countries currently includes members of the Organization of Economic Cooperation and Development and countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow. Saudi Arabia is the only non-OECD country that has concluded such arrangements.

are not permitted to invest in equity securities, nor are they generally permitted to engage in real estate investment or development activities. To the extent that commercial banks are permitted to hold equity securities (for example, in connection with debts previously contracted), the three banking agencies generally assign such investments to the 100 percent risk category for risk-based capital purposes.

Under the three banking agencies' rules, the agencies may, on a case-by-case basis, deduct equity investments from the parent bank's capital or make other adjustments, if necessary, to assess an appropriate capital charge above the minimum requirement. The banking agencies' treatment of investments in subsidiaries is discussed below.

The OTS risk-based capital standards require that thrift institutions deduct certain equity investments from capital over a phase-in period, which ended on July 1, 1994, as explained more fully below in the section on subsidiaries.

FSLIC/FDIC-covered assets (assets subject to guarantee arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned.

The OTS places these assets in the zero percent risk category.

Repossessed assets and assets more than 90 days past due

The three banking agencies require that foreclosed real estate be written down to fair value (see Section Two of this report, ''Specific Valuation Allowances for, and Charge-Offs of, Troubled Real Estate Loans not in Foreclosure'' for further details) with the resulting asset assigned to the 100 percent risk category. The write-down effectively results in a reduction of capital. Assets 90 days or more past due, including 1- to 4-family residential mortgages, are assigned to the 100 percent risk category. If and when such assets are eventually charged off, capital is effectively adjusted for any resulting loss.

Consistent with the Basle Accord, the 100 percent risk category is the highest risk category under the risk-based capital guidelines of the three banking agencies. As noted above, however, the bank risk-based capital standards represent minimum ratios. Organizations with high levels of risk, including a significant volume of nonperforming or past due assets, are expected to maintain capital ratios above minimum levels. Thus, the risk-based capital framework of the banking agencies provides the flexibility to require higher levels of capital against assets of this type.

The OTS risk-based capital framework assigns a 200 percent risk weight to repossessed assets (generally referred to as real estate owned or REO) and assets more than 90 days past due. An exception exists for 1- to 4-family residential mortgages more than 90 days past due, which are assigned to the 100 percent risk category. The OTS intends to change the risk weight for all REO to 100 percent in conjunction with recent changes in the accounting for REO.

Limitation on subordinated debt and limited-life preferred stock

Consistent with the Basle Accord, the three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital. This limit, in effect, states that these components together may not exceed 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity.

Neither subordinated debt nor limited-life preferred stock is a permanent source of funds, and subordinated debt cannot absorb losses while the bank continues to operate as a going-concern. On the other hand, both capital components can provide a cushion of protection to the FDIC insurance fund. Thus, the 50 percent limitation permits the inclusion of some subordinated debt in capital, while assuring that permanent stockholders' equity capital remains the predominant element in bank regulatory capital.

The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows thrifts the option of: (1) Discounting maturing capital instruments issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term—the approach required by the banking agencies; or (2) including the full amount of such instruments provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed.

As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The Federal Reserve's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the Federal Reserve may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risks associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the Federal Reserve deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. (The Federal Reserve does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, does reserve the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.)

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also

used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the Federal Reserve may also consider the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities that are permissible for national banks and subsidiaries that are engaged in ''impermissible'' activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-by-line basis if majority-owned and on a pro rata basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and were phased-out of capital over a transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased-out of capital were consolidated on a pro rata basis.

Nonresidential Construction and Land Loans

The three banking agencies assign loans for real estate development and construction purposes to the 100 percent risk category. Reserves or charge-offs are required, in accordance with examiner judgment, when weaknesses or losses develop in such loans. The banking agencies have no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan.

The OTS generally assigns these loans to the 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, that excess portion must be deducted from capital in accordance with a phase-in arrangement, which ended on July 1, 1994.

Mortgage-Backed Securities (MBS)

The three banking agencies, in general, place privately-issued MBSs in a risk category appropriate to the underlying assets but in no case to the zero percent risk category. In the case of privately-issued MBSs where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBSs with AA or better investment ratings.

At the same time, both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss. The Federal Reserve, in conjunction with the other banking agencies and the OTS, issued, on January 10, 1992, more specific guidance as to the types of ''high risk'' MBSs that will qualify for a 100 percent risk weight.

Assets Sold With Recourse

In general, recourse arrangements allow the purchaser of an asset to ''put'' the asset back to the originating institution under certain circumstances, for example if the asset ceases to perform satisfactorily. This, in turn, can expose the originating institution to any loss associated with the asset. As a general rule, the three banking agencies require that sales of assets involving any recourse be reported as financings and that the assets be retained on the balance sheet. This effectively requires a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse. The Federal Reserve generally applies a capital charge to any off-balance sheet recourse arrangement that is the equivalent of a guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation.

An exception to this general rule for the three banking organizations involves pools of 1- to 4-family residential mortgages and to certain farm mortgage loans. Certain recourse transactions involving these assets are reported in the bank Call Report as sales, and, thus, are not included in the asset base used in calculating the Tier 1 leverage ratio. For risk-based capital purposes, however, the amount of such mortgages sold with recourse is generally treated as an off-balance sheet guarantee, and assessed a capital charge.

In general, the OTS also requires a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with recourse, the OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities against pools of assets. When a bank originates such a transaction by placing loans that it owns in a trust and retaining any portion of the subordinated securities, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk-weight category. The Federal Reserve carefully reviews these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

The OTS requires that risk-based capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

On May 25, 1994, the three banking agencies and the OTS, under the auspices of the FFIEC, sought public comment on various aspects of the capital treatment of recourse transactions by publishing a Notice of Proposed Rulemaking (NPR) and an Advance Notice of Proposed Rulemaking (ANPR), which is a more preliminary step in the formal rulemaking process. The comment period ended July 25, 1994.

The NPR proposed to amend the banking agencies' risk-based capital guidelines by:

(1) Reducing the risk-based capital charge for ''low level'' recourse arrangements to an amount equal to the maximum contractual recourse obligation;

(2) Requiring equivalent capital treatment of recourse arrangements and direct credit substitutes that provide first dollar loss protection. This would increase the capital assessment for *first loss* standby letters of credit and purchased subordinated interests that

only provide partial credit enhancement; and

(3) Defining ''recourse'' and associated terms such as ''standard representations and warranties.''

The ANPR proposed incorporating into the risk-based capital guidelines a framework based on formal credit ratings for assessing capital against exposures with different levels of risk in certain asset securitizations. Thus, the more risky a particular risk position with a securitized transaction, the higher the capital charge.

Staffs of the agencies are reviewing public comments, particularly in light of the Reigle Community Development and Regulatory Improvement Act of 1994 (Act), which was signed into law on September 23, 1994. Section 350 of the Act requires the banking agencies, by the end of March 1995, to promulgate regulations that better reflect the exposure of an insured depository institution to credit risk from transfers of assets with recourse. At a minimum, these regulations must limit the amount of required capital to be held against assets sold with recourse to the maximum amount of recourse for which the ''selling'' institution is contractually liable. The staffs of the agencies are working to issue by the end of March 1994 a final rule incorporating the proposed ''low level'' recourse treatment in order to meet the legislative requirements of section 350. Staffs of the agencies are also continuing their work on developing proposals to make the capital requirements for recourse transactions more commensurate with the actual risk inherent in the transactions.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned (OREO) and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on 1- to 4-Family Properties

In some cases, a banking organization may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve views these two transactions as a single loan, provided there are no intervening liens. This could result in assigning the total amount of these transactions to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio and, therefore, did not qualify for the 50 percent risk weight. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions.

The FDIC, OCC, and the OTS generally assign the loan secured by the first lien to the 50 percent risk-weight category and the loan secured by the second lien to the 100 percent risk-weight category.

Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of the OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the three banking agencies' capital guidelines.

Mutual Funds

The three banking agencies generally assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The purpose of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund's holding cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis in a manner consistent with the actual composition of the mutual fund.

Section Two

Differences in Accounting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the auspices of the FFIEC, the three banking agencies have developed uniform reporting requirements for commercial banks to be used in the preparation of the Call Report. The FDIC has also applied these uniform reporting requirements to savings banks under its supervision. The income statement and balance sheet accounts presented in the Call Report are used by the bank supervisory agencies for determining the capital adequacy of banks. The data collected in this report also are used for other regulatory, supervisory, analytical, and statistical purposes, and provide information to the Federal Reserve for the conduct of monetary policy.

Section 121 of FDICIA states that ''accounting principles applicable to reports or statements required to be filed by all insured depository institutions with federal banking agencies shall be uniform and consistent with generally accepted accounting principles (GAAP).'' Under section 121, the objectives of accounting principles applicable to such reports and statements are to:

1. Result in financial statements and reports of condition that accurately reflect the institution's capital;
2. Facilitate effective supervision of depository institutions; and
3. Facilitate prompt corrective action at least cost to the insurance funds.

Section 121 further states that a federal banking agency may ''prescribe an accounting principle . . . which is no less stringent than GAAP'' when the agency determines that ''the application of any generally accepted accounting principle is inconsistent with the objectives'' of accounting principles noted above.

Section 121 of FDICIA thus requires the Federal Reserve and the other federal banking agencies to set forth reporting requirements in the Call Report that are consistent with, or no less stringent than, GAAP. The reporting requirements for the Call Report are substantially consistent with GAAP as applied by commercial banks, aside from a few limited exceptions. As a matter of long-standing policy, the reporting requirements for Call Reports depart from GAAP only in those instances where statutory requirements or overriding supervisory concerns warrant a departure from GAAP. Furthermore, in those cases where the reporting requirements for bank Call Reports are different from GAAP, they are more conservative than GAAP.

Thus, bank regulatory reporting requirements are consistent with the objectives and mandate of FDICIA Section 121.

The agencies have been working to limit the number of differences between regulatory reporting requirements and GAAP. In some cases, however, differences will exist when there is a need to address supervisory concerns. In addition, the agencies have been working closely to coordinate any new accounting and reporting policies, to ensure consistency among the agencies and to reduce or eliminate differences with GAAP.

The OTS has developed and maintains a separate reporting system for the thrift institutions under its supervision. The financial report for thrifts, or TFR, is based on GAAP as applied by thrifts.

A summary of the primary differences in regulatory reporting requirements between the three bank agencies and the OTS is set forth below. The information is based on a study developed on an interagency basis.

Futures and Forward Contracts

The banking agencies, as a general rule, do not permit the deferral of losses by banks on futures and forwards regardless of whether they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting requirement as a supervisory policy prior to the adoption of FASB Statement No. 80, which allows hedge or loss deferral accounting, under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only in the case of futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow FASB Statement No. 80 for futures contracts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting treatment for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses, which would be reflected as assets on the thrift's balance sheet in accordance with GAAP.

The Federal Reserve is closely reviewing hedge accounting issues with the other federal banking agencies, with the objective of encouraging the FASB to develop a comprehensive hedge accounting framework that results in consistent accounting treatment for all derivative instruments of financial and nonfinancial companies.

Excess Servicing Fees

As a general rule, the three banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing results when loans are sold with servicing retained and the stated servicing fee rate is greater than the normal servicing fee rate. With the exception of sales of pools of first lien one- to four-family residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset, not recognized up front as required by FASB Statement No. 65.

The OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-Substance Defeasance of Debt

The banking agencies do not permit banks to report defeasance of their debt obligations in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust solely for satisfying the debt. Under FASB Statement No. 76, the assets in the trust and the defeased debt are removed from the balance sheet and a gain or loss for the current period can be recognized. However, for Call Report purposes, banks may not remove assets or defeased liabilities from their balance sheets or recognize resulting gains or losses. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocable trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practice is to follow FASB Statement No. 76.

Sales of Assets With Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits; (2) the transferor's obligation under the recourse provisions can be reasonably estimated; and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the three banking agencies is generally to permit commercial banks to report transfers of receivables with recourse as sales only when the transferring institution (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of first lien 1- to 4-family residential or agricultural mortgage loans under certain government-sponsored programs (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation). Transfers of mortgages under these programs are generally treated as sales for Call Report purposes.

Furthermore, private transfers of first lien 1- to four-family residential mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, the seller's obligation under recourse provisions related to sales of mortgage loans under the government programs is viewed as an off-balance sheet exposure. Thus, for risk-based capital purposes, capital is generally expected to be held for recourse obligations associated with such transactions.

The OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, off-balance sheet recourse obligations generally are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes. Thus, by making this adjustment in the risk-based capital calculation, the differences between the OTS and the banking agencies for capital adequacy measurement purposes are substantially reduced.

Over the past few years, the FFIEC has studied transfers of assets with recourse (often referred to as the ''recourse study''). In this respect, the staff of the Federal Reserve has reviewed the capital and regulatory reporting treatment for sales of assets with recourse and on May 25, 1994, issued, under the auspices of the FFIEC, a proposal for public comment which addresses these issues. If finalized, the proposal could reduce the differences between regulatory reporting requirements and GAAP in this area by allowing a larger portion of transfers of assets with recourse to be treated as sales. In addition, the staff of the Federal Reserve has been working with

the other agencies to implement section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, which deals with the regulatory reporting and capital treatment of certain recourse transactions, as discussed in greater detail on page 28 of Section One of this report.

Push-Down Accounting

When a depository institution is acquired in a purchase transaction, but retains its separate corporate existence, the institution is required to revalue all of the assets and liabilities at fair value at the time of acquisition. When push-down accounting is applied, the same revaluation made by the parent holding company is made at the depository institution level.

The three banking agencies require push-down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change in ownership.

Negative Goodwill

The three banking agencies require that negative goodwill be reported as a liability, and not be netted against goodwill assets. Such a policy ensures that all goodwill assets are deducted in regulatory capital calculations, consistent with the Basle Accord.

The OTS permits negative goodwill to offset goodwill assets reported in the financial statements.

Offsetting

The three banking agencies generally prohibit netting of assets and liabilities in the Call Report. However, FASB Interpretation No. 39 (FIN 39) netting requirements have been adopted for Call Report purposes *solely* for assets and liabilities that arise from off-balance-sheet instruments. For example, under FIN 39, the assets and liabilities arising from these contracts may be netted when there is a legally enforceable bilateral master netting agreement.

The OTS policy on netting for all assets and liabilities is consistent with GAAP, as set forth in FIN 39. FIN 39 allows institutions to offset assets and liabilities (e.g., loans and deposits) when four conditions are met. Moreover, the OTS permits netting for off-balance sheet conditional and exchange contracts to the same extent as the banking agencies.

By order of the Board of Governors of the Federal Reserve System, January 9, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–900 Filed 1–12–95; 8:45 am]

BILLING CODE 6210–10–P

National Westminster Bank PLC.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 27, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Westminster Bank PLC, London, England, and NatWest Holdings, New York, New York; to acquire BRS Capital Management, Inc., Boston, Massachusetts, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska; to acquire Platte Valley Finance Company, North Platte, Nebraska, and thereby engage in consumer finance lending, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and credit insurance activities pursuant to § 225.25(25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–901 Filed 1–12–95; 8:45 am]

BILLING CODE 6210–01–F

James A. Redding, 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 January 27, 1995,

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. James A. Redding and Mary G. Clark, both of Windom, Minnesota; each to acquire 25.51 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gary D. Grable, Kansas City, Missouri; to acquire 8.81 percent; John

H. Ferguson, Liberty, Missouri, to acquire 2.94 percent; Russell J. Bysel, Prairie Village, Kansas, to acquire 5.87 percent; Richard L. Bond, Overland Park, Kansas, to acquire 4.41 percent; Carl Edward Bradley, Lake Waukomis, Missouri, to acquire .73 percent; Gregory R. Walton, Leawood, Kansas, to acquire 3.67 percent; Angela L. Mitchell, Overland Park, Kansas, to acquire 1.47 percent; James D. Robertson, Liberty, Missouri, to acquire 2.94 percent; and W. Jackson Letts, Mission Hills, Kansas, to acquire 1.47 percent, of the voting shares of Guaranty Bancshares Corporation, Kansas City, Missouri, and thereby indirectly acquire Guaranty Bank and Trust, Kansas City, Kansas.

2. Bill Taylor, Lansing, Kansas; to acquire an additional 1.13 percent, for a total of 11.12 percent of the voting shares of Lansing Financial Corporation, Lansing, Kansas, and thereby indirectly acquire First State Bank of Lansing, Lansing, Kansas.

Board of Governors of the Federal Reserve System, January 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–902 Filed 1–12–95; 8:45 am]

BILLING CODE 6210–01–F

The Royal Bank of Canada; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Royal Bank of Canada, Montreal, Quebec, Canada; to engage *de novo* through its subsidiary BFA Receivables Acquisition Corp., Wilmington, Delaware, in acquiring, making and servicing receivables, loans or other extensions of credit for BFA's account or the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–903 Filed 1–12–95; 8:45 am]

BILLING CODE 6210–1–

FEDERAL TRADE COMMISSION

[File No. 951–0013]

Reckitt & Colman plc; Proposed Consent Agreement With Analysis To Aid Pubic Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, Reckitt & Colman to acquire L&F Products Inc. with the required prior approval on the condition that it sells its own rug cleaning assets, within six months, to a Commission approved acquirer. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transaction. In addition, the consent agreement would require the respondent to obtain Commission approval, for ten years, before acquiring any interest in the carpet-deodorizer business in the United States.

DATES: Comments must be received on or before March 14, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: ANN MALESTER, FTC/S–2224, WASHINGTON, D.C. 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comments is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Reckitt & Colman plc (''Reckitt & Colman''), a United Kingdom corporation, of substantially all of the assets and liabilities of L&F Products Inc., a Delaware corporation, from Eastman Kodak Company, and it now appearing that Reckitt & Colman, hereinafter sometimes referred to as ''proposed respondent,'' is wiling to enter into an agreement containing an order to divest certain assets and cease and desist from making certain acquisitions, and providing for certain other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Reckitt & Colman is a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales with its principal executive offices located at One Burlington Lane, London, England W4 2RW. Reckitt & Colman does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of

business at 1655 Valley Road, Wayne, New Jersey 07474–0943.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) any claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist, in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to 1655 Valley Road, Wayne, New Jersey 07474–0943 shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands that the Commission's approval, pursuant to the Commission's Order in Docket No. C–3306, of the Acquisition, as defined in the following order, is conditioned upon the proposed respondent's compliance with the terms of the following order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of this order after it becomes final, or of the Commission's Order in Docket No. C–3306.

Order

I.

Definitions

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Reckitt & Colman'' means Reckitt & Colman plc, its predecessors, successors and assigns, the divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Reckitt & Colman controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. ''Kodak'' means Eastman Kodak Company, its predecessors, successors and assigns, the divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Kodak controls, directly or indirectly, and their directors, officers, employees, agents and representatives and their respective successors and assigns.

C. ''L&F''means the United States Assets and Businesses acquired by Reckitt & Colman in the Acquisition.

D. ''Respondent'' means Reckitt & Colman.

E. ''Commission'' means the Federal Trade Commission.

F. ''Acquisition'' means Reckitt & Colman's acquisition of substantially all of the assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc. pursuant to an asset purchase agreement dated September 26, 1994, with Eastman Kodak Company, L&F Products Inc., a wholly-owned subsidiary of Kodak, and Sterling Winthrop Inc., a wholly-owned subsidiary of L&F Products Inc.

G. ''Carpet Deodorizer Products'' means powder products designed to combat and eliminate offensive odors in rugs and carpets that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Carpet Deodorizer Products does not include Rug Cleaning Products.

H. ''Carpet Deodorizer Assets'' means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Carpet Deodorizer Products, including, but not limited to, the brands, trademarks and tradedress ''Carpet Fresh'', ''Rug Fresh''; and

(2) All of Reckitt & Colman's Carpet Deodorizer Products assets and businesses delineated in Schedule A, attached hereto and made a part hereof.

Carpet Deodorizer Assets excludes any assets or businesses acquired in the Acquisition.

I. ''Rug Cleaning Products'' means products designed to clean rugs and carpets that are applied by aerosol spray, or in liquid, foam or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Rug Cleaning Products does not include Carpet Deodorizer Products.

J. ''Rug Cleaning Assets'' means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Rug Cleaning Products, including, but not limited to, the right to use the brands, trademarks and tradedress ''Woolite Heavy Traffic Carpet Cleaner'', ''Woolite One Step Carpet Cleaner'', ''Woolite Spot & Stain Carpet Cleaner'', ''Woolite Fabric and Upholstery Cleaner'', and ''Woolite Pet Stain Carpet Cleaner'' in connection with the production, marketing and sale of Rug Cleaning Products; and

(2) all of Reckitt & Colman's Rug Cleaning Products assets and businesses delineated in schedule B, attached hereto and made a part hereof.

Rug Cleaning Assets excludes any assets or businesses acquired in the Acquisition.

K. ''Woolite Fabric Care Products'' means products designed to clean fabric and clothing that are applied by aerosol spray, or in liquid, foam or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Woolite

Fabric Care Products excludes Rug Cleaning Products.

L. ''Woolite Assets'' means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Woolite Fabric Care Products, including, but not limited to, the brand and trademark ''Woolite''; and

(2) all of Reckitt & Colman's Woolite Fabric Care Products assets and businesses delineated in Schedule C, attached hereto and made a part hereof.

Woolite Assets excludes any assets or businesses acquired in the Acquisition.

M. ''Air Freshener Products'' means products that are specifically designed to scent the air in the home that are applied by aerosol spray, or in liquid, solid, wick or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores.

N. ''Air Freshener Assets'' means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Air Freshener Products, including, but not limited to, the brands and trademarks ''Airwick'', ''Stick Ups'', ''Air Waves'', ''Wizard'', ''Botanicals'', and ''Airwick Neutra Air''; and

(2) all of Reckitt & Colman's Air Freshener Products assets and businesses delineated in Schedule D, attached hereto and made a part hereof.

Air Freshener Assets excludes any assets or businesses acquired in the Acquisition.

II

Divestiture of Carpet Deodorizer Assets

It is ordered that:

A. Reckitt & Colman shall divest the Carpet Deodorizer Assets, absolutely and in good faith, within six (6) months of the date this order becomes final, and shall also divest such additional ancillary assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Carpet Deodorizer Assets; provided, however, that Reckitt & Colman is not required to divest nay of the Carpet Deodorizer Assets identified in Schedule A, Part 2, if such assets are not required by the acquirer.

B. Reckitt & Colman shall divest the Carpet Deodorizer Assets only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Carpet Deodorizer Assets is to ensure the continuation of the assets as an ongoing, viable enterprise engaged in the same businesses in which the Carpet Deodorizer Assets presently are employed, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer of the Carpet Deodorizer Assets to Reckitt & Colman, for a period of six (6) months following the date of the divestiture, Reckitt & Colman shall provide such personnel, information, assistance, advice and training to the acquirer as is necessary to transfer the Carpet Deodorizer Assets pursuant to Paragraph II.A. of this order and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Reckitt & Colman as necessary to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture, distribution and marketing of Carpet Deodorizer Products. Reckitt & Colman shall not charge the acquirer a rate more than its own direct costs for providing such assistance.

D. Reckitt & Colman shall cooperate and assist the acquirer in obtaining approvals for the transfer of all registrations, leases, licenses, certifications, permits, or similar documents relating to the Carpet Deodorizer Assets.

E. Reckitt & Colman shall take such actions as are necessary to maintain the viability and marketability of the Carpet Deodorizer Assets and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Carpet Deodorizer Assets except in the ordinary course of business and except for ordinary wear and tear.

III

Rug Cleaning Divestiture

It is further ordered that:

A. Reckitt & Colman shall divest, absolutely and in good faith, within six (6) months of the date the Commission approves the Acquisition pursuant to Paragraph V of the order in Docket No. C–3306, the Rug Cleaning Assets, and shall also divest such additional ancillary assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Rug Cleaning Assets; provided, however, that Reckitt & Colman is not required to divest any of the Rug Cleaning Assets identified in Schedule B, Part 2, if such assets are not required by the acquirer.

B. Reckitt & Colman shall divest the Rug Cleaning Assets only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Rug Cleaning Assets is to ensure the continuation of the assets as an ongoing, viable enterprise engaged in the same businesses in which the Rug Cleaning Assets presently are employed, and to remedy the lessening of competition resulting from the Acquisition as described in the Commission's letter approving the Acquisition.

C. Upon reasonable notice from the acquirer of the Rug Cleaning Assets to Reckitt & Colman, for a period of six months following the date of the divestiture, Reckitt & Colman shall provide such personnel, information, assistance, advice and training to the acquirer as is necessary to transfer the Rug Cleaning Assets pursuant to Paragraph III.A. of this order and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Reckitt & Colman to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture, distribution and marketing of Rug Cleaning Products. Reckitt & Colman shall not charge the acquirer a rate more than its own direct costs for providing such assistance.

D. Reckitt & Colman shall cooperate and assist the acquirer in obtaining approvals for the transfer of all registrations, leases, licenses, certifications, permits, or similar documents relating to the Rug Cleaning Assets.

E. Reckitt & Colman shall take such actions as are necessary to maintain the viability and marketability of the Rug Cleaning Assets to prevent the destruction, removal, wasting, deterioration or impairment of any of the Rug Cleaning Assets except in the ordinary course of business and except for ordinary wear and tear.

IV

Trustee provisions

It is further ordered that:

A. (1) If Reckitt & Colman has not divested, absolutely and in good faith and with the Commission's prior approval the Carpet Deodorizer Assets within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the Carpet Deodorizer Assets and the Air Freshener Assets; provided, however, that the trustee is not required to divest any of the Carpet Deodorizer Assets identified in Schedule A, Part 2, or any of the Air Freshener Assets identified in Schedule D, Part 2, if such assets are not required by the acquirer.

(2) If Reckitt & Colman has not divested, absolutely and in good faith and with the Commission's prior approval the Rug Cleaning Assets within six (6) months of the date the Commission approves the Acquisition pursuant to the order in Docket No. C–3306, the Commission may appoint a trustee to divest the Rug Cleaning Assets and the Woolite Assets; provided, however, that the trustee is not required to divest any of the Rug Cleaning Assets identified in Schedule B, Part 2, or any of the Woolite Assets identified in Schedule C, Part 2, if such assets are not required by the acquirer.

B. In the event the Commission or the Attorney General brings an action pursuant to § 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*1*), or any other statute enforced by the Commission, Reckitt & Colman shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Reckitt & Colman to comply with this order, or the order in Docket No. C–3306.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A.(1) or Paragraph IV.A.(2) of this order, Reckitt & Colman shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities.

1. The Commission shall select the trustee, subject to the consent of Reckitt & Colman, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Reckitt & Colman has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Reckitt & Colman of the identity of any proposed trustee, Reckitt & Colman shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission and under the terms and conditions described in Paragraph IV.A. of this order, the trustee shall have the exclusive power and authority to divest the Carpet Deodorizer Assets and the Air Freshener Assets, and/or the Rug Cleaning Assets and the Woolite Assets, together with any additional, incidental assets of Reckitt & Colman that may be reasonably necessary to assure the viability and competitiveness of the Carpet Deodorizer Assets and the Air Freshener Assets, and/or the Rug Cleaning Assets and the Woolite Assets.

3. Within ten (10) days after the appointment of the trustee, Reckitt & Colman shall execute a trust agreement that, subject to the prior approval of the Commission, and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to effect the divestiture(s) require by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.C.3. of this order to accomplish the divestiture(s). If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture(s) can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may only extend the divestiture period two (2) times.

5. The trustee shall have full and complete access (subject to the terms and conditions described in Paragraph IV.A. of this order) to the personnel, books, records, and facilities related to the Carpet Deodorizer Assets, Air Freshener Assets, Rug Cleaning Assets and Woolite Assets and to any other relevant information, as the trustee may reasonably request. Reckitt & Colman shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Reckitt & Colman shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in the divestiture(s) caused by Reckitt & Colman shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. Subject to Reckitt & Colman's absolute and unconditional obligation to divest at no minimum price the assets described in Paragraph IV.A. of this order (and subject to the terms and conditions described in Paragraph IV.A. of this order), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint and as described in the Commission's letter approving the Acquisition, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquirer for each divestiture described in Paragraph IV.A of this order. If the trustee receives bona fide offers from more than one acquirer for each divestiture, and if the Commission determines to approve more than one such acquirer, the trustee shall divest the assets described in Paragraph IV.A. of this order to each acquirer selected by Reckitt & Colman from among those approved by the Commission for each divestiture.

7. The trustee shall serve, without bond or other security, at the cost and expense of Reckitt & Colman, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Reckitt & Colman, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Reckitt & Colman and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets described in Paragraph IV.A. of this order.

8. Reckitt & Colman shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or

maintain the assets described in Paragraph IV.A. of this order.

12. The trustee shall report in writing to Reckitt & Colman and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestitures.

V

Hold Separate

It is further ordered that Reckitt & Colman shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect according to its terms until Reckitt & Colman has divested all of the Rug Cleaning Assets and all of the Carpet Deodorizer Assets as required by this order.

VI

Prior approval

It is further ordered that, for a ten (10) year period commencing on the date this order becomes final, Reckitt & Colman shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships or otherwise:

(1) acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in the development, production, distribution, or sale for resale of Carpet Deodorizer Products in the United States; or

(2) acquire any assets used or previously used (and still suitable for use) in the manufacture, distribution, or sale for resale of Carpet Deodorizer Products in the United States.

Provided, however, that this Paragraph VI shall not apply to the acquisition of products or services acquired in the ordinary course of business.

VII

Compliance Reports

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Reckitt & Colman has fully complied with the provisions of Paragraphs II, III, IV and V of this order, Reckitt & Colman shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with those provisions. Reckitt & Colman shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for each divestiture, including the identity of all parties contacted. Reckitt & Colman also shall include in its compliance reports, subject to any legally recognized privilege, copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning each divestiture.

B. One (1) year from the date this order becomes final and annually thereafter for nine (9) years on the anniversary date of this order, Reckitt & Colman shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this order.

VIII

Access

It is further ordered that, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Reckitt & Colman, Reckitt & Colman shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Reckitt & Colman or L&F relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to Reckitt & Colman, and without restraint or interference from Reckitt & Colman, to interview officers or employees of Reckitt & Colman or L&F, who may have counsel present, regarding such matters.

IX

Corporate Change

It is further ordered that Reckitt & Colman shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

Schedule A

Reckitt & Colman shall divest all of the Carpet Deodorizer Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in Paragraph I.H.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Carpet Deodorizer Products in the United States, including, but not limited to, the following:

Part 1

(1) all customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(2) intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradedress, service marks, and UPC codes;

(3) all rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensers, licensees, consignors and consignees;

(4) all rights under warranties and guarantees, express or implied;

(5) all Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(6) all books, records, files, financial statements, business plans and supporting documents;

(7) all items of prepaid expense; and

(8) a perpetual license at no royalty to use the brands, trademarks and tradedress ''Airwick Neutra Air'' and ''Botanicals'' in connection with the production, marketing and sale of Carpet Deodorizer Products in the United States.

Part 2

(1) a perpetual license at no royalty to use the brand, trademark and tradedress ''Airwick'' in connection with the production, marketing and sale of Carpet Deodorizer Products in the United States;

(2) all machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(3) inventory;

(4) accounts and notes receivable; and

(5) all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

Schedule B

Reckitt & Colman shall divest all of the Rug Cleaning Products assets and businesses pursuant to the terms of this order. The assets and business identified in Paragraph I.J. (2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Rug Cleaning Products in the United States, including, but not limited to, the following:

Part 1

(1) a perpetual license at no royalty to use the brand, trademark, and tradedress ''Woolite'' in connection with the production, marketing and sale of Rug Cleaning Products in or into the United States;

(2) all customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(3) intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, service marks, and UPC codes;

(4) all rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(5) all rights under warranties and guarantees, express or implied;

(6) all Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(7) all books, records, files, financial statements, business plans and supporting documents; and

(8) all items of prepaid expense.

Part 2

(1) all machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(2) inventory;

(3) accounts and notes receivable; and

(4) all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

Schedule C

The trustee shall divest all of the Woolite Fabric Care Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in Paragraph I.L.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Woolite Fabric Care Products in the United States, including, but not limited to, the following:

Part 1

(1) all customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(2) intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradedress, service marks, and UPC codes;

(3) all rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(4) all rights under warranties and guarantees, express or implied;

(5) all Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(6) all books, records, files, financial statements, business plans and supporting documents; and

(7) all items of prepaid expense.

Part 2

(1) all machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(2) inventory;

(3) accounts and notes receivable, and

(4) all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

Schedule D

The trustee shall divest all of the Air Freshener Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in Paragraph I.N.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Air Freshener Products in the United States, including, but not limited to the following:

Part 1

(1) all customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(2) intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradedress, service marks, and UPC codes;

(3) all rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(4) all rights under warranties and guarantees, express or implied;

(5) all Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(6) all books, records, files, financial statements, business plans and supporting documents; and

(7) all items of prepaid expense.

Part 2

(1) all machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(2) inventory;

(3) accounts and notes receivable, and

(4) all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (''Hold Separate'') is by and between Reckitt & Colman plc (''Reckitt & Colman''), a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales, with its office and principal place of business at One Burlington Lane, London 4W 2RW, England, which does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of business at 1655 Valley Road, Wayne, New Jersey 07474-0943; and the Federal Trade Commission (''the Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively the ''Parties'').

Premises

Whereas, on September 26, 1994 Reckitt & Colman entered into an agreement with Eastman Kodak Company (''Kodak'') to acquire substantially all of the United States assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc. (such assets and businesses hereinafter referred to as ''L&F''), as well as the voting securities of certain wholly-owned subsidiaries of L&F or Kodak that sell products outside the United States (hereinafter ''Acquisition''); and

Whereas, on October 22, 1990, the Commission, with the consent of Reckitt & Colman, issued its complaint and made final its Order to settle charges that the acquisition by Reckitt & Colman of the Boyle-Midway Division of American Home Products Corporation violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (''FTC Act''), as amended, 15 U.S.C. § 45 (*In the Matter of Reckett & Colman plc,* FTC Docket No. C–3306); and

Whereas, the Order in Docket No. C–3306 provides that for a period of ten (10) years Reckitt & Colman shall not acquire, without the prior approval of the Commission, directly or indirectly through subsidiaries, partnerships, or otherwie, any interest in, or the whole or any part of the stock or share capital of any person or business that is engaged in the rug cleaning products business in the United States, or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in) the rug cleaning products business; and

Whereas, Reckitt & Colman products and markets, among other things, Carpet Deodorizer Products and Rug Cleaning Products, as defined in Paragraph I of the Agreement Containing Consent Order (''Consent Agreement'' or ''Consent Order'') to which this Hold Separate is attached and made a part thereof as Appendix I; and

Whereas, L&F, with its principal office and place of business located at 225 Summit Avenue, Montvale, New Jersey 07645–1575, produces and markets, among other things, Carpet Deodorizer Products and Rug Cleaning Products, as defined in Paragraph I of the Consent Order; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission and whether the Commission should approve the Acquisition pursuant to the Order in *In the Matter of Reckitt & Colman plc, FTC Docket No. C–3306; and*

Whereas, the Commission has determined to grant Reckitt & Colman the prior approval required for its acquisition of L&F conditioned, however, upon Reckitt & Colman divesting, as required under the Consent Agreement, the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in Paragraph I of the Consent Agreement; and

Whereas, if the Commission accepts the Consent Agreement, the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in Paragraph I of the Consent Agreement, during the perioid prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in Paragraph I of the Consent Agreement, and the Commission's right to have the Carpet Deodorizer Assets and the Rug Cleaning Assets continue as viable competitors; and

Whereas, the purpose of the Hold Separate and the Consent Agreement is:

1. to preserve the Carpet Deodorizer Assets, the Air Freshener Assets, and the Rug Cleaning Assets as viable, independent, ongoing enterprises, pending the divestiture of the Carpet Deodorizer Assets, the Air Freshener Assets, and Rug Cleaning Assets required under the terms of the Consent Agreement;

2. to remedy any anticompetitive effects of the Acquisition; and

3. to preserve the Carpet Deodorizer Assets, the Air Freshener Assets, and the Rug Cleaning Assets as ongoing and competitive entities engaged in the same businesses in which they are presently employed until each of the respective divestitures required under the terms of the Consent Agreement is achieved; and

Whereas, Reckitt & Colman's entering into this Hold Separate shall in no way be construed as an admission by Reckitt & Colman that the Acquisition is illegal; and

Whereas, Reckitt & Colman understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws of the FTC Act by reason of anything contained in this Consent Agreement.

Now, Therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's conditional approval of the Acquisition and its agreement that, at the time it accepts the Consent Agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Agreement, it will not seek further relief from Reckitt & Colman with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the Consent Agreement to which it is annexed and made a part thereof, and the Order in Docket No. C–3306, and in the event the required divestiture of the Carpet Deodorizer

Assets is not accomplished, to appoint a trustee to seek divestiture of the Air Freshener Assets as well as the Carpet Deodorizer Assets, and in the event the required divestiture of the Rug Cleaning Assets is not accomplished, to appoint a trustee to seek divestiture of the Woolite Assets as well as the Rug Cleaning Assets, or to seek civil penalties or a court appointed trust or other equitable relief, as follows:

1. Reckitt & Colman agrees to execute and be bound by the Consent Agreement.

2. Reckitt & Colman agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2.a and 2.b, it will comply with the provisions of paragraph 4 of this Hold Separate:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules; or

b. the day after the divestiture of the Carpet Deodorizer Assets required by the Consent Order has been completed.

3. Reckitt & Colman agrees that from the date this Hold Separate is accepted until the day after the divestiture of the Rug Cleaning Assets required by the Consent Order has been completed, it will comply with the provisions of Paragraph 5 of this Hold Separate.

4. Reckitt & Colman agrees to manage and maintain the Carpet Deodorizer Assets and the Air Freshener Assets, as they are presently constituted, on the following terms and conditions:

a. Reckitt & Colman shall appoint four individuals, one each from among Reckitt & Colman's current employees working in Reckitt & Colman's marketing, sales, materials management, and finance operations, to manage and maintain the Carpet Deodorizer Assets and the Air Freshener Assets. These individuals (''the management team'') shall manage the Carpet Deodorizer Assets and the Air Freshener Assets independently of the management of Reckitt & Colman's other businesses, except that these individuals will arrange for the Reckitt & Colman Carpet Deodorizer Products and the Reckitt & Colman Air Freshener Products to be marketed and sold by Reckitt & Colman's marketing and sales forces. The management team shall not thereafter, until the Carpet Deodorizer Assets are divested pursuant to the Consent Order, be in any way involved in the marketing, selling or materials management of any other Reckitt & Colman product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Reckitt & Colman. The independent auditor/manager shall have exclusive control over the operations of the Carpet Deodorizer Assets and the Air Freshener Assets, with responsibility for the management of the Carpet Deodorizer Assets and the Air Freshener Assets and for maintaining the independence of those businesses.

c. Reckitt & Colman shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager or the management team or any of its operations relating to the operations of the Carpet Deodorizer Assets and the Air Freshener Assets; provided however, that Reckitt & Colman may exercise only such direction and control over the management team and the Carpet Deodorizer Assets and the Air Freshener Assets as is necessary to assure compliance with this Hold Separate or the Consent Order.

d. Reckitt & Colman shall maintain the viability and marketability of the Carpet Deodorizer Assets and the Air Freshener Assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear. Reckitt & Colman shall not sell, transfer, or encumber the Carpet Deodorizer Assets or the Air Freshener Assets except in the ordinary course of business, or to effect the divestitures contemplated by the Consent Order pursuant to the terms of the Consent Order.

e. Except for the management team, Reckitt & Colman shall not permit any other Reckitt & Colman employee, officer, or director to be involved in the management of the Carpet Deodorizer Assets or the Air Freshener Assets except to the extent the services of Reckitt & Colman's sales, marketing, and materials management personnel are necessary as set forth in subparagraph 4.a.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or defending or prosecuting litigation, or negotiating agreements to divest assets, Reckitt & Colman shall not receive or have access to, or the use of, any material confidential information not in the public domain about the Carpet Deodorizer Assets or the Air Freshener Assets or the activities of the management team in managing those businesses, nor shall the management team receive or have access to, or use of, any material confidential information not in the public domain about Reckitt & Colman's competing Carpet Deodorizer Products or Air Freshener Products businesses, or the activities of Reckitt & Colman in managing its Carpet Deodorizer Products or Air Freshener Products businesses. Reckitt & Colman may receive on a regular basis from the management team aggregate financial information necessary and essential to allow Reckitt & Colman to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in the subparagraph. (''Material confidential information'' as used herein, means competitively sensitive or proprietary information not independently known to Reckitt & Colman from sources other than the management team, including, but not limited to, customer lists, price lists, marketing methods (except to the extent marketing and sales plans need to be divulged to the Reckitt & Colman marketing and sales force in the ordinary course of business), patents, technologies, processes, or other trade secrets).

g. Nothing in this Hold Separate shall prohibit Reckitt & Colman from providing cash management, tax preparation and/or insurance functions for the Carpet Deodorizer Assets and the Air Freshener Assets heretofore provided by Reckitt & Colman. Reckitt & Colman personnel providing such support services must retain and maintain all material confidential information relating to the Carpet Deodorizer Assets and the Air Freshener Assets on a confidential basis and, except as permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing such information to or with any person whose employment involves any other Reckitt & Colman Carpet Deodorizer Product business or Rug Cleaning Products business. Reckitt & Colman personnel providing these support services to the Carpet Deodorizer Assets and the Air Freshener Assets shall execute a confidentiality agreement prohibiting the disclosure of any Carpet Deodorizer Assets or Air Freshener Assets confidential information.

h. Reckitt & Colman shall not change the composition of the management team, and the independent auditor/manager shall have the power to remove employees only for cause.

i. All material transactions, out of the ordinary course of business and not

precluded by Paragraph 4 hereof, shall be subject to a majority vote of the management team. In the case of a tie, the independent auditor/manager shall cast the deciding vote.

j. Reckitt & Colman shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of the Carpet Deodorizer Assets and the Air Freshener Assets and the conduct of the management team in accordance with this Consent Agreement. Reckitt & Colman shall also circulate to its employees and appropriately display a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Appendix A.

k. All earnings and profits from the Carpet Deodorizer Assets and the Air Freshener Assets shall be available for use in those businesses until divestiture. In computing earnings and profits for the Carpet Deodorizer Assets and the Air Freshener Assets, Reckitt & Colman may deduct from the revenues generated by the Carpet Deodorizer Assets and the Air Freshener Assets only direct product costs and indirect overheads allocated to those businesses.

l. Reckitt & Colman shall make available for use in the Carpet Deodorizer Assets and the Air Freshener Assets businesses until divestiture an amount not lower than those budgeted for 1995 and 1996 for advertising, trade promotion, and product development of the Reckitt & Colman Carpet Deodorizer Products and Air Freshener Products, and shall increase such spending as deemed reasonably necessary by the management team in light of competitive conditions. If necessary, Reckitt & Colman shall provide the management team with any funds to accomplish the foregoing.

m. Reckitt & Colman shall pay all direct product costs and indirect overheads for the Carpet Deodorizer Assets and the Air Freshener Assets businesses. The management team and the independent auditor/manager shall serve at the cost and expense of Reckitt & Colman, and the Carpet Deodorizer Assets and the Air Freshener Assets businesses shall not be charged with the compensation and expenses of the independent auditor/manager.

n. If the independent auditor/manager ceases to act or fails to act diligently, a substitute independent auditor/manager shall be appointed in the same manner as provided in subparagraph 4.b. of this Hold Separate. Any replacement for independent auditor/manager shall be appointed with the consent of the Commission.

o. Reckitt & Colman shall indemnify the management team and the independent auditor/manager against any losses or claims of any kind that might arise out of involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team or the independent auditor/manager.

p. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the efforts to accomplish the purposes of this Hold Separate.

5. To ensure the complete independence and viability of L&F and to assure that no competitive information is exchanged between L&F and Reckitt & Colman, Reckitt & Colman shall hold L&F as it is presently constituted separate and apart on the following terms and conditions:

a. L&F, as defined in paragraph I of the Consent Agreement, shall be held separate and apart and shall be operated independently of Reckitt & Colman, except to the extent that Reckitt & Colman must exercise direction and control over L&F to assure compliance with this Hold Separate Agreement, the Consent Order, or the Order in Docket No. C–3306.

b. Reckitt & Colman shall assign to L&F its rights under the transition services agreements and all supply agreements contemplated, respectively, by §§ 5.12 and 5.13 of the September 26, 1994, Asset Purchase Agreement among Eastman Kodak Company, L&F Products Inc., Sterling Winthrop Inc., and Reckitt & Colman plc; and, as contemplated by §§ 5.12 and 5.13 of the September 26, 1994 Asset Purchase Agreement, Sterling Winthrop Inc. (''Sterling'') personnel will continue the support and administrative services being provided by such Sterling personnel to L&F as of the date this Hold Separate was signed, and all arrangements, existing on the date this Hold Separate was signed, that provide for the supply by Sterling of materials to L&F will remain in place. Reckitt & Colman shall enforce all its rights to cause such Sterling personnel providing support and administrative services and maintaining existing supply arrangements to retain and maintain all material confidential information relating to L&F on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Reckitt & Colman business, including the Reckitt & Colman Rug Cleaning Products business.

c. Reckitt & Colman shall appoint four individuals, one each from among L&F's current employees working in L&F's marketing, sales, materials management, and finance operations to manage and maintain L&F. These individuals, (''the management team'') shall manage L&F independently of the management of Reckitt & Colman's other businesses. The management team shall not thereafter, until the Rug Cleaning Assets are divested pursuant to the Consent Order, be in any way involved in the marketing, selling or materials management of any competing Reckitt & Colman products.

d. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Reckitt & Colman. The independent auditor/manager shall have exclusive control over the operations of L&F with responsibility for the management of L&F and for maintaining the independence of those businesses. Provided, however, that the auditor/manager appointed pursuant to this Paragraph 5 shall not be the same auditor/manager appointed pursuant to Paragraph 4.

e. Reckitt & Colman shall not exercise direction or control over, or influence directly or indirectly, L&F, the independent auditor/manager or the management team or any of their operations relating to the operations of L&F; provided however, that Reckitt & Coleman may exercise only such direction and control over the Management team of L&F as is necessary to assure compliance with this Hold Separate, the Consent Order, and the Order in Docket No. C–3306.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or defending or prosecuting litigation, or negotiating agreements to divest assets, Reckitt & Colman shall not receive or have access to, or the use of, any material confidential information not in the public domain about L&F or the activities of the management team in managing L&F; nor shall L&F or the management team receive or have access to, or use of, any material confidential information not in the public domain about Reckitt & Colman's businesses, of the activities of Reckitt & Colman in managing its businesses. Reckitt & Colman may receive on a regular basis from L&F aggregate financial information necessary and essential to allow Reckitt & Colman to

prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. (''Material confidential information'' as used herein, means competitively sensitive or proprietary information not independently known to Reckitt & Colman from sources other than L&F or the management team including, but not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

g. Nothing in this Hold Separate shall prohibit Reckitt & Colman from providing cash management, tax preparation and/or insurance functions for L&F heretofore provided by Sterling or Kodak. Reckitt & Colman personnel providing such support services must retain and maintain all material confidential information relating to L&F on a confidential basis and, except as permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing such information to or with any person whose employment involves any other Reckitt & Colman Carpet Deodorizer Product business or Rug Cleaning Products business. Reckitt & Colman personnel providing these support services to L&F shall not be involved in any other Reckitt & Colman Carpet Deodorizer Products business or Rug Cleaning products business, and shall execute a confidentiality agreement prohibiting the disclosure of any L&F confidential information.

h. L&F shall be staffed with sufficient employees to maintain the viability and competitiveness of L&F, which employees shall be selected from L&F's existing employee base and may also be hired from sources other than L&F. Each director, officer and management employee of L&F shall execute a confidentiality agreement prohibiting the disclosure of any L&F confidential information.

i. Reckitt & Colman shall not change the composition of the management team and the independent auditor/manager shall have the power to remove employees only for cause.

j. All material transactions, out of the ordinary course of business and not precluded by Paragraph 5 hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

k. Reckitt & Colman shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of L&F and the conduct of the management team in accordance with this Consent Agreement.

l. All earnings and profits of L&F shall be retained separately by L&F. If necessary, Reckitt & Colman shall provided L&F with sufficient working capital to operate at the rate of operation in effect during the twelve (12) months preceding the date of this Hold Separate.

m. Reckitt & Colman shall cause L&F to continue to expend funds for the advertising, trade promotion, and product development of L&F products at levels not lower than those budgeted for 1995 and 1996, and shall increase such spending as deemed reasonably necessary by the management team in light of competitive conditions. If necessary, Reckitt & Colman shall provide L&F with any funds to accomplish the foregoing.

n. If the independent auditor/manager ceases to act or fails to act diligently, a substitute independent auditor/manager shall be appointed in the same manner as provided in subparagraph 5.d of this Hold Separate. Any replacement for independent auditor/manager shall be appointed with the consent of the Commission.

o. The management team and the independent auditor/manager shall serve at the cost and expense of Reckitt & Colman. Reckitt & Colman shall indemnify the management team and the independent auditor/manager against any losses or claims of any kind that might arise out of involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team or the independent auditor/manager.

p. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the efforts to accomplish the purposes of this Hold Separate.

6. Should the Commission seek in any proceeding to compel Reckitt & Colman to divest itself of the Carpet Deodorizer Assets or the Rug Cleaning Assets or any additional assets, as provided in the Consent Agreement, or to seek any other equitable relief, Reckitt & Colman shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Reckitt & Colman also waives all rights to contest the validity of this Hold Separate.

7. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Reckitt & Colman made to its principal office in the United States, Reckitt & Colman shall permit any duly authorized representative or representatives of the Commission:

a. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Reckitt & Colman or L&F relating to compliance with this Hold Separate; and

b. Upon five (5) days' notice to Reckitt & Colman, and without restraint or interference from it, to interview officers or employees of Reckitt & Colman or L&F, who may have counsel present, regarding any such matters.

8. This Hold Separate shall not be binding until approved by the Commission.

Appendix A—Divestiture and Requirement for Confidentiality

Reckitt & Colman has entered into a Consent Order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain Reckitt & Colman carpet deodorizer assets and products, including Carpet Fresh, Rug Fresh, Botanicals, and Airwick Neutra Air; or alternatively, if that divestiture is not accomplished within six months, the additional divestiture of certain Reckitt & Colman air freshener assets and products, including Airwick, Stick Ups, Air Waves, Wizard, Botanicals, and Airwick Neutra Air. Until such divestitures as are required by the Consent Order are accomplished, the Reckitt & Colman carpet deodorizer assets and products, including Carpet Fresh, Rug Fresh, Botanicals, and Airwick Neutra Air, and the Reckitt & Colman air freshener assets and products, including Airwick, Stick Ups, Air Waves, Wizard, Botanicals, and Airwick Neutra Air must be managed and maintained as a separate, ongoing business, independent of all other competing lines of Reckitt & Colman as provided by the Agreement to Hold Separate. All competitive information relating to these product lines must be retained and maintained by the persons responsible for the management of these products on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such information to or with any other

person whose employment involves any competing Reckitt & Colman carpet deodorizer or air freshener product. Similarly, all persons responsible for the management of any competing Reckitt & Colman carpet deodorizer product or air freshener product shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such information to or with any other person responsible for the Carpet Fresh, Rug Fresh, Botanicals, or Airwick Neutra Air carpet deodorizer products, or Airwick, Stick Ups, Air Waves, Wizard, Botanicals, and Airwick Neutra Air air freshener products.

Any violation of the Consent Order or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted subject to final approval an agreement containing a proposed consent order from Reckitt & Colman plc (''Reckitt & Colman'') to resolve competitive concerns with the proposed acquisition of certain assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc. Under the proposed order, Reckitt & Colman would divest assets relating to its carpet deodorizer products business and its rug cleaning products business (respectively, the ''Carpet Deodorizer Assets'' and the ''Rug Cleaning Assets'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether to withdraw from the agreement or make final the agreement's proposed order.

The draft complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 56 of the FTC Act, 15 U.S.C. § 45, as amended, in the market for carpet deodorizers. Additionally, Reckitt & Colman is already subject to a Commission order issued to settle charges that its previous acquisition of the Boyle-Midway Division of American Home Products Corporation violated Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 5 of the FTC Act, 15 U.S.C. § 45, as amended (*In the Matter of Reckitt & Colman plc,* FTC Docket No. C–3306). The Order in Docket No. C–3306 provides that for a period of ten (10) years Reckitt & Colman shall not acquire, without the prior approval of the Commission, any interest in, stock of, or any assets used in the rug cleaning products business. The proposed consent order would remedy the violation alleged in the draft complaint by requiring the divestiture of the Carpet Deodorizer Assets. Additionally, the proposed order would allow Reckitt & Colman to acquire L&F with the required prior approval of the Commission on the condition that Reckitt & Colman divest the Rug Cleaning Assets.

The proposed order would require Reckitt & Colman to divest the Carpet Deodorizer Assets within six (6) months after the proposed order becomes final. The proposed order also would require Reckitt & Colman to divest the Rug Cleaning Assets within six (6) months after the Commission approves Reckitt & Colman's acquisition of L&F pursuant to the Order in Docket No. C–3306.

Reckitt & Colman would also be required to divest, at the option of the acquirer of the Carpet Deodorizer Assets, the rights to use the Airwick brand name in connection with the manufacture and sale of carpet deodorizer products. In addition, Reckitt & Colman would be required to divest manufacturing equipment and facilities associated with the Carpet Deodorizer Assets and Rug Cleaning Assets at the acquirer(s)' option.

To help ensure the viability of the Carpet Deodorizer Assets and the Rug Cleaning Assets, Reckitt & Colman would be required to provide such personnel, information, assistance, advice, and training as are necessary to transfer these assets pursuant to the order and establish these businesses as viable, ongoing concerns. In addition, Reckitt & Colman would be required to assist the acquirer(s) in obtaining approvals for the transfer of all registrations, leases, licenses, certifications, permits, or other similar documents relating to the Carpet deodorizer Assets and the Rug Cleaning Assets.

If Reckitt & Colman fails to divest the Carpet Deodorizer Assets during the allotted time, a trustee could be appointed to divest, within twelve (12) months, the Carpet Deodorizer Assets and, in addition, assets relating to Reckitt & Colman's air freshener products business (''Air Freshener Assets''). If Reckitt & Colman does not divest the Rug Cleaning Assets within the allotted time, a trustee could be appointed to divest, within twelve (12) months, the Rug Cleaning Assets and, in addition, assets relating to Reckitt & Colman's Woolite fabric care products business (''Woolite Assets''). If, at the end of twelve months, the trustee submitted a plan of divestiture or believed that divestiture could be achieved within a reasonable time, the time period for divestiture could be extended by the Commission, or, in the case of a court-appointed trustee, by the court. The Commission, however, may extend this period only two (2) times.

A Hold Separate Agreement signed by a Reckitt & Colman provides that until divestiture of the Carpet Deodorizer Assets is completed, the Reckitt & Colman Carpet Deodorizer Assets and Air Freshener Assets businesses shall be held separate from and operated independently of Reckitt & Colman. The Hold Separate Agreement also provides that until the divestiture of the Rug Cleaning Assets required by the proposed order is completed, the L&F businesses being acquired by Reckitt & Colman shall be held separate from and operated independently of Reckitt & Colman.

The proposed order would require Reckitt & Colman, for a period of ten (10) years, to obtain the prior approval of the Commission before acquiring any interest in any other company engaged in the development, production, distribution, or sale for resale of carpet deodorizer products in the United States.

Under the proposed order, Reckitt & Colman would be required to provide to the Commission reports of its compliance with the divestiture provisions of the order sixty (60) days after the order becomes final and every sixty (60) days thereafter, until the divestitures have been completed.

Additionally, one year from the date the order becomes final and annually thereafter for nine (9) years, Reckitt & Colman would be required to provide to the Commission a report of its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–759 Filed 1–12–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅝% for the quarter ended December 31, 1994. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 4, 1995.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 95–917 Filed 1–12–95; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request to replace SSA–4972, OMB Control No. 0970–0038, which was discontinued in FY 1988, with ACF–4972. The new form, Quarterly Report of Recoveries of Overpayment, represents a reduction in the total annual paperwork burden which was required to prepare the form it replaces.

ADDRESSES: Copies of the request for approval may be obtained from Robert A. Sargis of the Office of Information Systems Management, ACF, by calling (202) 690–7275.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the following: Wendy Taylor, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, D.C. 20503 (202) 395–7316.

Information on Document

Title: ACF–4972

OMB No.:

Description: Quarterly Report of Recoveries of Overpayments ACF–4972 used to assess the effectiveness of State recovery efforts on outstanding overpayment benefits which were made in error to clients in the AFDC program.

Respondents: State Governments

Annual Number of Respondents: 51 sites

Number of responses per respondent: 4

Total annual responses: 204 sites

Hours per response: 40

Total Burden Hours: 8,160.

Dated: January 5, 1995.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 95–895 Filed 1–12–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request to extend the prior approval of the paperwork burden associated with the application required for the STATE DEPENDENT CARE GRANTS PROGRAM. This request is being made to extend the approval period from April of 1995 to April 1998. There is no change in the previously approved paperwork burden.

ADDRESSES: Copies of the request for approval may be obtained from Robert A. Sargis of the Office of Information Systems Management, ACF, by calling (202) 690–7275.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the following: Wendy Taylor, OMB Desk Officer for ACF, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Application for the State Dependent Care Grants Program

OMB No.:

Description: This application is used to determine States and Territories' eligibility for Federal funds under the State Dependent Care Grants Program.

Respondents: States and Territories

Annual Number of Respondents: 57 sites

Number of responses per respondent: 1

Total annual responses: 57 sites

Hours per response: 20

Total Burden Hours: 1,140.

Dated: January 5, 1995.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 95–896 Filed 1–12–95; 8:45 am]

BILLING CODE 4184–01–M

Administration of Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375 and Pub. L. 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, January 25, 1995, from 1 PM to 4 PM. The meeting will be held in room 216, Hart Senate Office Building, Constitution and Delaware Avenues, NE., Washington, DC.

The meeting of the Committee shall be open to the public. The proposed agenda includes discussion and voting on the final agenda for the May Conference which will be published in the **Federal Register**.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Dated: January 10, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–918 Filed 1–12–95; 8:45 am]

BILLING CODE 4130–02–M

Agency for Toxic Substances and Disease Registry

Public Meeting of the Native American Working Group in Association With the Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Meeting of the Native American Working Group (NAWG), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee.

Time and Date: 1 p.m.–5 p.m., January 24, 1995.

Place: Holiday Inn Crowne Plaza Hotel, 1113 Sixth Avenue, Seattle, Washington 98101, telephone (206) 464–1980, FAX (206) 340–1617.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, an Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of NAWG is part of these efforts. NAWG will work with the Hanford Health Effects Subcommittee to provide input on Native American health effects at the Hanford site.

Purpose: The purpose of this meeting of NAWG is to discuss Native American issues concerning health effects and issues related to site restoration and waste management options at the Hanford, Washington, DOE site.

Matters to be Discussed: Items to be discussed will include: (1) the effects on public health—past, current, and future—of the release of radioactive and hazardous materials into the environment at Hanford, and (2) proposed actions based on the findings of health research and public health activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, ATSDR Health Council Advisor, 1600 Clifton Road, NE, Mailstop E–28, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: January 6, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–884 Filed 1–12–95; 8:45 am]

BILLING CODE 4163–70–M

Agency For Toxic Substances and Disease Registry

[ATSDR–89]

Availability of Draft Health Consultation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(4)] states that the Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of the Environmental Protection Agency, State officials, and local officials. In response to such a request, ATSDR has developed a chemical-specific health consultation report designed to address specific questions with regard to current drinking water standards. This notice announces, for review and comment, the availability of this chemical-specific health consultation report prepared by ATSDR on 1,4-dioxane.

DATES: To ensure consideration, comments on this health consultation report must be received on or before January 30, 1995. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based on what is in the best interest of the general public.

ADDRESSES: Requests for copies of the chemical specific health consultation report and comments concerning it should be sent to the attention of Ms. Kim Jenkins, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E29, Atlanta, Georgia 30333.

Requests for the health consultation report must be in writing. ATSDR reserves the right to provide only one free copy of the document to each requestor.

Written comments and other data submitted in response to this notice and the health consultation report must bear the docket control number ATSDR–89. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and the health consultation report will be available for public inspection at ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8:00 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Jenkins, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E29, Atlanta, Georgia 30333, telephone (404) 639–6357.

SUPPLEMENTARY INFORMATION: Health consultations are ATSDR actions that provide advice and recommendations on specific, health-related questions associated with actual or potential human exposure to hazardous substances as defined in CERCLA, as amended, or any other associated human health hazards.

Dated: January 6, 1995.

Jack Jackson,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–885 Filed 1–12–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance wtih section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 8:30 a.m.-4:30 p.m., Monday, January 30, 1995.

Place: Rhodes Building, 4th Floor Conference Room, 3005 Chamblee-Tucker Road, Atlanta, Georgia 30341, telephone 404/488–5000. (Exit Chamblee-Tucker Road off I–85).

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce risk factors, morbidity, and mortality from diabetes and its complications. The committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provisions of services to people with diabetes.

Matters to be Discussed: Committee members will discuss CDC's role in primary prevention, the National Diabetes Education Program, screening issues, the Regenstreif Conference, Policy and economic activities, and the status of the Diabetes Control Programs and health communication.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Cheryl Shaw, Program Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5004.

Dated: January 9, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–886 Filed 1–12–95; 8:45 am]

BILLING CODE 4163–18–M

Poverty-Associated Mental Retardation Prevention Technical Assistance Workshop; Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Poverty-Associated Mental Retardation (PAMR) Prevention Technical Assistance Workshop for Planning Grant Recipients.

Time and Date: 8:30 a.m.–4:30 p.m., January 30, 1995.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public limited only by the space available.

Purpose: The primary purpose of this workshop is to provide technical assistance to recipients of CDC grants as they plan programs to prevent PAMR. The workshop is not designed to provide general information on mental retardation or on prevention of PAMR.

Supplementary Information: The workshop will convene a group of recipients of CDC PAMR Planning Grants.

Seven of every 1,000 ten-year old children suffer from mild mental retardation, and three of every 1,000 suffer from more serious mental retardation. Poor children, especially those whose mothers have less than a high school education, are at risk for cognitive delay of as much as one standard deviation of IQ (15 points) at age three. Studies such as the Infant Health and Development Program and the Carolina Abecedarian Project have proven that an intensive early health and development intervention can prevent or reduce as much as two-thirds of PAMR. CDC is actively involved in research and planning to help States develop a community-based program to prevent PAMR.

Contact Person for Additional Information: Edward A. Brann, M.D., Chief, Mental Retardation Prevention Section, Developmental Disabilities Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–15, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–7400.

Dated: January 6, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–883 Filed 1–12–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0455]

American Science and Engineering, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Science and Engineering, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of X-radiation, produced by the operation of X-ray tubes at energy levels of 500,000 electron volts (500 keV) or lower, to inspect cargo containers that may contain food.

DATES: Written comments on the petitioner's environmental assessment by February 13, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5M4438) has been filed by American Science and Engineering Inc., 40 Erie St., Cambridge, MA 02139–4286. The petition proposes to amend the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) to provide for the safe use of X-radiation, produced by the operation of X-ray tubes at energy levels of 500 keV or lower, to inspect cargo containers that may contain food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 13, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the

petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 6, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–897 Filed 1–13–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–089–N]

RIN 0938–AG61

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the preliminary Federal fiscal year (FFY) 1995 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act (the Act) and implementing regulations at 42 CFR 447.297 through 447.299. The preliminary FFY 1995 State DSH allotments published in this notice will be superseded by final FFY 1995 DSH allotments to be published in the **Federal Register** by April 1, 1995.

EFFECTIVE DATE: The preliminary DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1995.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 966–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1923(f) of the Social Security Act (the Act) and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the **Federal Register** the national target and each State's allotment for disproportionate hospital share (DSH) payments for each Federal fiscal year (FFY). DSH payments are payment adjustments made to Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. Preliminary amounts must be published by October 1 of each FFY and final amounts by April 1 of each FFY.

The implementing regulations provide that the national aggregate DSH limit for a FFY is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY. (**Note**: Whenever the phrases ''total medical assistance expenditures'' or ''total administrative costs'' are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the ''State DSH allotment''.

Each State's DSH allotment for FFY 1995 is calculated by first determining whether the State is a ''high-DSH State,'' or a ''low-DSH State.'' This is determined by using the State's ''base allotment.'' A State's base allotment is the greater of: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a ''high-DSH State.'' The FFY 1995 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a ''low-DSH State.'' The FFY 1995 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1994 increased by growth amounts and supplemental amounts, if any. However, the FFY 1995 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1995 (excluding administrative costs).

The growth amount for FFY 1995 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1994 and FFY 1995 multiplied by the State's final DSH allotment for 1994. Because the national DSH limit is considered a target, a low-DSH State whose program grows from one year to the next can receive a growth amount that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between fiscal years FFY 1994 and FFY 1995. Furthermore, because a low-DSH State's FFY 1995 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1995 DSH allotment to be lower than its FFY 1994 DSH allotment. This situation occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. This situation did not occur for FFY 1995. Consequently, there are no States with preliminary FFY 1995 State DSH allotments that are lower than the final FFY 1994 State DSH allotments.

There is no supplemental amount available for redistribution for FFY 1995. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12-percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1995 national 12 percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1995.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1 million.

As an exception to the above requirements, under section 1923(f)(1)(A)(i)(II) of the Act and regulations at 42 CFR 447.296(b)(5) and 447.298(f), a State may make DSH payments for a FFY in accordance with the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the

Act. Nebraska's preliminary State DSH allotment has been determined in accordance with this exception.

We are publishing in this notice the preliminary FFY 1995 national DSH target and State DSH allotments based on the best available data we have at this time from the States as adjusted by HCFA. This data is taken from each State's August 1994 Form HCFA–37 and is adjusted as necessary. The final FFY 1995 DSH allotments will be published in the **Federal Register** by April 1, 1995.

II. Calculations of the Preliminary FFY 1995 DSH Limits

The total of the preliminary State DSH allotments for FFY 1995 is equal to the sum of the base allotments for all high-DSH States, the FFY 1994 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1995, we classified that State as a ''high-DSH'' State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan under title XIX of the Act in FFY 1995, we classified that State as a ''low-DSH'' State. There are 34 low-DSH States and 16 high-DSH States for FFY 1995 as a result of this classification.

Using the most recent data from the August 1994 budget projections (Form HCFA–37), we estimate the States' FFY 1995 national total medical assistance expenditures to be $155,059,961,000. Thus, the overall preliminary national FFY 1995 DSH expenditure target is approximately $18.6 billion (12 percent of $155.1 billion).

In addition, in the preliminary FFY 1995 State DSH allotments we provide a total of $752,609,000 ($417,509,000 Federal share) in growth amounts for the 34 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1994 and FFY 1995. To compute this percentage, we first ascertained each low-DSH State's estimate of total FFY 1994 medical assistance and administrative expenditures as reported on the State's Medicaid Budget Report (Form HCFA–37) submitted in August 1994. Next, we compared those estimates to each low-DSH State's total estimated unadjusted FFY 1995 medical assistance and administrative expenditures as reported to HCFA on the State's August 1994 Form HCFA–37 submission.

The growth factor percentage was multiplied by the low-DSH State's final FFY 1994 DSH allotment amount to establish the State's preliminary growth amount for FFY 1995.

Since the sum of the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the growth for low-DSH States ($19,242,708,000) is greater than the preliminary FFY 1995 national target ($18,607,195,000), there is no preliminary FFY 1995 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1994 DSH allotment amount to establish the preliminary total low-DSH State DSH allotment for FFY 1995. If a State's growth amount, when added to its final FFY 1994 DSH allotment amount, exceeds 12 percent of its FFY 1995 estimated medical assistance expenditures, the State only receives a partial growth amount which, when added to its final FFY 1994 allotment, limits its total State DSH allotment for FFY 1995 to 12 percent of its estimated FFY 1995 medical assistance expenditures. For this reason, seven of the low-DSH States received partial growth amounts.

As we explained above, in accordance with the minimum payment adjustments required by Medicare methodology, Nebraska's preliminary FFY 1995 State DSH allotment is $11 million.

In summary, the total of all preliminary State DSH allotments for FFY 1995 is $19,242,708,000 ($10,978,517,000 Federal share). This total is composed of the prior FFY's final State DSH allotments ($18,490,099,000) plus growth amounts for all low-DSH States ($752,609,000) plus supplemental amounts for low-DSH States ($0). The total of all preliminary FFY 1995 State DSH allotments is 12.6 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1995. The total of all preliminary DSH allotments for FFY 1995 is $635,513,000 over the FFY 1995 preliminary national target amount of $18,607,195,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1995 to ensure that its actual FFY 1995 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1995 which will be published by April 1, 1995. As the ongoing reconciliation between actual FFY 1995 DSH payment adjustment expenditures and the final FFY 1995 DSH allotments takes place, each State should amend its plans as may be necessary to make any adjustments to its FFY 1995 DSH payment adjustment expenditure patterns so that the State will not exceed its final FFY 1995 DSH allotment.

The FFY 1995 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1995. In addition, additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1995 will continue to be reconciled back to each State's final FFY 1995 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1995 DSH allotment is not exceeded. Any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed.

Any DSH expenditures that are disallowed will be subject to the normal Medicaid disallowance procedures.

III. Preliminary FFY 1995 DSH Allotments Under Public Law 102–234

KEY TO CHART

Column		Description
Column A	=	Name of State.
Column B	=	Final FFY 1994 DSH Allotments For All States. For a high-DSH State, this is the State's base allotment which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1994 which was published in the **Federal Register** on May 2, 1994.

KEY TO CHART—Continued

Column		Description
Column C	=	Growth Amounts For Low-DSH States. This is an increase in a low-DSH State's final FFY 1994 DSH allotment to the extent that the State's Medicaid program grew between FFY 1994 and FFY 1995.
Column D	=	Preliminary FFY 1995 State DSH Allotments. For high DSH States this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1994 from column B plus the growth amounts from column C and the supplemental amounts, if any, from column D.
Column E	=	High or Low DSH State Designation. ''High'' indicates the State is a high-DSH State and a ''Low'' indicates the State is a low-DSH State.

PRELIMINARY FEDERAL FISCAL YEAR 1995 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234 AMOUNTS ARE STATE AND FEDERAL SHARES

[Dollars are in thousands(000)]

State	Final FFY 94 DSH allotments for all states	Growth amounts for low DSH states (1)	Preliminary FFY 95 state DSH allotments	High or low DSH state designation
A	B	C	D	E
AL	$417,458	NOT APPLICABLE	$417,458	HIGH.
AK	$19,589	$1,273	$20,862	LOW.
AR	$3,039	$203	$3,242	LOW.
CA	$2,191,451	NOT APPLICABLE	$2,191,451	HIGH.
CO	$302,014	NOT APPLICABLE	$302,013	HIGH.
CT	$408,933	NOT APPLICABLE	$408,933	HIGH.
DE	$5,924	$1,063	$6,986	LOW.
DC	$41,039	NOT APPLICABLE	$41,039	LOW.
FL	$286,478	$76,223	$362,701	LOW.
GA	$382,344	$34,880	$417,224	LOW.
HI	$64,078	$3,887	$67,965	LOW.
ID	$1,985	$126	$2,111	LOW.
IL	$394,993	$69,434	$464,427	LOW.
IN	$336,799	$31,516	$368,315	LOW.
IA	$5,497	$689	$6,186	LOW.
KS	$188,935	NOT APPLICABLE	$188,935	HIGH.
KY	$264,289	NOT APPLICABLE	$264,289	HIGH.
LA	$1,217,636	NOT APPLICABLE	$1,217,636	HIGH.
ME	$165,317	NOT APPLICABLE	$165,317	HIGH.
MD	$129,543	$15,000	$144,543	LOW.
MA	$567,128	$19,052	$586,180	LOW.
MI	$617,700	$67,497	$685,197	LOW.
MN	$55,394	$5,225	$60,618	LOW.
MS	$158,464	$16,481	$174,946	LOW.
MO	$731,894	NOT APPLICABLE	$731,894	HIGH.
MT	$1,300	$78	$1,378	LOW.
NE(2)	$11,000	NOT APPLICABLE	$11,000	LOW.
NV	$73,560	NOT APPLICABLE	$73,560	HIGH.
NH	$392,006	NOT APPLICABLE	$392,006	HIGH.
NJ	$1,094,113	NOT APPLICABLE	$1,094,113	HIGH.
NM	$15,757	$1,743	$17,501	LOW.
NY	$2,831,864	$206,729	$3,038,594	LOW.
NC	$389,266	$49,413	$438,679	LOW.
ND	$1,155	$38	$1,193	LOW.
OH	$566,925	$73,044	$639,969	LOW.
OK	$23,568	$529	$24,097	LOW.
OR	$25,058	$5,537	$30,594	LOW.
PA	$967,407	NOT APPLICABLE	$967,407	HIGH.
RI	$94,432	$7,705	$102,137	LOW.
SC	$439,759	NOT APPLICABLE	$439,759	HIGH.
SD	$1,302	$137	$1,439	LOW.
TN	$430,611	NOT APPLICABLE	$430,611	HIGH.
TX	$1,513,029	NOT APPLICABLE	$1,513,029	HIGH.
UT	$5,514	$651	$6,165	LOW.
VT	$26,662	$1,351	$28,013	LOW.
VA	$185,746	$26,038	$211,785	LOW.
WA	$307,993	$33,210	$341,202	LOW.
WV	$121,883	$1,710	$123,592	LOW.
WI	$10,881	$1,978	$12,859	LOW.
WY	$1,389	$170	$1,559	LOW.
TOTAL	$18,490,099	$752,609	$19,242,708	,

PRELIMINARY FEDERAL FISCAL YEAR 1995 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234 AMOUNTS ARE STATE AND FEDERAL SHARES—CONTINUED

[Dollars are in thousands(000)]

State	Final FFY 94 DSH allotments for all states	Growth amounts for low DSH states (1)	Preliminary FFY 95 state DSH allotments	High or low DSH state designation
A	B	C	D	E
NOTES:.				

(1) There was 1 low DSH State which had negative growth and 7 low DSH States which got partial growth up to 12% of FFY 95 Map.
(2) Allotment based upon minimum payment adjustment amount.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the preliminary FFY 1995 national aggregate DSH target and the preliminary FFY 1995 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we are now interpreting the 12-percent limit as a target. Low-DSH States will get their base allotments plus their growth amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 28, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 16, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 95–850 Filed 1–12–95; 8:45 am]

BILLING CODE 4120–01–P

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, November 25, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Supplemental Security Income Notice of Interim Assistance Reimbursement (TWO FORMS)—0960–NEW. Forms SSA–8125 and SSA–L8125 will collect interim assistance reimbursement (IAR) information from States which provide such reimbursement. Form SSA–8125 will be used in most cases. The use of form SSA–L8125 will be limited to situations where a person is collecting Supplemental Security Income payments because of disability due to drug abuse or alcoholism. The respondents will be States who provide IAR.

Number of Respondents: 140,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 23,333 hours.

2. Pre-1957 Military Service Federal Benefit Questionnaire—0960–0120. The information on form SSA–2512 is used by the Social Security Administration to establish whether the wage earner's military service may be used to determine entitlement to or the amount of any Social Security benefit payable. The respondents are claimants who are applying for Social Security benefits on a record where the wage earner has pre-1957 military service.

Number of Respondents: 56,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 9,333 hours.

3. Reconsideration Report for Disability Cessation—0960–0350. The information on form SSA–782 is used by the Social Security Administration to obtain additional information and evidence to support requests for reconsideration. The respondents are claimants under Title II and Title XVI of the Social Security Act who file a request for reconsideration of disability benefits.

Number of Respondents: 11,550.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 5,775 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: January 9, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–924 Filed 1–12–95; 8:45 am]

BILLING CODE 4190–29–P–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–19]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing-and-speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Land, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*et seq.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; U.S. Air Force: Carol Xander, Area–MI, Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332–5113; (202) 767–6235; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM–20, Forrestal Bldg., Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: January 6, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/13/95

Suitable/Available Properties

Buildings (by State)

Idaho

Bldg. 611
Mountain Home Air Force Base
Mountain Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189440016
Status: Underutilized
Comment: 3200 sq. ft., 1 story wood frame, needs repair, presence of lead base paint and asbestos, most recent use—base chapel

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Family Housing & Land
Borealis Street
Tok Co: SE Fairbanks AK 99780–
Landholding Agency: DOT
Property Number: 879440029
Status: Excess
Comment: Bachelors quarters and bldg. w/ duplex family housing units, 2050 sq. ft. ea., 2 story, wood frame, fair condition, currently under lease.

Unsuitable Properties

Buildings (by State)

Connecticut

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton CT
Landholding Agency: Navy
Property Number: 77951001
Status: Unutilized
Reason: Secured Area

Illinois

Bldg. 24
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 25
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510002
Status: Unutilized
Reason: Extensive deterioration
Bldg. 822
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 823
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510004
Status: Unutilized
Reason: Extensive deterioration

New York

Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway, Extensive deterioration, GSA Number: 2–4–NY–817.

[FR Doc. 95–799 Filed 1–12–95; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–95–3866; FR–3850–N–01]

Notice of Sale of HUD-Held Multifamily Mortgage Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces the Department's intention to sell nonperforming, unsubsidized mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive auction. This notice also describes the bidding process for these loans. This notice ensures compliance with the Department's mortgage sale regulations.

DATES: Bid Packages will be available in February 1995.

ADDRESSES: Interested parties may request a Bid Package by sending a written notice to Hamilton Securities Group, Inc., 1410 Q Street, NW., Washington, DC 20009, Attention: Mr. Richard Karsch. When the information is available, it will be forwarded by regular mail. Parties may make special arrangements to receive the information through the post office's next- or second-day services.

A due diligence facility will be located at 733 15th Street, NW., Suite 800, Washington, DC 20005. The facility will be open to the public between the hours of 9 a.m. and 6 p.m., Monday through Friday. Interested parties wanting access to the facility must contact Mr. Ron Hughes at (202) 639–9700, to schedule access time.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Office of the Housing-FHA Comptroller, Room 5144, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 401–0577. Hearing- or speech-impaired individuals may call (202) 708–4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In accordance with the final rule published in the **Federal Register** on September 22, 1994 (59 FR 48726) (Mortgage Sale Regulations), and specifically with § 290.202 of that rule (59 FR 48731), the Department announces its intention to sell nonperforming, unsubsidized mortgage loans (Mortgage Loans). The first of these Mortgage Loans encumber properties located in the southeastern United States (Southeast Mortgage Sale). A final listing of the specific properties involved in the Southeast Mortgage Sale will be included in the Bid Package. The Mortgage Loans will be sold without Federal Housing Administration (FHA) insurance. The Department will offer interested parties an opportunity to bid competitively on the Mortgage Loans. Bids may be offered for one or all of the Mortgage Loans, as well as for any combination of Mortgage Loans. The Department will accept those bids that optimize the gross proceeds from the sale.

The Bidding Process

The Department will describe the procedure for participating in the Southeast Mortgage Sale in a Bid Package, which will include a standardized nonnegotiable loan sale agreement (Sales Agreement), as well as pertinent information concerning each of the Mortgage Loans, such as the unpaid principal balance and interest rate. The Department will distribute the Bid Package for a period of 6 weeks prior to the date that bids are due (Bid Date). Bid Packages will be available in February 1995. Interested parties may request a Bid Package by sending a written notice to the address specified in the **ADDRESSES** section, above, of this notice.

Bidders must include a 5 percent deposit with their bids. If a bidder submits multiple bids, the deposit will be limited to 5 percent of the bidder's largest bid amount. The successful bidders will be notified within 3 business days after the Bid Date (Award Date). An additional 5 percent deposit is required from each successful bidder within 2 business days after the Award Date. If a bidder submits multiple bids, the additional deposit will be limited to 5 percent of the bidder's largest bid amount. The Department will assign its interest in a Mortgage Loan to a successful bidder 60 days after the Award Date. If the successful bidder fails to abide by the terms of the Sales Agreement, including paying the Department any remaining sums due pursuant to the Sales Agreement and closing within the time period provided by the Sales Agreement, the Department shall retain and accept as liquidated damages any deposit from the successful bidder.

Due Diligence Facility

During the 6 week distribution period for Bid Packages, a due diligence facility will be available to interested parties, at which the Department will provide information such as environmental and title reports and market data. The facility will be located at the address specified in the **ADDRESSES** section, above, of this notice. The Department anticipates that information will be available in both electronic and hard copy forms. The Department reserves the right to charge a reasonable fee to recover its costs in duplicating and forwarding any information requested by an interested party.

Mortgage Sale Policy

The Department reserves the right to add or delete Mortgage Loans to the Southeast Mortgage Sale at any time prior to the sale. The Department also reserves the right to reject any and all bids, without prejudice to the Department's right to include any Mortgage Loans in a later sale.

Persons or entities that are debarred from doing business with the Department, pursuant to 24 CFR part 24, may not participate in this sale.

These are the essential terms of sale; the Sales Agreement will provide additional details. To ensure a competitive bidding process, the terms of sale are not subject to negotiation.

This notice is to ensure compliance with the Mortgage Sale Regulations. These regulations were promulgated in consideration of the settlement that the Department entered into in *Walker* v. *Kemp*, No. C 87 2628 RFP (N.D. Cal.). In settling the matter, the Department agreed, with regard to specific mortgages, to consider, prior to the sale of such mortgages, certain factors pertaining to the protection of tenant interests in subsidized projects with

HUD-held mortgage loans. By following the Mortgage Sale Regulations, the Department is in compliance with the terms of the settlement.

This is a sale of nonperforming, unsubsidized mortgage loans. Therefore, the Department has determined that pursuant to the Mortgage Sale Regulations, these loans may be sold without FHA insurance. At this time, the Department knows of no Mortgage Loans securing projects (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage (59 FR 48731, § 290.202). If the Department determines that there are any such Mortgage Loans, they will be removed from this sale.

Mortgage Loan Sale Procedure

The Department selected a competitive auction as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, mortgages must be sold on a competitive basis (59 FR 48730, § 290.200(a)). This method of sale optimizes the Department's return on the sale of these Mortgage Loans, affords the greatest opportunity for all interested parties to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for the Department to dispose of the Mortgage Loans.

The Department previously considered and discussed with industry participants a loan sale procedure that afforded the borrowers the opportunity to acquire their Mortgage Loans on a noncompetitive basis prior to offering the Mortgage Loans for sale to all other interested parties (Borrower Settlement Option). For the reason set forth above, however, the Department decided to dispose of these Mortgage Loans through a competitive auction.

Application of Replacement Reserve to Indebtedness

Before a Mortgage Loan is assigned to a successful bidder, the Department will apply the funds in the replacement reserve account to the amount due the Department under the mortgage. The Department decided to take this action because it is selling the Mortgage Loans without insurance, and thus the regulatory agreements terminate when the Department assigns the Mortgage Loans to the successful bidders.

Scope of Notice

This notice applies to the Southeast Mortgage Sale, and odes not establish the Department's policy for the sale of other mortgage loans.

Dated: January 9, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–957 Filed 1–12–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–94–5101–10–K014; WYW–130382]

Kenetech Windpower, Wyoming Wind Energy Project; Availability of Draft Environmental Impact Statement

AGENCIES: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS) for the Kenetech Windpower, Wyoming Wind Energy Project, Carbon County, Wyoming.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office has prepared a DEIS on the potential impacts of a proposed wind energy project. A total of 1,390 wind turbines and associated facilities (including approximately 29 miles of 230 kV powerline) would be constructed on 62,000 acres (25,091 hectares) of private, Federal and State lands, over a 10–12 year development period, in Carbon County, Wyoming. If the project is approved, the BLM will issue a right-of-way grant under section 501 of the Federal Land Policy and Management Act of 1976 for the wind energy facilities and powerline. The U.S. Bonneville Power Administration (BPA) is a cooperating agency and will base a decision to purchase 25 MW of power, under Public Law 96–501, upon this analysis.

DATES: Comments on the DEIS will be accepted through March 20, 1995. Public Meetings will be held at the Jeffrey Center, Third and Spruce Streets, Rawlins, Wyoming, on February 8, 1995, at 7:00 p.m., and on February 9, 1995, at the Albany County Public Library, Large Meeting Room, 310 S. 8th Street, Laramie, Wyoming, at 7:00 p.m.

ADDRESSES: Comments should be sent to Bureau of Land Management, Rawlins District Office, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301 or Bonneville Power Administration, Richard Stone, Environmental Specialist (ECN–3), P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301, phone number 307–324–7171 or Bonneville Power Administration, Richard Stone, Environmental Specialist (ECN–3), P.O. Box 3621, Portland, Oregon 97208, phone number 503–230–3797.

SUPPLEMENTARY INFORMATION: Kenetech Windpower proposes to construct a 500 (MW) Wind Energy Project to be located on Foote Creek Rim and Simpson Ridge in Carbon County, Wyoming. The project area is located approximately 40 miles (64.36 Km) southeast of Rawlins, and 40 miles (64.36 Km) northwest of Laramie, Wyoming. The Foote Creek Rim portion is in all or portions of approximately 10 sections in Townships l9N and 20N, Ranges 78W and 79W north and west of Arlington. The Simpson Ridge portion is in all or portions of 92 sections in Townships 20N, 21N, and 22N, Ranges 80W and 81W south of Hanna. Land ownership in the project area is approximately 62 percent private, 28 percent public (administered by BLM), and 10 percent State of Wyoming.

The project will be constructed in phases over a 10–12 year period. The first phase, involving 70.5 MW of electrical power generated by 201 Wind Turbine Generators (WTGs), would be constructed on Foote Creek Rim in 1995–1996. Later phases would involve 50 MW (approximately 75 WTGs/50 MW) increases per year, as utility contracts are approved, until the 500 MW capacity is reached (for a total of 1,390 WTGs). BLM would issue Notices to Proceed for subsequent phases following a review of site-specific proposals (Plans of Development) and monitoring data for consistency with this analysis. Ancillary facilities include, but are not limited to:

1. Above and below-ground electric
2. Communication lines
3. Access roads
4. Substations
5. Control/maintenance building
6. Transformer sites

The Bonneville Power Administration, Department of Energy, a Cooperating Agency for the EIS, will execute a power purchase contract to purchase 25 MW of electricity from the Foote Creek Rim phase of the project under BPA's Resource Supply Expansion Program.

The wind turbines will be erected on 80 to 120 feet (24 to 37 meters) tubular

towers with height determined by specific meteorological and geographic characteristics. The WTGs are variable speed, up-wind, three-fiberglass-bladed machines with a rotor diameter of 108 feet (33 meters). The WTGs will be spaced approximately 162 to 216 feet (49 to 66 meters) apart with approximately 1,080 to 1,620 feet (329 to 494 meters) between each row.

The electrical utility interconnection is with the PacifiCorp 230 kV system at the Miner's substation at Hanna, Wyoming. A wood pole 230 kV line would be erected from the project site northwest, approximately 29 miles (40 Km), to the Miner's substation.

The DEIS analyzes impacts from the proposed action, a 300 MW alternative (Alternative A), and the No Action Alternative. Alternative project locations, reduced project area, construction phasing alternatives, and alternative generating sources were considered but not analyzed in detail.

The DEIS identifies potentially significant impacts to:

1. Big game crucial habitat and movement patterns
2. Avian mortality from collisions with turbine blades
3. Loss of sage grouse habitat
4. Disturbance of native American religious or culturally significant sites
5. Modification of basic elements of visual resources in the project area

Dated: January 9, 1995.

Robert A. Bennett,

Acting State Director.

[FR Doc. 95–908 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–22–P

[CA–050–05–1220–00]

Availability of an Environmental Assessment Amending the Arcata Resource Management Plan for the Samoa Peninsula Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Land Management has available the draft environmental assessment which amends the existing Arcata Resource Area Management Plan addressing the Samoa Peninsula Management Area. This area includes both the Samoa Dunes parcel, (T.5N.,R.1W., Sec. 31, S½ & T.4N.,R.1w. Sec.6) and the Manila Dunes parcel, (T.6N.,R.1W.,parts of Sec. 26,27,34, and 35). This notice is being furnished to inform the public of the documents availability and to begin the 30 day public comment period.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, at Bureau of Land Management, Arcata Resource Area, 1125 16th Street, Room 219, Arcata, CA 95521. Telephone: (707) 822–7648.

SUPPLEMENTARY INFORMATION: The environmental assessment was prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5–5). Issues and concerns addressed in the environmental assessment focus on key land use management changes.

The changes are to:

Close the Manila Dunes parcel to off-Highway-Vehicle use.
Close the Samoa Dunes parcel nightly, to reduce crime and vandalism;
Prohibit crossbow/bow shooting from both parcels;
Conduct native dune plant habitat restoration and research.

The environmental assessment is available for public review. Availability has also been published in county and state newspapers. There will be a 30 day comment period beginning the date in which this notice appears in the **Federal Register**. Public comments should be mailed in writing to the above address.

Lynda J. Roush,

Area Manager.

[FR Doc. 95–909 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–05–7122–00–5540; AZA–28922, AZA–28547, AZA–28543, AZA–28545, and AZA–23489]

Notice of Realty Action: Noncompetitive Sale of Public Lands in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale.

SUMMARY: The following described lands has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at not less than the estimated fair market value. Improvements have existed on the parcels for a number of years and sale has been determined to be the most desirable solution to resolve long standing unauthorized uses. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian

T. 23 N. R. 18 W., section 3, lots 34, 35, 36 and 37 (Chloride, AZ)
T. 13 N. R. 10 W., section 8, lot 1 (Nothing, AZ)

The lands described above are hereby segregated from appropriated under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to the following individuals:

File No.	Parcel	Offered to	Acres
AZA–28922.	Lot 34	Adjacent land-owners.	0.31
AZA–28547.	Lot 35	Mrs. Maxie Mitchell.	.37
AZA–28543.	Lot 36	Ms. Valera Rucker.	.06
AZA–28545.	Lot 37	Mr. Seth John-son.	.23
AZA–23489.	Lot 1	Mr. Rich-ard Kenwor-thy.	3.65

If it is determined that the subject parcels contain no known mineral values, the mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patents, when issued, will contain certain reservations to the United States and will be subject to any valid existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Kingman Resource Area Office. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the Kingman Resource Area Manager, 2475 Beverly Avenue, Kingman, Arizona 86401. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

January 5, 1995.

Gordon L. Cheniae,

District Manager.

[FR Doc. 95–852 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–32–M

[UT–060–05–4320–03]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed plan amendment and protest period.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the Grand Resource Management Plan

(RMP) for the Grand Resource Area, Grand and San Juan Counties, Utah. The Proposed Amendment is for the purpose of (1) livestock grazing use adjustments; (2) flexibility to modify grazing season; and (3) allowance to consider future proposals for livestock use adjustments.

The Livestock Requirements under current management actions are proposed to be amended. The proposed plan amendment would (1) allow for Livestock Grazing Use Adjustments on the following livestock grazing allotments: Cisco, Bogart, Diamond, Cottonwood, Main Canyon, Middle Canyon, South Sand Flats, North Sand Flats, Between The Creeks, and Arth's Pasture. A portion of the forage previously reserved for livestock would be reallocated to non-livestock purposes (enhancement of wildlife, riparian vegetation, watershed, and recreation values). In total, over 6,000 Animal Unit Months are proposed to be reallocated from livestock to non-livestock purposes; (2) allow additional flexibility to modify the grazing season of use for individual allotments; and (3) allow for future proposals to make adjustments in Livestock Grazing Use within the resource area.

DATES: The protest period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Brad Palmer, Grand Resource Area Manager, 82 East Dogwood, Suite G, Moab, Utah 84532, telephone (801) 259–8193. Copies of the environmental assessment and proposed amendment are available for review at the Grand Resource Area Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be SPECIFIC and must contain at a minimum the following information:

—The name, mailing address, telephone number, and interest of the person filing the protest.

—A statement of the issue or issues being protested.

—A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.

—A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protestor believes the BLM State Director's decision is incorrect.

Protests must be received by the Director of the Bureau of Land Management (WO–760), MS 406 L St., 1849 C Street NW, Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the proposed plan amendment.

G. William Lamb,

Acting State Director.

[FR Doc. 95–881 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–PQ–P

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of revised Outer Continental shelf protraction diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following Louisiana Leasing Maps, last revised on the date indicated, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

*REVISED MAPS

Description	Latest revision date
South Timbalier Area, LA–6.	December 30, 1994.
Bay Marchand Area, LA–6C.	December 30, 1994.

*Changes include separation of Louisiana Leading Map South Timbalier and Bay Marchand Areas, LA–6, to form individual Louisiana Leasing Maps South Timbalier Area, LA–6, and Bay Marchand Area, LA–6C.

FOR FURTHER INFORMATION CONTACT: Copies of these Official Protraction Diagrams may be purchased for $2.00 each from the Public Information Unit (MS 5034), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by telephone at (504) 736–2519.

SUPPLEMENTARY INFORMATION: Technical comments or questions pertaining to these maps should be directed to the Office of Leasing and Environment, Supervisor, Sales and Support Unit at (504) 736–2768.

Dated: January 4, 1995.

Chris C. Oynes,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 95–853 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–MR–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, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (Sub-No. 162X), Norfolk and Western Railway Company—Abandonment—Between Anawalt and Jenkinjones, West Virginia. Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub-No. 496X), CSX Transportation, Inc.—Abandonment—In Hamilton County, Ohio.

Vernon A. Williams,

Secretary.

[FR Doc. 95–904 Filed 1–12–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Steinhardt Management Company, Inc.; and Caxton Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 6 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the Southern District of New York in *United States* v. *Steinhardt Management Company, Inc.; and Caxton Corporation*, Civil Action No. 94–9044 (RPP).

The Complaint in this case alleges that the defendants conspired to restrain competition in markets for specified United States Treasury securities by agreeing to coordinate their actions in trading the specified Treasury securities, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment enjoins the defendants from agreeing with each other or with any other person (A) to restrain trade in the cash and/or financing markets for Treasury securities in violation of the antitrust laws of the United States; (B) to purchase, sell, or refrain from purchasing or selling any Treasury security issue to or through a particular person; or (C) to withhold all or part of a defendant's or another person's position in a Treasury security issue from the cash or financing markets. Certain of these prohibitions are subject to limitations or exceptions which are discussed more fully in the accompanying Competitive Impact Statement. Each defendant is also required to appoint an antitrust compliance officer and establish an antitrust compliance program with specified requirements.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John F. Greaney, Chief, Computers & Finance Section, Antitrust Division, Department of Justice, Suite 9901, 555 4th Street NW., Washington, D.C. 2001, (telephone: 202/307–6200).

Constance K. Robinson,

Director of Operations Antitrust Division.

United States District Court Southern District of New York, United States of America, Plaintiff, v Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 that is the Property of Steinhardt Management Company, Inc.; Steinhardt Management, Company, Inc., Real Party in Interest and $12,500,000 that is the property of Caxton Corporation, Caxton Corporation, Real Party in Interest.

Complaint

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant entities and to obtain forfeiture of the defendant property and complains and alleges:

I. Jurisdiction and Venue

1. This action is brought under Sections 4 and 6 of the Sherman Act, 15 U.S.C. §§ 4, 6, as amended, to restrain violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as amended, and to obtain forfeiture of property owned pursuant to a contract, combination or conspiracy in violation of Section 1 of the Sherman Act. The Court has jurisdiction over this matter pursuant to Section 4 of the Sherman Act and 28 U.S.C. §§ 1345, 1355.

2. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, as amended, and under 28 U.S.C. § 1391(c) because the defendant entities transact business and are found in the Southern District of New York.

3. This is an *in rem* proceeding against the defendant property. That property is in the defendant entities' bank accounts in the Southern District of New York.

II. Description of the Conspiracy

4. This action arises from an unlawful combination and conspiracy among the defendant entities, Steinhardt Management Company (''SMC'') and Caxton Corporation (''Caxton''), and other persons, to restrain interstate trade and foreign commerce in the 7.00% United States Treasury notes auctioned on April 24, 1991 (''April notes'') by withholding the notes from the markets for such securities in order to profit from the artificial shortage, or ''squeeze,'' resulting from the withholding of supply.

5. Beginning in mid-April 1991, Caxton and SMC each bought large, leveraged long positions in the April notes. As of mid-May 1991, their combined position in the issue was almost $20 billion. This combined position represented about 160% of the approximately $12 billion of April notes issued by the United States Treasury. Between early May 1991 and mid-September 1991, SMC and Caxton, in combination, owned (''held'') from $12 billion to $19 billion April notes.

6. The purchases of April notes by Caxton and SMC had the effect of concentrating ownershp of the issue and, simultaneously, creating a substantial ''short'' position on it. Once created, this short position could be utilized only if the defendant entities reduced the size of their positions in the April notes.

7. Caxton and SMC effectively controlled the supply of April notes available to both the ''cash market'' (where purchases and sales occur) and the ''financing market'' (where persons with leveraged long positions, such as the defendant entities, borrow money in order to buy or to continue to hold an issue. Short sellers in both markets were required, in effect, to buy or borrow April notes from Caxton or SMC.

8. After accumulating their position in the April notes, the defendant entities and their coconspirators acted to restrict the supply of April notes to short sellers. The consequences of this action was to cause short sellers to bid up prices for April notes in the cash and financing markets. From the latter part of May 1991 through mid-September 1991, Caxton and SMC and their coconspirators withheld significant quantities of April notes from the cash and financing markets. Due to this constriction in supply, the price of April notes in the cash market was increased; likewise, interest rates charged to finance a position in the April notes were depressed.

9. As a result of the actions taken by the defendant entities and their coconspirators, they and their coconspirators earned substantial profits from the low financing rates and high cash prices of the April notes caused by their actions.

III. Defendants

10. SMC is a New York corporation with its principal place of business in New York, New York. SMC manages several investment funds. As manager of those funds, SMC purchased and financed April notes. SMC is the real party in interest related to the $12,500,000.00 of defendant property it owns and controls.

11. Caxton is a Delaware corporation, with its principal place of business in New York, New York. Caxton manages several investment funds. As manager of those funds, Caxton purchased and financed April notes. Caxton is the real party in interest related to the $12,500,000.00 of defendant property it owns and controls.

12. The investment funds SMC and Caxton manage compete with numerous investors and traders in the sale, purchase, financing, and lending of specific issues of United States Treasury securities.

13. Various persons not made defendants in this action have participated as co-conspirators in the violations alleged in this Complaint and have performed acts and made statements in furtherance of the conspiracy.

IV. The Markets for April Notes

14. When the owner of a specific Treasury security holds a position in

that issue that exceeds the amount of the issue available for purchase by short sellers in the cash or financing markets, a ''squeeze'' can occur. A squeeze is especially likely to succeed if the size of the position held by the single owner, or the combined position of the coordinating holders, exceeds the amount of the issue available to cover short positions through repurchase or ''repo'' agreements in the financing market. When a squeeze occurs, short sellers are required to pay abnormally high prices or to incur abnormally high financing costs to buy or borrow the specific security they are short.

15. Purchasers of Treasury securities that wish to leverage their investments, such as the defendant entities, usually finance their positions in the financing market. In a financing market transaction, the owner of a security sells the issue and simultaneously agrees to repurchase it on a specified date for a specified price. The repurchase price is higher than the sale price, the difference between the two prices representing an interest rate, called the ''repo rate''. A financing market transaction is the functional equivalent of a loan in which Treasury securities are used as collateral.

16. Short sellers (traders who sell securities they do not own in the expectation that the price will fall) must purchase or borrow the specific security that they are obligated to deliver in order to fulfill their obligations. An investor who needs to borrow a specific Treasury security issue can do so in the financing market, through ''special'' repo transactions in which the investor (short seller), in effect, lends cash in exchange for collateral of a specific issue.

17. There are separate product markets within the meaning of the antitrust laws for specific Treasury issues within both the cash and financing markets. Some traders speculate in the financing market for specific issues, lending cash and accepting securities as collateral, in the hope that they can re-lend the collateral to someone else at a profit. Interest rates for special repo transactions in the financing markets fluctuate widely because they reflect supply and demand for a particular security. If a security is in short supply, the repo rate for that issue will generally be low because owners will be able to negotiate lower repo rates from short sellers competing to borrow the scarce security.

18. Prices in the cash and financing markets are related. When it is costly to borrow a specific security, demand for it in the cash market will increase if some traders buy, rather than borrow, it. As a result, the issue may cost more than other securities of comparable maturity. Similarly, a high price in the cash market (compared to securities of like maturity) may cause short sellers to borrow a security through repurchase agreements rather than buy it. That increased demand may depress repo rates. The holder of a specific issue can earn a premium when lending or selling that security when demand for it is great in either the cash or financing market.

19. The owner of a large position in a specific issue, or two or more holders acting together, can limit the supply of that issue available to the specials market by financing all or part of their positions ''off the street,'' that is, with parties who will not re-lend the securities. Such a restriction of supply can precipitate a squeeze when demand for the issue exceeds the supply made available. In that situation, investors who must borrow the issue must accept very low interest rates in the repo market (on the cash they lend to obtain the issue), enabling the owner or owners of the issue to earn a premium for making the security available.

20. Sellers of Treasury securities transmit securities to buyers in interstate commerce through the Federal Reserve System. The business activities of the defendant entities and co-conspirators that are the subject of this complaint were within the flow of, and substantially affected, interstate trade and commerce.

V. The Conspiracy

21. Beginning in or about April 1991, Caxton and SMC agreed to acquire control of the supply of April notes and to limit the supply of April notes to the cash and financing markets in order to cause a squeeze and to profit thereby. To achieve the objectives of the conspiracy, the defendant entities did the things they agreed to do, including:

a. purchasing and holding extremely large long positions in the April notes;

b. exchanging information about their positions in the April notes;

c. discussing ways to finance their positions in the April notes in a manner that would restrict the supply of the notes available to the cash and financing markets;

d. restricting the supply of April notes available for specials transactions, beginning on May 23, 1991;

e. instructing a primary dealer at which SMC concentrated the financing of its April note position to make the notes available for specials transactions only if the repo rate was below a specified level (and giving other directions to constrict supply availability);

f. placing a part of Caxton's position in the April notes with a primary dealer that Caxton understood would place the notes with investors who were not likely to lend them;

g. concentrating the financing of their positions with a single dealer; and

h. continuing to hold their positions in the April notes at times when they could have sold some or all of these positions at a substantial premium.

22. As a result of the conspiracy, repo rates for the April notes in the financing market declined and cash market prices for the notes increased. Repo rates for April notes generally remained low and cash market prices high until September 1991, when the joint position of SMC and Caxton fell below the amount necessary to continue the squeeze.

VI. Anticompetitive Effects of the Conspiracy

23. The combination and conspiracy to restrain interstate trade and commerce in April notes had, among other things, the following effects:

a. SCM and Canton obtained market power over the April notes;

b. Persons who sold April notes short were denied the benefits of free and open competition in the cash and financing markets for April notes, resulting in higher costs to finance and purchase April notes;

c. Price competition for April notes was unreasonably restrained;

d. Liquidity in the markets for April notes was reduced; and

e. The Treasury was denied the benefits of a free and competitive secondary market for April notes.

24. The combination and conspiracy affected a substantial amount of interstate commerce and is likely to recur unless it is enjoined by this Court.

VII. Prayer for Relief

Wherefore, plaintiff prays for relief as follows:

1. That the Court adjudge and decree that SCM and Canton have combined and conspired in unreasonable restraint of interstate trade and commerce in April notes, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. That SCM and Canton and all persons acting on behalf of either of them or under their direction or control be permanently enjoined from engaging in, carrying out, renewing, or attempting to engage in, carry out, or renew, any contracts, agreements, practices, or understandings in violation of the Sherman Act.

3. That the defendant property be forfeited to the United States.

4. That plaintiff have such other relief as the Court may consider necessary or appropriate.

5. That plaintiff recover the costs of this action.

Dated:

Anne K. Bingaman,

Assistant Attorney General.

Robert Titan,

Assistant Attorney General.

Mark C. Schechter,

Deputy Director of Operations.

John F. Greaney,

Chief, Computers and Finance Section.

Jonathan M. Rich,

Assistant Chief, Computers and Finance Section.

Hays Corey, Jr.,

HG1946.

Kenneth W. Gaul,

Attorneys, Antitrust Division, United States Department of Justice, 555 4th St., N.W., Washington, DC 20001.

United States District Court Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management, Company, Inc., Real Party in Interest and $12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

Stipulation

It is hereby stipulated and agreed, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

December 14, 1994.

For Plaintiff United States of America.

John F. Greaney,

Chief, Computers and Finance Section, Antitrust Division, Department of Justice.

December 15, 1994.

For Defendant Steinhardt Management Company, Inc..

Frederick P. Schaffer,

December 15, 1994.

For Defendant Caxton Corporation.

Richard J. Wiener.

United States District Court Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management, Company, Inc., Real Party in Interest and $12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on December 16, 1994, and plaintiff and defendant entities, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to an issue of fact or law;

And Whereas defendant entities have agreed to be bound by Section IV of this Final Judgment pending its approval by the Court;

Now Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of the defendant entities and of the defendant property by virtue of 28 U.S.C. §§ 1345, 1355. Venue exists in this Court pursuant to 28 U.S.C. § 1395(b). The Complaint states a claim upon which relief may be granted under Sections 1 and 6 of the Sherman Act, 15 U.S.C. §§ 1, 6.

II

Definitions

As used in this Final Judgment:

1. ''Agree'' means to enter into any contract, combination, conspiracy, concert of action, or mutual understanding, formal or informal, express or implied, with any other person.

''Any'' means one or more.

3. ''Cash market'' means the market in which Treasury securities are bought and sold, and includes the when-issued market and the secondary market.

4. ''CUSIP number'' means the alphanumeric description of a Treasury security established by the American Bankers Association's *C*ommittee on *U*niform *S*ecurities *I*dentification *P*rocedures.

5. ''Defendant entities'' means Steinhardt Management Company, Inc. and Caxton Corporation.

6. ''Finance'' or ''financing transaction'' means any transaction whereby a person who has a position in an issue obtains cash or credit from another person by using such position as collateral, including any transaction pursuant to which possession or ownership of a position in an issue is transferred by one party to another with a simultaneous agreement that the second party will later return such position to the first party, such as a repurchase agreement, a reverse repurchase agreement, or a borrow versus pledge agreement.

7. ''Financing market'' means the market for financing positions in Treasury securities through which an issue may be made available to holders of short positions in that issue.

8. ''Includes'' or ''including'' means includes, but is not limited to.

9. ''Issue'' means a particular marketable United States Treasury security, as distinguished from all others by its CUSIP number.

10. ''Or'' means either or both, and is used as a word of inclusion rather than exclusion.

11. ''Other person'' means a person other than: a defendant entity; any subsidiary, officer, director, employee, agent, successor, or assign of a defendant entity; any person who makes, or has authority to make, trading or investment decisions on behalf of a defendant entity in the cash or financing markets; any person in which any shareholder in a defendant entity as of the date of entry of this Final Judgment makes, or has authority to make, trading or investment decisions in the cash or financing markets; any account or assets managed on a discretionary basis by a defendant entity or, while acting in respect to such account or assets, by a defendant entity's designee.

12. ''Person'' means any individual, partnership, firm, corporation, association, sole proprietorship, joint venture, or other business or legal entity, whether or not organized for profit.

13. ''Position'' means the quantity of an issue held, whether outright or as the

consequence of any financing transaction, except that a person shall not be deemed to have obtained a position in an issue as the result of having engaged in a financing transaction with a defendant entity.

14. ''Treasury auction'' means any auction of Treasury securities conducted by or on behalf of the United States Department of the Treasury.

15. ''Treasury security'' means any marketable United States Treasury bill, note, or bond.

16. ''Withhold'' means to decline to sell or finance for any period of time part or all of a position in any issue.

Use of either the singular or plural should not be deemed a limitation and the use of the singular should be construed to include, where applicable, the plural and vice versa.

III

Applicability

This Final Judgment shall apply to the defendant entities and each of their subsidiaries, officers, directors, employees, agents, successors, and assigns; to any entity for or in which any person who is a shareholder in a defendant entity as of the date of entry of this Final Judgment, whether directly or indirectly, conducts or directs asset management or investment advisory activities that involve transactions in the cash market or in the financing market (hereinafter ''related entity''); and to all persons acting in concert with any defendant entity and having actual notice of this Final Judgment; provided, however, that this Final Judgment shall not apply to any fund or other entity whose assets are managed or invested in whole or in part by a defendant entity or by a related entity.

IV

Prohibited Conduct

A. The defendant entities are enjoined and restrained from agreeing with each other or with any other person to restrain trade in the cash or financing markets in violation of the antitrust laws of the United States.

B. The defendant entities are enjoined and restrained from agreeing with each other or with any other person:

1. to purchase or refrain from purchasing any issue from a particular person; or

2. to sell or refrain from selling any issue to or through a particular person.

C. The defendant entities are enjoined and restrained from agreeing with any other person:

1. to withhold, directly or indirectly, all or any part of such other person's position from the cash market; or

2. to withhold, directly or indirectly, all or any part of such other person's position from the financing market.

D. The defendant entities are enjoined and restrained from agreeing with any other person:

1. to withhold, directly or indirectly, all or part of a defendant entity's position from the cash market for the purpose of (a) maintaining the value of such other person's position or (b) causing the value of such other person's position to increase, for any period of time; or

2. to withhold, directly or indirectly, all or part of a defendant entity's position from the financing market for the purpose of (a) maintaining the value of such other person's position or (b) causing the value of such other person's position to increase, for any period of time.

E. Notwithstanding any provision of Section IV.B to the contrary, nothing in this Final Judgment shall prohibit a defendant entity:

1. from agreeing with its counterparty to enter into a transaction to purchase or sell an issue; or

2. from agreeing with another person that such other person tender a bid on behalf of such defendant entity at a Treasury action.

F. Notwithstanding any provision of either Section IV.B or Section IV.C to the contrary, nothing in this Final Judgment shall prohibit any defendant entity from agreeing with another person that such other person not increase or decrease its position in an issue while such other person is endeavoring to transact the purchase, sale or financing of a position in such issue with or on behalf of a defendant entity.

V

Compliance provisions

Each defendant entity is ordered to initiate and maintain an antitrust compliance program which shall include designating, within thirty (30) days of the entry of this Final Judgment, an Antitrust Compliance Officer, who shall monitor the activities of all persons responsible for trading or financing Treasury securities on behalf of the defendant entity and shall be responsible for establishing an antitrust compliance program designed to provide reasonable assurance of compliance with this Final Judgment and with the federal antitrust laws by the defendant entity. The Antitrust Compliance Officer shall also:

1. Distribute, within thirty (30) days from the entry of this Final Judgment, a copy of this Final Judgment to: (a) all members of the Board of Directors and Officers of the defendant entity; (b) all traders or other employees of the defendant entity whose duties include the trading or financing of Treasury securities; and (c) all agents of the defendant entity whose responsibilities include the trading or financing Treasury securities on behalf of such defendant entity (not including brokers or dealers who may occasionally act as agents of a defendant entity on a transaction-specific basis).

2. Distribute within thirty (30) days a copy of this Final Judgment to (a) any person who becomes a member of the Board of Directors or officers of the defendant entity and (b) to any employee of the defendant entity who is, in the future, given any duties which include the trading or financing of Treasury securities.

3. Brief annually those persons designated in Paragraphs 1 and 2 of this Section on the meaning and requirements of the federal antitrust laws and this Final Judgment and inform them that the Antitrust Compliance Officer or a designee of the Antitrust Compliance Officer is available to confer with them regarding compliance with such laws and with this Final Judgment.

4. Obtain from each person designated in Paragraphs 1 and 2 of this Section an annual written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Final Judgment; (b) has been advised and understands that noncompliance with this Final Judgment may result in his or her being found in civil or criminal contempt of court; and (c) is not aware of any violation of the federal antitrust laws or of this Final Judgment that he or she has not reported to the Antitrust Compliance Officer.

5. Maintain a record of persons to whom this Final Judgment has been distributed and from whom the certification required by Paragraph 4 of this Section has been obtained.

6. Certify to the Court and to the Assistant Attorney General in charge of the Antitrust Division, within forty-five (45) days after entry of this Final Judgment, that the defendant entity: (a) has designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (b) has distributed this Final Judgment, briefed the appropriate persons, and obtained certifications, as required by this Section V.

VI

Plaintiff access

A. For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant entity, subject to any lawful privilege, be permitted:

1. access during such defendant entity's regular office hours to inspect and copy all records and documents in its possession or custody, or subject to its control, relating to any matters contained in this Final Judgment; and

2. to depose or interview such defendant entity's officers, employees, trustees, or agents, who may have counsel present, regarding any matters contained in this Final Judgment; such depositions or interviews to be subject to the reasonable convenience of and without restraint or interference from the defendant entity.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, each of the defendant entities shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of security compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant entity to plaintiff, such defendant entity represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such materials, ''Confidential: Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days' notice shall be given by plaintiff to such defendant entity prior to divulging such material in any legal proceeding to which the defendant entity is not a party; provided, however, that nothing herein shall apply to any use of such information or documents in any grand jury proceeding.

VII

Further Elements of Decree

A. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

B. This Final Judgment shall terminate ten (10) years from the date of entry.

C. The defendant property that is the property of Steinhardt Management Company, Inc. is hereby forfeited to the United States. Steinhardt Management Company, Inc. shall pay $12,500,000, plus the Additional Amount defined in the Civil Settlement Agreement between Steinhardt Management Company, Inc. and the United States Department of Justice dated December 16, 1994, within five (5) business days after receipt of notice of this Final Judgment. Such amount represents that portion of the settlement amount forfeited to the Department of Justice pursuant to 15 U.S.C. § 6, and which is payable to the Department of Justice Asset Forfeiture Fund.

D. The defendant property that is the property of Caxton Corporation is hereby forfeited to the United States. Caxton Corporation shall pay $12,500,000 plus the Additional Amount defined in the Civil Settlement Agreement between Caxton Corporation and the United States Department of Justice dated December 16, 1994, within five (5) business days after receipt of notice of this Final Judgment. Such amount represents that portion of the settlement amount forfeited to the Department of Justice pursuant to 15 U.S.C. § 6, and which is payable to the Department of Justice Asset Forfeiture Fund.

E. Entry of this Final Judgment is in the public interest.

United States District Court Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management, Company, Inc., Real Party in Interest and $12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On December 16, the United States filed a civil antitrust complaint alleging that Steinhardt Management Company, Inc. (''SMC''), Caxton Corporation (''Caxton'') and others conspired to restrain competition in markets for specified United States Treasury securities, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The complaint seeks injunctive relief and forfeiture of property owned by SMC and Caxton pursuant to the alleged conspiracy under Section 6 of the Sherman Act, 15 U.S.C. § 6.

The complaint alleges that, beginning in April 1991 and continuing into September 1991, the defendant entities and others (collectively, the ''conspirators'') violated Section 1 of the Sherman Act by agreeing to coordinate their actions in trading the two-year Treasury notes auctioned by the United States Treasury on April 24, 1991 (''April Notes''). During that period, the conspirators coordinated trading in the secondary markets for the April Notes, including both the cash market (where purchases and sales occur) and the financing market (where, in effect, persons with leveraged long positions, such as the defendant entities, borrow money in order to buy or to continue to hold an issue). The alleged conspiracy affected the price of the April Notes in both the cash market and the financing market.

The United States and the defendant entities have stipulated to the entry of a proposed Final Judgment, which will grant the relief sought in the complaint and terminate this action.

II

Description of the Practices Involved in the Alleged Violation

A. The Treasury Securities Markets

The Treasury finances the debt of the United States by issuing Treasury securities in the form of bonds, notes and bills. Treasury bonds, notes and bills are sold by the Treasury through periodic auctions conducted by the Federal Reserve System. At each such auction, the Treasury awards securities to the bidders willing to accept the lowest yield levels (effectively, interest rates) on their cash.

A week before an auction of a particular issue, the Treasury announces the size of the issue to be auctioned. ''When-issued'' trading for that issue

begins immediately thereafter. In a when-issued trade, no money changes hands; rather, sellers agree to deliver the securities on the date the Treasury settles with successful bidders, generally one week after the auction (''settlement''). At settlement, the Treasury transmits the new issue to the successful bidders in exchange for payment. On settlement day, when-issued buyers must pay for their purchases and when-issued sellers must deliver the securities they sold. Persons who sell short an issue in the when-issued market must deliver *that issue* to the purchaser at settlement; they cannot substitute another Treasury issue.[1]

After settlement, trading to buy and sell the issue continues in the secondary or ''cash'' market until the maturity date, when the issue is redeemed. In every when-issued or cash market trade, a seller who does not already own the issue is said to be ''short,'' and the buyer ''long.'' The ''short'' seller may obtain the securities it is required to deliver by purchasing them at the Treasury auction or in a when-issued or cash market trade. Alternatively, the short may borrow them in the ''financing market,'' generally through a repurchase or ''repo'' transaction, and delivering the borrowed securities to the buyer.

Traders of Treasury securities frequently use repurchase agreements not only to effectuate delivery when they have ''short'' positions, but also to finance their ''long'' purchases. A repurchase transaction is the functional equivalent of a loan using Treasury securities as collateral, in which the owner of an issue sells it and simultaneously agrees to repurchase it on a specified date for a specified price. The repurchase price is somewhat higher than the sale price; the difference between the two prices represents an interest rate, and is often called the ''repo'' rate.

Treasury securities can be financed either through ''special'' repo agreements, in which the collateral is a particular, identified issue, or through ''general'' repo agreements, in which no particular issue need be specified for delivery. When there is specific demand for an issue because short sellers need to borrow the issue in order to deliver it to persons who have bought it, owners can lend the issue in a special repo-market transaction at a ''special rate.''[2] The issue generally is said to be ''on special'' when the interest rate that owners (such as SMC and Caxton in the case of the April Notes) are required to pay to borrow cast against the issue is significantly lower than the ''general'' collateral rate.'' The general collateral rate is an overall rate for loans collateralized by Treasury securities, and usually fluctuates only in relation to short-term, money-market rates. Because the demand, as reflected by price, for a particular issue is unique in both the cash market and in the financing market (while the issue is on special), there are separate product markets for each Treasury security issue within the meaning of the antitrust laws.

If the supply of an issue is artificially constricted by agreement among the holders of the issue, both the price of the issue in the cash market and the cost of borrowing the issue in the financing market increase.[3] When the cost of purchasing an issue in the cash market or the cost of borrowing it in the financing market is significantly different than the cost of buying or borrowing securities of comparable maturities, a ''squeeze'' is said to occur.

B. The Conspiracy

SMC and Caxton both manage investment funds—sometimes known as ''hedge funds''—which generally make large, ''leveraged'' investments with borrowed capital. The hedge funds managed by the defendant entities compete with numerous other traders and investors in the when-issued, cash and financing markets to sell purchase and finance various Treasury security issues. Prior to their purchase of April Notes, the defendant entities had a history of interaction. Beginning in January 1990, Caxton became co-managing general partner of two of SMC's funds, and Caxton's chairman became the president of SMC. The formal affiliation of Caxton and its chairman with SMC ended after one year, but employees and agents of the defendant entities continued to communicate regularly with each other, including during the period encompassed by the conspiracy.

As charged in the complaint, beginning in or about April 1991, the defendant entities agreed on a scheme to acquire control of the supply of April Notes and to limit the supply of the issue in the cash and financing markets in order to cause a squeeze. This scheme ensured that persons who had sold notes short in the when-issued market or the post-settlement cash market could obtain such notes only by purchasing them at artificially high and non-competitive prices in the cash market or by borrowing them at artificially low and non-competitive special rates in the financing market. This course of conduct continued for a period of time during which the defendant entities, with the assistance of others, earned supracompetitive rates on transactions in the April Notes.

Through numerous purchases made through various dealers, in the when-issued market, the cash market and at auction, SMC and Caxton obtained substantial positions in the April Notes. Indeed, from May until mid-September 1991, the defendant entities controlled more than the ''floating supply'' of the issue, giving them the power to cause short sellers of the April Notes to fail to meet their security-specific delivery obligations.

As part of the alleged scheme, SMC and Caxton conferred on the subject of their activities or planned activities with respect to April Notes. They exchanged information about the size of their positions, the likely size of the short positions in the markets and ways to finance positions so as to keep their notes from becoming available to meet the demand for specials financing. The defendant entities gave tacit assurances to each other that they would continue to hold their substantial long positions in the April Notes, and would limit the supply of April Notes they would make available to the cash and financing markets from the positions they controlled.

The conspirators agreed to coordinate SMC's and Caxton's financing efforts so as to restrict the supply of April Notes available in the financing and cash markets. The conspirators began to implement their squeeze on May 23, 1991.[4] An essential part of the scheme

[1] Each Treasury security of a particular issue is unique and bears an identification number (known as a ''CUSIP number'') which distinguishes it from all other securities. Thus, all April Notes (all of which were issued on the same date) bore the same CUSIP number.

[2] A Treasury security may trade ''on special'' in the collateral markets for various reasons. Special rates could be the result of ordinary market supply and demand, but could also be induced by persons acting together to distort normal market forces. Potentially, if the holders of an issue withhold enough of it from the ''specials'' market, unmet demand may cause come percentage of the issue to be financed at interest rates approaching zero.

[3] Due to the manner in which the financing market works, the increased cost of borrowing the security occurs when short sellers earn *lower* interest rates on money they lend to holders in order to borrow the security overnight or for a short term. The cost of borrowing the securities increases when short sellers—who must borrow the security to avoid a default (failure to deliver or ''fail'') on their contractual obligations—receive say, only 4.25% on the money they land when, if the issue were not ''on special,'' they would have been able to borrow the securities in the repo market and earn a higher interest rate, say, 5.75%.

[4] The conspirators waited until May 23 to implement the squeeze because the subsequent issue of two-year notes was auctioned on the previous day. By waiting until the Treasury auctioned a succeeding issue, the conspirators minimized the risk that the Treasury would reopen

involved the defendant entities entering into financing agreements with two primary dealers to ensure that the supply of April Notes available to shorts in the secondary markets would be reduced.

SMC concentrated the financing of its position with one dealer, and actively directed that dealer to withhold some or all of SMC's notes from the financing and cash markets. For example, SMC directed the dealer to refuse to make its notes available for special repo transactions unless the repo rate had dropped below a certain level. At other times, SMC ordered the dealer to refuse to make the notes available at all for special financing transactions for periods of time ranging from hours to days, with the intent and effect of causing unmet demand that forced rates lower. For its part, Caxton financed a portion of its April Notes in a series of transactions with another dealer in a manner that largely caused a quantity of the notes to be withheld from the cash market. Beginning in early August, 1991, SMC moved the majority of its position to the dealer already financing the majority of the Caxton position. This resulted in a renewed concentration of the issue that enabled the dealer to drive down repo rates.

The coordinated withholding of supply allowed SMC and Caxton to enrich themselves at the expense of other market participants both as a result of low rates at which they were able to finance their securities and as a result of cash sales at prices that were inflated by the squeeze.

The conspiracy described above injured numerous persons who traded the April Notes, especially those with short positions, by artificially inflating prices for that issue in the cash market and repo rates in the financing market. Further, the conspiracy had a dangerous probability of damaging the Treasury of the United States. As noted in the *Joint Report on the Government Securities Market* issued by the Treasury, the SEC and the Federal Reserve Board, an acute, protracted squeeze resulting from illegal coordinated conduct, such as the one alleged here, ''can cause lasting damage to the marketplace, especially if market participants attribute the shortage to market manipulation. Dealers may be more reluctant to establish short positions in the future, which could reduce liquidity and make it marginally more difficult for the Treasury to distribute its securities without disruption.''[5]

the April-Note issue, which would have reduced or eliminated their ability to control the supply of the issue. If the issue had been reopened, the Treasury would have auctioned more notes with the April Notes' CUSIP number, rather than auctioning notes with a new CUSIP. Reopening would have effectively flooded the secondary markets with increased supply of the issue, and would have eroded the market power the conspirators had obtained through their purchases of the April Notes.

III

Explanation of the Proposed Final Judgment

The United States and the defendant entities have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Paragraph VIII.E. of the proposed Final Judgment sets forth such a finding.

The United States submits that the proposed Final Judgment is in the public interest. The proposed Final Judgment contains injunctive provisions that are remedial in nature and designed to assure that the defendant entities will not engage in the future in the same or similar anticompetitive practices as those employed in furtherance of their conspiracy.

In addition, the proposed Final Judgment provides for a substantial asset forfeiture that will act as a deterrent to future illegal conduct and serve as a warning to others of the possible consequences of similar illegal behavior. Pursuant to the proposed Final Judgment and the Settlement Agreements attached hereto, SMC and Caxton will each pay $12.5 million (plus interest accruing at a rate of 5.75% to the date of payment) to the United States within five business days of the entry of the Final Judgment. This payment reflects a cash settlement in lieu of forfeiture of the securities held pursuant to the alleged conspiracy.

A. Global Settlement of Charges

On the same date that this action was filed, the Department of Justice (''Department'') and the Securities and Exchange Commission (''SEC'') announced a global settlement with SMC and Caxton that resolves the defendant entities' liability under the antitrust and securities laws with respect to the conduct alleged in the complaints filed by the Department and the SEC. The terms of the settlement provide that SMC pay a total of $40 million—$19 million in fines and forfeitures and establish a $21 million disgorgement fund to be used to compensate victims of its misconduct. The settlement also provides that Caxton will pay a total of $36 million—$22 million in fines and forfeitures and establish a $14 million disgorgement fund.

[5] *See* Department of the Treasury, Securities and Exchange Commission, Board of Governors of the Federal Reserve System; *Joint Report on the Government Securities Market* at 10 (Jan. 1992).

B. Specific Injunctive Provisions

The proposed Final Judgment prohibits the defendant entities from agreeing with each other or with other persons to take certain actions affecting the markets for Treasury securities. The prohibited agreements are either impermissible under the antitrust laws, or were determined during the Department's three-year investigation of the Treasury securities markets to be significant mechanisms for facilitating collusion. The proposed Final Judgment, however, is not intended to discourage or prohibit normal communications between the defendant entities and other participants in the markets for Treasury securities. Traders in these markets often, and appropriately, exchange views about events that may affect interest rates, and consequently, the value of Treasury securities. Such an exchange of views, without more, is not ordinarily harmful to competition.

1. Section III, Applicability

The proposed Final Judgment applies to the defendant entities and each of their subsidiaries, officers, directors, employees, agents, successors and assigns. It also applies to any entity for or in which any person who is a shareholder in a defendant entity as of the date of entry of the Final Judgment engages in or directs asset management or investment advisory activities, whether directly or indirectly, that involve transactions in the cash or financing markets (''related entity''); and to all persons acting in concert with any defendant entity that have actual notice of the Final Judgment. But the proposed Final Judgment does not apply to any fund or other entity whose assets are managed or invested in whole or in part by a defendant entity or by a related entity.

This applicability provision ensures that the Final Judgment will apply not only to the defendant entities, but also to any related entity or any person

acting as an agent of a defendant entity.[6] It also applies to any existing or newly formed entity in which a shareholder of one of the defendant entities has decisionmaking or trading authority involving Treasury securities. This provision ensures that the defendant entities will be unable to evade the terms of the Final Judgment by conducting Treasury security trading through some other entity. The Final Judgment, however, does not generally bind other participants in the Treasury security markets who merely engage in ordinary principal-to-principal counterparty trades with the defendant entities.

2. Section IV, Prohibited Conduct

a. *Subsection A* generally prohibits defendant entities from entering into agreements to restrain trade, within the meaning of the antitrust laws, in the purchase, sale or financing of any issue in the cash or financing markets. This subsection is to be construed by reference to the defined terms used therein (*e.g.*, ''agreeing''), and by the general purpose of the antitrust laws as set forth in Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Federal case law construing and interpreting the Sherman Act.

b. *Subsection B* prohibits defendant entities from entering into agreements to purchase or sell an issue, or to refrain from purchasing or selling an issue, through any particular person, subject to limited exceptions, discussed below, contained in Subsections E and F. Subsection B prohibits, for example, a defendant entity from agreeing with another holder of an issue to coordinate its purchases or sales of the issue by acquiring the issue only through particular primary dealers, or by agreeing to spread out their coordinated purchases among different dealers to conceal the size of their purchases and holdings. The defendant entities acquired their positions in April Notes largely from separate dealers, indicating possible coordination of their acquisition strategies.

c. *Subsection C* prohibits defendant entities from agreeing with another holder of an issue to withhold such other holder's position from the cash or financing markets for any period of time. This subsection, for example, prohibits a defendant entity from agreeing that another holder of an issue will withhold *the other holder's* position from the cash or financing markets. The Department has alleged that a central component of the conspiracy charged in this case were agreements between SMC and Caxton to withhold their positions from the cash and financing markets in order to effectuate the squeeze of the April Notes. The Department has identified only one circumstance—prevention of ''front-running''—in which one holder of an issue agrees with another, competing holder, to withhold the other holder's position in the same issue from the markets could possibly have a procompetitive purpose. With the exception of preventing front-running, which is the subject of a limited exception, discussed below, contained in subsection F, this subsection contains an outright prohibition on a defendant entity agreeing that another holder will restrict supply of an issue by withholding the other holder's position from the cash or financing markets.

d. *Subsection D* similarly prohibits the defendant entities from agreeing with another holder of an issue to withhold the *defendant entity's* position in the issue for the purpose of maintaining or increasing the value of the other holder's position in the cash or financing markets for any period of time. The limited purpose contained within this subsection makes clear that a defendant entity may continue to decide when and whether to trade or finance its own position.[7] If, however, the purpose of a defendant entity's withholding of a position is to attempt to maintain or increase the value of the other holder's position in the markets, that is prohibited. The Department has identified no legitimate pro-competitive reason to agree to restrict supply by withholding one's own position in an issue for the purpose of benefitting another, ordinarily competing, holder of the same issue.

e. *Subsection E* makes clear subsection B is not intended to prohibit customary practices in trading positions in Treasury securities. Specifically, this subsection makes clear that nothing in the proposed Final Judgment is intended to prohibit normal principal-to-principal counterparty agreements to purchase or sell a position in an issue.

f. *Subsection F* is an exception to subsections B and C that permits a defendant entity to request (and obtain an agreement) that another holder, such as a primary dealer, will not trade its position while also endeavoring to transact a trade with or on behalf of a defendant entity. This exception is intended to permit a defendant entity to obtain commitments from primary dealers or other counterparties that they will not engage in ''front running''[8] or other self-dealing actions to the detriment of the defendant entity while the counterparty is effectuating the purchase, sale or financing of a position on behalf of the defendant entity. This provision is necessary because, in the ordinary course, non-dealer traders such as the defendant entities must transact trades through persons such as primary dealers, who may also be competing holders of the same issue. Merely requesting that the counterparty to a transaction not engage in self-dealing while also acting on behalf of a defendant entity should not, by itself, be harmful to competition.

3. Section V, Compliance Provisions

Section V of the proposed Final Judgment requires the defendant entities to institute antitrust compliance programs. Each defendant entity must appoint an antitrust compliance officer, who will be responsible for monitoring the activities of all persons with responsibility for trading or financing Treasury securities. The antitrust compliance officer will also establish an antitrust compliance program, including specific obligations described in this section, designed to provide reasonable assurance that the defendant entity will comply with the Final Judgment and the antitrust laws. The antitrust compliance officer will certify to the Court and the Assistant Attorney General in charge of the Antitrust Division within forty-five days after entry of the Final Judgment that the defendant entity has taken specified steps require by this section.

[6] The complaint filed by the Department alleges that various persons, not identified in the complaint, were co-conspirators along with the defendant entities. These ''others,'' defined as being within the collective category of ''conspirators'' in section I of this Competitive Impact Statement, above, include certain persons who acted directly as agents of one or the other of the defendant entities in the trading and financing of the April Notes.

[7] Because of the current structure of trading and financing of Treasury securities, investment funds such as the defendant entities must ordinarily enter into agreements with counterparties to trade or finance their positions, including perhaps agreements restricting the timing or form of sales or financing. Thus, if the defendant entities are to retain control over the manner in which they trade or finance their positions, they must remain free to enter into agreements with others that literally might involve ''withholding'' their positions for some period of time.

[8] ''Front running'' occurs when a person, such as a dealer or broker who has advance knowledge of another trader's intended actions in the market, uses that advance knowledge to trade on his own behalf ahead of the other trader. Thus, for example, if a dealer were to learn that a defendant entity intended to make substantial purchases of an issue through the dealer, so that the price of the issue in the cash market would likely rise, the dealer could use this advance knowledge to purchase the issue before the price begins to rise, and then to sell the issue at the inflated price. Defendant entities are not prohibited from obtaining commitments that a dealer will not trade against them in this fashion before committing to trade through the dealer.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Pursuant to separate agreements reached by SMC and Caxton with the SEC and the Department, the defendant entities will pay $35 million into a fund to be available for damages claims from private parties that have been injured by their conduct, including damages incurred as a consequence of violations of the antitrust laws.[9] Entry of the proposed Final Judgment itself will neither impair not assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against SMC or Caxton in this matter.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification interpretation or enforcement of the Final Judgment.

[9] The specific permitted grounds for successful claims against the disgorgement fund and the mechanics of fund operation under the auspices of the SEC are set forth in the *Final Judgment of Permanent Injunction and Other Relief* as to each defendant entity, filed contemporaneously with the SEC's complaint against SMC and Caxton.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all the relief that the United States sought in its complaint. The Department believes that litigation on the allegations in the compliant would involve substantial cost to the United States and is not warranted given the relief to be obtained in the proposed Final Judgment. In specifying the relief set forth in the proposed Final Judgment, the Department consulted with and considered the views of experts in the Treasury securities field, including the United States Department of the Treasury and the SEC. The specific injunctive provisions are tailored to ensure that the defendant entities will not engage in the same illegal conduct, and in the event of violations, are enforceable through civil and criminal contempt. Further, the payment by defendant entities under Section 6 represents the second-largest forfeiture or other penalty ever paid to the government by defendants in a single antitrust case, and will provide a substantial deterrent to future anticompetitive conduct in the Treasury securities markets.

Another alternative to the proposed Final Judgment would be to prosecute this conspiracy as a criminal violation of Section 1 of the Sherman Act, 15 U.S.C. 1, rather than through a civil complaint. The Department carefully considered this alternative. The Department determined, in the exercise of its prosecutorial discretion, that charging this matter as a civil violation was most appropriate. The releases from criminal prosecution set forth in the Settlement Agreements attached hereto merely confirm the Department's decision that the case is more appropriately brought as a civil matter.

VII

Determinative Materials and Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Dated: December 16, 1994.

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division.

Respectfully submitted,

Hays Gorey, Jr., HG1946,

Kenneth W. Gaul, KG2858

Attorneys, U.S. Department of Justice, Antitrust Division, Room 8104, 555 4th Street, NW., Washington, DC 20001, (202) 514–9602.

Certificate of Service

I, Kenneth W. Gaul, an attorney in the Department of Justice, Antitrust Division, certify that on this date I have caused to be served by hand the attached COMPETITIVE IMPACT STATEMENT upon the following counsel for defendant entities in the matter of *United States* v. *Steinhardt Management Company, Inc. and Caxton Corporation, et al.* (94 Civ. _____).

Frederick P. Schaffer,

Shulte, Roth & Zabel, 900 Third Avenue, New York, NY 10022 (Counsel for Steinhardt Management Company, Inc.)

Richard J. Wiener,

Caldwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038 (Counsel for Caxton Corporation).

Kenneth W. Gaul.

December 16, 1994.

United States District Court, Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management Company, Inc., Real Party in Interest and $12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

Settlement Agreement

This Settlement Agreement (''Agreement'') is made between the United States of America (''Plaintiff'') and Steinhardt Management Company, Inc., (''SMC'').

1. This Agreement is made to resolve and forever to settle SMC's liability under the antitrust laws for certain conduct to be alleged in a Complaint to be filed by the United States pursuant to this Agreement. Upon the fulfillment of the conditions set forth in this Agreement, the releases described herein shall be effective.

2. On the date of execution of this Agreement,

(a) Plaintiff shall file a civil Complaint alleging a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by SMC and others in connection with the acquisition and trading of certain United States Treasury notes;

(b) Plaintiff shall file a Final Judgment in the form attached as Exhibit A, that, if entered by the Court, would resolve

and settle the allegations of the Complaint filed pursuant to subparagraph (a), above;

(c) Plaintiff and SMC shall execute and file a Stipulation and Order in the form attached as Exhibit B, stipulating to the entry of a Final Judgment in the form attached as Exhibit A.

3. In consideration of the sum of money to be forfeited by SMC pursuant to the Final Judgment and other of the agreements set forth therein, upon entry of the Final Judgment in the form attached as Exhibit A, or in such other form as the Court may order requiring payment of the civil forfeiture specified in paragraph 6(a), Plaintiff releases SMC and its present and former officers, employees, directors and subsidiaries, and any funds or accounts managed by SMC, from any civil liability or claims whatsoever or any criminal liability for any federal offense (a) which was committed prior to the date of this Agreement and arose out of the purchase, sale, financing or trading of the two-year United States Treasury notes issued in April 1991 or the two-year United States Treasury notes issued in May 1991 (together, ''Specified Notes'') or (b) which arose out of any conduct known to the Department of Justice or the Securities and Exchange Commission (''SEC'') related to any investigation by the Department of Justice or the SEC into the purchase, sale, financing or trading of the Specified Notes, or into any efforts to interfere with, obstruct, mislead or subvert any such investigation; provided, however, that nothing in this Agreement shall apply to violations of the federal tax laws, Title 26, United States Code.

4. Plaintiff and SMC recognize that the Court may enter a Final Judgment only after the parties have complied with the provisions of the Tunney Act, 15 U.S.C. § 16 (b) through (g). The parties shall use their best efforts to comply with the procedures of the Tunney Act to ensure that a Final Judgment in the form attached as Exhibit A is entered by the Court at the earliest practicable date. If the Court should require modification to the Final Judgment before entering it, SMC shall not unreasonably withhold its agreement to such modification.

5. The parties recognize that this Agreement is being made in conjunction with the *Consent and Undertakings of Defendants Steinhardt Management Company, Inc.* that SMC has entered into with the SEC (the ''SEC Consent'') in the form attached as Exhibit C, and that, upon execution of the SEC Consent, the SEC will file against SMC a civil complaint alleging violations of the securities laws, under the caption *Securities and Exchange Commission v. Steinhardt Management Company, Inc. and Caxton Corporation* (the ''Securities Case'').

6. Pursuant to this Agreement, the SEC Consent, and the *Final Judgment of Permanent Injunction and Other Relief as to Defendants Steinhardt Management Company, Inc.* in the Securities Case (the ''Securities Case Final Judgment'') in the form attached as Exhibit D, SMC shall, at the times specified in paragraph 12 and as provided in the Securities Case final judgment, pay the sum of $40 million as follows:

(a) $19 million shall be paid to the United States of America. Of this amount, $12.5 million shall constitute a civil forfeiture pursuant to the Sherman Antitrust Act, 15 U.S.C. § 6, and shall be paid to the Department of Justice Asset Forfeiture Fund; the remaining $6.5 million shall constitute a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and shall be paid to the Treasurer of the United States;

(b) $21 million shall be paid into a disgorgement fund established by court order in the Securities Case, upon terms established by the Securities Case Final Judgment, as entered by the Court. This disgorgement fund shall be administered and used as set forth in the Securities Case Final Judgment.

Under no circumstances shall SMC be entitled to a refund of any monies paid pursuant to this Agreement; provided that the foregoing shall not preclude reimbursement of SMC from the disgorgement fund in accordance with the procedures governing such fund, in respect of certain third-party claims paid directly by SMC.

7. Should the Court for any reason not order all or any part of the amount specified in paragraph 6(a) to be forfeited to the United States, the difference between the amount ordered forfeited by the Court in the captioned case and the amount specified to be forfeited to the United States by paragraph 6(a), shall be paid to the Treasurer of the United States pursuant to the Final Judgment in the Securities Case under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3) (''Additional Civil Penalty''). Upon the payment of the Additional Civil Penalty, the releases described in paragraph 3 shall be effective.

8. SMC understands that the United States has not waived the right of any federal agency, with respect to SMC or any other person: (a) to revoke or suspend any license, certificate, registration of or other form of permission issued by such agency; (b) to impose any penalty or to take any form of punitive or disciplinary action; or (c) to debar, suspend, disqualify, or otherwise restrict or prohibit certain transactions or other dealings with the United States or with any of its agencies or departments.

9. SMC hereby waives any right it might have as a result of this Agreement or any settlement arrangements contemplated hereby under the United States Supreme Court's decision in *United States* v. *Halper,* 490 U.S. 435 (1989), or in respect of the subject matter of that case or under any other existing or future decision relating to that subject matter.

10. SMC neither admits nor denies any of the factual allegations pertaining to the matters described in the Complaint to be filed pursuant to paragraph 2, nor does SMC either admit or deny any legal liability arising therefrom. Nothing in this Agreement or in the Final Judgment or any Order contemplated hereby shall constitute a finding of fact or conclusion of law or otherwise provide any basis for establishing such liability.

11. SMC shall pay the civil penalty imposed by the Court in the Securities Case and contribute the funds to establish the disgorgement fund as specified in the Securities Case Final Judgment (collectively, the ''Initial Payment''). Pursuant to this Agreement and the Tunney Act, 15 U.S.C. §§ 16(b) through (g), the forfeiture provided for in the Final Judgment shall not be paid until five (5) business days after SMC receives notice of entry of the Final Judgment, or such other order as represents a final disposition of the captioned case. At that time, in addition to the $12.5 million payment specified in the Final Judgment (''Deferred Payment''), SMC shall forfeit an ''Additional Amount,'' as defined below. The term ''Additional Amount'' shall mean an amount representing interest on the Deferred Payment, computed on the basis of a 365 day year, at a rate per annum of 5¾%, from and including the date of the Initial Payment, but excluding the date on which the Deferred Payment is made. To the extent the Court does not impose any portion of the Deferred Payment or the Additional Amount, such amounts shall nonetheless be paid to the United States pursuant to paragraph 7 at the time specified herein.

12. This Agreement, and all the terms and provisions hereof, shall be binding on the parties hereto and their

respective successors and assigns, and shall inure only to the benefit of the parties hereto, and other person specifically released pursuant to paragraph 3, and their respective successors and assigns, and no other person shall be entitled to any benefits hereunder.

13. No additional understandings, promises, agreements and/or conditions have been entered into by the parties hereto with respect to the matters set forth in this Agreement other than those set forth herein and none will be entered into unless in writing and signed by all parties.

14. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one agreement.

15. This Agreement shall be deemed to have been fully executed and delivered when both the United States, on the one hand, and SMC, on the other, have received counterparts hereof executed on behalf of the other party by each of the signatories for such other party set forth on the signature pages hereof.

Agreed to:

December 14, 1994.

United States of America

John F. Greaney,

Chief, Computers and Finance Section, Antitrust Division, Department of Justice.

December 15, 1994

Steinhardt Management Company, Inc.

Michael Steinhardt,

Chairman, Steinhardt Management Company, Inc.

United States District Court, Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and $12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management Company, Inc., Real Party in Interest and $12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

Settlement Agreement

This Settlement Agreement (''Agreement'') is made between the UNITED STATES OF AMERICA (''Plaintiff'') and CAXTON CORPORATION (''Caxton'').

1. This Agreement is made to resolve and forever to settle Caxton's liability under the antitrust laws for certain conduct to be alleged in a Complaint to be filed by the United States pursuant to this Agreement. Upon the fulfillment of the conditions set forth in this Agreement, the releases described herein shall be effective.

2. On the date of execution of this Agreement,

(a) Plaintiff shall file a civil Complaint alleging a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by Caxton and others in connection with the acquisition and trading of certain United States Treasury notes;

(b) Plaintiff shall file a Final Judgment in the form attached as Exhibit A, that, if entered by the Court, would resolve and settle the allegations of the Complaint filed pursuant to subparagraph (a), above;

(c) Plaintiff and Caxton shall execute and file a Stipulation and Order in the form attached as Exhibit B, stipulating to the entry of a Final Judgment in the form attached as Exhibit A.

3. In consideration of the sum of money to be forfeited by Caxton pursuant to the Final Judgment and other of the agreements set forth herein, upon entry of the Final Judgment in the form attached as Exhibit A, or in such other form as the Court may order requiring payment of the civil forfeiture specified in paragraph 6(a), Plaintiff releases Caxton, Luttrell Capital Management, Inc. (''LCM''), and their present and former officers, employees, directors and subsidiaries, and any funds or accounts managed by Caxton or LCM, from any civil liability or claims whatsoever or any criminal liability for any federal offense which was committed prior to the date of this Agreement and (a) which arose out of the purchase, sale, financing or trading of the two-year United States Treasury notes issued in April 1991 or the two-year United States Treasury notes issued in May 1991 (together, ''Specified Notes'') or (b) which arose out of any conduct known to the Department of Justice or the Securities and Exchange Commission (''SEC'') related to any investigation by the Department of Justice or the SEC into the purchase, sale, financing or trading of the Specified Notes, or into any efforts to interfere with, obstruct, mislead or subvert any such investigation; provided, however that nothing in this Agreement shall apply to violations of the federal tax laws, Title 26, United States Code.

4. Plaintiff and Caxton recognize that the Court may enter a Final Judgment only after the parties have complied with the provisions of the Tunney Act, 15 U.S.C. §§ 16 (b) through (g). The parties shall use their best efforts to comply with the procedures of the Tunney Act to ensure that a Final Judgment in the form attached as Exhibit A is entered by the Court at the earliest practicable date. If the Court should require modification to the Final Judgment before entering it, Caxton shall not unreasonably withhold its agreement to such modification.

5. The parties recognize that this Agreement is being made in conjunction with the *Consent and Undertakings of Defendant Caxton Corporation* that Caxton has entered into with the SEC (the ''SEC Consent'') in the form attached as Exhibit C, and that, following execution of the SEC Consent, the SEC will file against Caxton a civil complaint alleging violations of the securities laws, under the caption *Securities and Exchange Commission v. Steinhardt Management Company, Inc. and Caxton Corporation* (the ''Securities Case'').

6. Pursuant to this Agreement, the SEC Consent, and the *Final Judgment of Permanent Injunction and Other Relief as to Defendant Caxton Corporation* in the Securities Case (the ''Securities Case Final Judgment'') in the form attached as Exhibit D, Caxton shall, at the times specified in paragraph 12 and as provided in the Securities Case Final Judgment, pay the sum of $36 million as follows:

(a) $22 million shall be paid to the United States of America. Of this amount, $12.5 million shall constitute a civil forfeiture pursuant to the Sherman Antitrust Act, 15 U.S.C. § 6, and shall be paid to the Department of Justice Asset Forfeiture Fund; the remaining $9.5 million shall constitute a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and shall be paid to the Treasurer of the United States;

(b) $14 million shall be paid into a disgorgement fund established by Court order in the Securities Case, upon terms established by the Securities Case Final Judgment, as entered by the Court. This disgorgement fund shall be administered and used as set forth in the Securities Case Final Judgment.

Under no circumstances shall Caxton be entitled to a refund of any monies paid pursuant to this Agreement; provided that the foregoing shall not preclude reimbursement of Caxton from the disgorgement fund in accordance with the procedures governing such fund, in respect of certain third-party claims paid directly by Caxton.

7. Should the Court for any reason not order all or any part of the amount specified in paragraph 6(a) to be forfeited to the United States, the difference between the amount ordered forfeited by the Court in the captioned case and the amount specified to be forfeited to the United States by paragraph 6(a), shall be paid to the Treasurer of the United States pursuant

to the Final Judgment in the Securities Case under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3) (''Additional Civil Penalty''). Upon the payment of the Additional Civil Penalty, the releases described in paragraph 3 shall be effective.

8. Caxton understands that the United States has not waived the right of any federal agency, with respect to Caxton or any other person: (a) to revoke or suspend any license, certificate, registration or other form of permission issued by such agency; (b) to impose any penalty or to take any form of punitive or disciplinary action; or (c) to debar, suspend, disqualify, or otherwise restrict or prohibit certain transactions or other dealings with the United States or with any of its agencies or departments.

9. Caxton hereby waives any right it might have as a result of this Agreement or any settlement arrangements contemplated hereby under the United States Supreme Court's decision in *United States* v. *Halper,* 490 U.S. 435 (1989), or in respect of the subject matter of that case or under any other existing or future decision relating to that subject matter.

10. Caxton neither admits nor denies any of the factual allegations pertaining to the matters described in the Complaint to be filed pursuant to paragraph 2, nor does Caxton either admit or deny any legal liability arising therefrom. Nothing in this Agreement or in the Final Judgment or any Order contemplated hereby shall constitute a finding of fact or conclusion of law or otherwise provide any basis for establishing such liability.

11. Caxton shall pay the civil penalty imposed by the Court in the Securities Case and contribute the funds to establish the disgorgement fund as specified in the Securities Case Final Judgment (collectively, the ''Initial Payment''). Pursuant to this Agreement and the Tunney Act, 15 U.S.C. §§ 16 (b) through (g), the forfeiture provided for in the Final Judgment shall not be paid until five (5) business days after Caxton receives notice of entry of the Final Judgment, or such other order as represents a final disposition of the captioned case. At that time, in addition to the $12.5 million payment specified in the Final Judgment (''Deferred Payment''), Caxton shall forfeit an ''Additional Amount,'' as defined below. The term ''Additional Amount'' shall mean an amount representing interest on the Deferred Payment, computed on the basis of a 365 day year, at a rate per annum of 5¾%, from and including the date of the Initial Payment, but excluding the date on which the Deferred Payment is made. To the extent the Court does not impose any portion of the Deferred Payment or the Additional Amount, such amounts shall nonetheless be paid to the United States pursuant to paragraph 7 at the time specified herein.

12. This Agreement, and all the terms and provisions hereof, shall be binding on the parties hereto and their respective successors and assigns, and shall inure only to the benefit of the parties hereto, and other persons specifically released pursuant to paragraph 3, and their respective successors and assigns, and no other person shall be entitled to any benefits hereunder.

13. No additional understandings, promises, agreements and/or conditions have been entered into by the parties hereto with respect to the matters set forth in this Agreement other than those set forth herein and none will be entered into unless in writing and signed by all parties.

14. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one agreement.

15. This Agreement shall be deemed to have been fully executed and delivered when both the United States, on the one hand, and Caxton, on the other, have received counterparts hereof executed on behalf of the other party by each of the signatories for such other party set forth on the signature pages hereof.

Agreed to:

December 14, 1994.

United States of America

John F. Greaney,

Chief, Computers and Finance Section, Antitrust Division, Department of Justice.

Caxton Corporation

December 15, 1994.

Peter P. D'Angelo,

President, Caxton Corporation.

[FR Doc. 95–781 Filed 1–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Commission Meetings

SUMMARY: Due to the scheduling difficulties of participants, the Glass Ceiling Commission meetings have been postponed. The meetings had been announced previously in the **Federal Register** of January 9, 1995, 60 FR 2403. The Commission meetings were to take place on Monday, January 23, 1995, 4:00 pm–7:00 pm and Tuesday, January 24, 1995, 9:00 am to 12 noon at the Department of Labor. The Commission meeting will be rescheduled at a later date.

FOR FURTHER INFORMATION CONTACT: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 9th day of January, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–910 Filed 1–12–95; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

Georgia
GA940003 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940050 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940073 (Feb. 11, 1994)

Volume IV

Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
MI940047 (Feb. 11, 1994)

Minnesota
MN940005 (Feb. 11, 1994)
MN940007 (Feb. 11, 1994)
MN940008 (Feb. 11, 1994)
MN940015 (Feb. 11, 1994)
MN940027 (Mar. 25, 1994)
MN940039 (Mar. 25, 1994)
MN940058 (Sep. 02, 1994)
MN940059 (Sep. 02, 1994)
MN940061 (Dec. 02, 1994)

Volume V

Missouri
MO940001 (Feb. 11, 1994)
MO940003 (Feb. 11, 1994)
MO940006 (Feb. 11, 1994)
MO940009 (Feb. 11, 1994)
MO940010 (Feb. 11, 1994)
MO940013 (Feb. 11, 1994)
MO940016 (Feb. 11, 1994)
MO940017 (Feb. 11, 1994)
MO940019 (Feb. 11, 1994)
MO940043 (Feb. 11, 1994)
MO940048 (Apr. 01, 1994)
MO940049 (Apr. 01, 1994)
MO940052 (Apr. 22, 1994)
MO940057 (Apr. 29, 1994)
MO940059 (Apr. 29 1994)
MO940063 (Apr. 29, 1994)
MO940064 (May 06, 1994)
MO940070 (May 13, 1994)
MO940073 (May 13, 1994)
MO940076 (May 13, 1994)
MO940077 (May 20, 1994)
MO940078 (May 20, 1994)
MO940079 (May 20, 1994)

Nebraska
NE940001 (Feb. 11, 1994)
NE940003 (Feb. 11, 1994)
NE940011 (Feb. 11, 1994)
NE940058 (Jul. 29, 1994)

Volume VI

California
CA940001 (Feb. 11, 1994)
CA940002 (Feb. 11, 1994)
CA940004 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 6th day of January 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–664 Filed 1–12–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–003]

National Environmental Policy Act; Aerodynamic and Propulsion Testing at Ames Research Center

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping for proposed aerodynamic and propulsion testing in the National Full-Scale Aerodynamics Complex at Ames Research Center.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and regulations (24 CFR part 1216 subpart 1216.3), NASA intends to prepare an EIS for aerodynamic and propulsion testing (hereinafter referred to as the ''Testing Program'') at Ames Research Center. This EIS will (1) serve as programmatic EIS for NASA's future Testing Program activities at Ames Research Center; (2) address specifically a requirement for tests in support of the

Department of Defense X–32 Common Affordable Lightweight Fighter (CALF) Program in 1995 and 1996; and (3) address specifically a possible requirement for future testing in support of the NASA High Speed Research (HSR) Program.

Better performance and decreased operational costs are necessary for critical components of future generations of high performance military and civil aircraft development programs. The overall purpose of the Testing Program is to support these development programs. The Testing Program is proposed to occur in the 40- by 80-Foot Wind Tunnel, the 80- by 120-Foot Wind Tunnel, and/or the Outdoor Aerodynamic Research Facility (OARF) of the National Full-Scale Aerodynamics Complex (NFAC) at NASA Ames Research Center, Moffett Field, California.

DATES: Interested parties are invited to submit written comments to NASA on or before February 27, 1995 to ensure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Jerry Kirk, Special Assistant for Integration, Aeronautical Test and Simulation Division, Code AO, Mail Stop 247–3, NASA Ames Research Center, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Jerry Kirk, 415–604–5045.

SUPPLEMENTARY INFORMATION: Better performance and decreased operational costs are necessary and critical components of future generations of high performance military and civil aircraft development programs. High performance aircraft share common requirements for testing with propulsion systems of very high thrust and increased jet exhaust velocities, which will tend to produce noise levels greater than present airplanes. These include new vertical take-off and landing fighter jets, as well as future generation supersonic civil transports

The key to the successful development of these future generation aircraft is testing of the actual propulsion systems installed in full-scale models. The NFAC at Ames Research Center is the only test facility in the world which has this capability. Successful results from such tests would provide a key capability for ensuring the long term dominance of U.S. aircraft in both the military environment and commercial marketplace. Currently proposed Testing Program activities for the NFAC include the X–32 CALF Program. There is also a reasonable probability that the Testing Program could include testing to support the High Speed Research (HSR) Program.

It is important to note that the specific tests discussed in the EIS may be representative of future test requirements not specifically identified to date. Therefore, this programmatic EIS will serve as a baseline document for the environmental evaluation of subsequent testing at Ames Research Center. This EIS will address common elements of such testing in a single document and will provide detailed information on each aspect of the Test Program to the extent that such data are available.

The X–32 CALF Program is a part of the Joint Advanced Strike Technology (JAST) program. The JAST team is comprised of members from the Advanced Research Projects Agency (ARPA), the U.S. Air Force, the U.S. Navy, the U.S. Marines, NASA, and the United Kingdom. The goal of the X–32 CALF Program is to develop one aircraft that meets the Department of Defense's multi-service requirements for a next-generation supersonic jet fighter. The High Speed Research (HSR) Program is intended to develop the technology base required to produce an environmentally friendly, economically viable supersonic cruise commercial jet transport. It is anticipated that some of the tests would generate noise levels beyond the Ames Research Center boundaries exceeding those currently produced.

Programmatic and test specific alternatives for this proposed testing include, but are not necessarily limited to: (1) alternative daily time periods for typical testing activities; (2) modifying the testing procedures to reduce the noise levels; (3) testing at a location other than Ames Research Center; and (4) elimination of the proposed Testing Program (''no action'').

The EIS will consider the potential environmental impacts associated with this Testing Program. Particular emphasis will be placed on potentially incurred noise impacts associated with the testing. Consideration will be given to the noise impact caused by running the tests as different times (daytime versus evening hours) and for varying lengths of time. NASA also plans to conduct consultation with the U.S. Fish and Wildlife Service regarding potential impacts to any threatened or endangered species in the Stevens Creek corridor adjacent to Ames Research Center.

Public scoping meeting(s) will be held during the public scoping period identified above. The specific meeting time(s) and locations(s) will be published in the San Jose Mercury News and La Oferta Review in a timely manner. The meeting schedule can also be obtained from Jerry Kirk at the address or telephone number provided above.

Written public input and comments on environmental issues or concerns related to the proposed Testing Program, including, but not limited to, program and test-specific alternatives, noise, as well as any other environmental concerns, are hereby solicited.

Dated: January 9, 1995.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–940 Filed 1–12–95; 8:45 am]

BILLING CODE 7510–01–1

[Notice (95–002)]

NASA Advisory Council; Task Force on Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Task Force on Shuttle-Mir Rendezvous and Docking Missions.

DATE: February 19, 1995, 10 a.m. to 5:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 2 Independence Square, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Vantine, Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1698.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir missions from the following perspectives: training, operations, rendezvous and docking.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 9, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–941 Filed 1–12–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–001)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astrophysics Subcommittee (ASC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Astrophysics Subcommittee.

DATES: Thursday, February 9, 1995, 8:30 a.m. to 5 p.m.; Friday. February 10, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 7–A/B West, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Guenter Riegler, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0339.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Overview of Astrophysics Division Status
—Status of NASA HQ Streamlining/Reorganization
—Branch Reports
—Mission Reports
—Senior Review Results
—Briefing on Educational Strategic Planning
—Discussion and Formulation of Recommendations/Action Items

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 9, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–942 Filed 1–12–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CAPITAL PLANNING COMMISSION AND DISTRICT OF COLUMBIA GOVERNMENT

Environmental Statements; Availability, etc.: Washington, D.C., Sport and Entertainment Arena Construction and Operation

AGENCY: National Capital Planning Commission and District of Columbia Government.

ACTION: Proposed construction and operation of a sports and entertainment arena in Washington, D.C.; public meeting and intent to prepare an environmental assessment.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission (Commission), the Commission, and the District of Columbia Government announce their intent to conduct one (1) public meeting to discuss a new sports and entertainment arena in Washington, D.C. The purpose of the public meeting is to determine the significant issues related to the construction and operation of the arena. The meeting will serve as part of the formal environmental review/scoping process for the preparation of the environmental document that is required for this project.

This Notice of Intent (NOI) initiates the formal environmental review/scoping process for this project and the public is encouraged to submit written comments on the alternatives and on the impacts at this time. A comprehensive Environmental Assessment (EA) is considered to be the appropriate environmental document for this project and its is expected that completion of an EA will discharge all obligations under Federal environmental laws. If it becomes apparent, however, through the environmental review process that an Environmental Impact Statement (EIS) is necessary, one will be prepared and a Supplemental Notice informing the public of this change will be issued. In addition, the comments and responses received on the scope of the alternative and potential impacts, as a result of this NOI, will be considered for the environmental document, whether it is ultimately an EA or an EIS, although, as mentioned an EA is considered to be the appropriate environmental document. Therefore, this is an announcement for the environmental review/scoping meeting for this project.

The proposed sports and entertainment arena would seat a maximum of approximately 23,000 persons and would be located in downtown Washington, D.C. The site includes the following: Square 455 which is bounded by G Street NW, 6th Street NW, F Street NW and 7th Street NW; the right-of-way for the 600 block of G Street NW and, approximately, the southern fifth of Square 454 which is bounded by H Street NW, 6th Street NW, G Street NW and 7th Street NW. The proposed sports and entertainment arena is scheduled to be completed in time for the 1997 basketball and hockey seasons.

The Environmental Assessment (EA) will identify and analyze impacts and mitigation options of the alternative actions under consideration. At present, those alternatives may include: (1) Construction and operation of a new sports and entertainment arena at the Gallery Place site; (2) construction and operation of a new sports and entertainment arena at the Union Station air rights site; and (3) a No Action Alternative, which would result in no new construction. Topics for environmental analysis include short-term construction-related impacts; long-term changes in traffic, parking, socio-economic impacts, land use and physical/biologic conditions within the project area; historic and visual resource protection; and site operations and maintenance.

The environmental review/scoping process will include all written comments and one (1) public meeting for the purpose of determining significant issues related to the alternatives and to the potential impacts associated with the proposed construction and operation of the sports and entertainment arena. The public meeting will be held at:

Monday, February 13, 1995 at the D.C. Convention Center, Rooms 30 and 31, at 900 9th Street N.W. at 7:00 PM

This public meeting will be advertised in local and regional newspapers. Adequate signs will be posted to direct meeting participants. A short formal presentation will precede the request for public comments. National Capital Planning Commission and District of Columbia representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, regional and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EA. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. A document summarizing the written and oral comments received will be prepared.

An Informational Packet will be available for inspection at the offices of the National Capital Planning Commission at 801 Pennsylvania Avenue N.W., D.C. Public Libraries, the

lobby of One Judiciary Square at 441 4th Street, N.W., and the District Building at 1350 Pennsylvania Avenue, N.W., and upon request. Agencies and the general public are invited and are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful environmental review/scoping comments should clearly describe specific issues or topics which the community believes the EA should address.

DATES: All written statements regarding environmental review of the proposed arena must be postmarked no later than February 17, 1995 to the National Capital Planning Commission, 801 Pennsylvania Avenue NW., Suite 301, Washington, D.C. 20576, Attention: Mr. Maurice Fousbee, Community Planner, Phone: (202) 724–0174.

FOR FURTHER INFORMATION PLEASE CONTACT: National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, D.C. 20576. Attention: Ms. Sandra H. Shapiro, General Counsel, Phone: (202) 724–0174.

Mr. Reginald Griffith,

Executive Director, National Capital Planning Commission.

[FR Doc. 95–960 Filed 1–12–95; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement To Promote Artistic Exchange Between the U.S. and the Countries of Eastern Europe, Central Europe and the Former Soviet Union

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to a nonprofit organization to carry out a project to promote artistic exchange between artists and arts organizations from the U.S. and those from the countries of Eastern Europe, Central Europe and the former Soviet Union (the Region). The tasks will include the administration of a process for the review of applications and awarding of subgrants to artists and arts organizations selected to execute projects in the Region or to host artists or arts managers from the Region. Eligibility to apply for the Cooperative Agreement is limited to nonprofit organizations. The Endowment anticipates awarding $90,000 for subgrants under the Cooperative Agreement. The successful recipient will be expected to contribute matching funds of at least $50,000. Those interested in receiving the Solicitation package should reference Program Solicitation PS 95–03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 95–03 is scheduled for release approximately February 3, 1995 with proposals due on March 6, 1995.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 95–974 Filed 1–12–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: January 30, 1995, 8:30am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1122, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard Hirsh, Deputy Division Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1970.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Proposals as part of the selection process for awards.

Reason for Closing: The proposals being review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–875 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: January 31, 1995, 9:00 am–4:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–876 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and time: January 30, 1995; 9:00 am–4:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 95–873 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors.

Date and Time: February 1, 1995 8:30–5:00 p.m.

Place: Room 390, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John R. Lehmann, Deputy Division Director, Microelectric Information Processing Systems Division, Rm 1155, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1940.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Circuits and Signal Processing Program.

Reason For Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–878 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems.

Date & Time: January 30–31, 1995/8:30 a.m.–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530 & 580 Arlington, Virginia 22230.

Contact Person: Dr. Deborah Crawford, Program Director, Solid State and Microstructures, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications of Faculty Early Career Development (CAREER) research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–877 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems:

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (#1196)

Date and time: January 31, 1995—8:00–5:00

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530 Arlington, Virginia 22230.

Type of meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Neuroengineering, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: (703) 306–1340.

Purpose of meeting: to review and evaluate Faculty Early Career Development Programs and other proposals for the Neuroengineering Program.

Agenda: to review and evaluate applications of Research Initiation and Research Equipment proposals.

Reason for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–871 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and time: February 3, 1995; 8:00 a.m.–5:00 p.m.

Place: Room #770, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Judith L. Hannah, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Telephone: (703) 306–1557.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Panel proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 95–872 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: Tuesday, January 30—Thursday, February 2, 1995; 8:30 AM–5:00 PM.

Place: Rooms 310, 320 (T-W), 340 and 360 (T-W), Stafford Place, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–870 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems.

Date and Time: February 3, 1995, 8:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Blvd., room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology & Organizations proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–879 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date and time: January 31, 1995, 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 1020 and 1060, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Lorretta J. Inglehart, Program Director, Instrumentation for Materials Research Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of meeting: To provide advice and recommendations concerning support for Instrumentation Proposals.

Agenda: Evaluation of proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–869 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the Naitonal Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and time: February 2, 1995, (9:00 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 530, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1360.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Civil and Mechanical Systems NSF IIA proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–874 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Microelectronic Information Processing Systems

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Microelectronic Information Processing Systems #1206.

Date and Time: January 30, 1995 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Conference Rooms: 310, 320, 340, 360, 370.

Type of Meeting: Closed.

Contact Person: Dr. Michael Foster, Program Director, Experimental Systems Program Microelectronic Information Processing Systems Division, National Science Foundation, Room 1155 Telephone No.: 703–306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate FY 95 Faculty Early Career Development (CAREER) proposals in the Microelectronic Information Processing Systems area of research.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 9, 1995.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 95–880 Filed 1–12–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Company; Dresden Nuclear Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR Part 50 to Commonwealth Edison Company (ComEd, the licensee) for the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time schedular exemption from the requirements of Sections III.D.2(a) and III.D.3 (Type B and Type C tests, respectively) of Appendix J to 10 CFR Part 50 relating to the primary reactor containment leakage testing for water-cooled reactors. The purpose of the tests is to assure that leakage through primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications and that periodic surveillance is performed.

Need for the Proposed Action

By letter dated November 23, 1994, the licensee requested, pursuant to 10 CFR 50.12(a), a one-time schedular exemption for Dresden, Unit 2, from the local leak rate test intervals for certain Type B and C leak rate tests required by 10 CFR Part 50, Appendix J, Sections III.D.2(a) and III.D.3. The exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown. If a forced outage is imposed to perform testing, it would present undue hardship and cost in the form of increased radiological exposure. Furthermore, if a forced outage is imposed to perform the required testing, an additional plant shutdown and startup will be required. In order to rectify these concerns, ComEd proposes to reschedule the Dresden, Unit 2, refuel outage from September 1994 to July 16, 1995. Increasing the interval between refueling outages will cause Dresden, Unit 2, to exceed the Type B and C leak rate testing surveillance intervals required for Type B and C leak rate tests which cannot be performed during reactor operation.

Environmental Impacts of the Proposed Action

The proposed action includes exemptions from performing certain Type B and C tests for a maximum period of 180 days beyond the required Appendix J test intervals. As stated in 10 CFR Part 50, Appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR 50.12(a), in that it represents a one-time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in Sections III.D.2(a) and III.D.3 of Appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the Appendix J intervals by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary, and therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurrence during the 180-day extended period.

The exemption request is further supported by the information provided in the application. ComEd has identified those Type B and C volumes which will be leak tested during reactor operation. In addition, ComEd has identified those volumes that will be leak tested should a forced outage of suitable duration occur prior to July 16, 1994 (180-day maximum exemption request). These commitments reduce the number of volumes which need an exemption and the length of time for which an exemption would be required should a forced outage of sufficient duration occur. ComEd has also provided the testing methodology which will be used if forced outages occur. In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden will impose an administrative limit for maximum pathway leakage of 80 percent of $0.6L_a$ for the remaining Unit 2 fuel cycle.

Past Unit 2 local leak rate test data have, in general, demonstrated good leak rate test results. The current maximum pathway leakage rate for Dresden, Unit 2, as determined through Type B and C leak rate testing is 309.46 standard cubic feet per hour (scfh). This value is approximately 63 percent of the Technical Specification limit of 488.45 scfh ($0.6L_a$). In addition, the previous outage ''as left'' total minimum pathway leakage rate for Type B and C testable penetrations was 173.25 scfh. This value is approximately 28 percent of the Technical Specification limit of 610.56 scfh ($0.75L_a$). By using the minimum pathway methodology, a conservative measurement of the actual leakage expected through a pathway under post-accident conditions can be determined. Based on the methodology, the low ''as left'' leakage value, and the previous local leak rate test data, it is clear that extending the test interval a maximum of 180 days for certain volumes will not affect the overall integrity of the containment.

The previous outage ''as left'' Intergrated Leak Rate Test, completed on May 14, 1993, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 493.36 scfh. This value is approximately 80.8 percent of the limit specified in the Technical Specifications.

The above data, along with the station-imposed limit for maximum pathway leakage, provide a basis for showing that the probability of exceeding the offsite dose rates established in 10 CFR Part 100 will not be increased by extending the current Type B and C testing intervals for a maximum of 180 days. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternative with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in increased radiation exposure for the license.

Alternate Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statements for Dresden, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

The staff consulted with the State of Illinois regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this Action, see the Licensee's request for exemption dated November 23, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 9th day of January 1995.

For the Nuclear Regulatory Commission.

John F. Stang,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–919 Filed 1–12–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–387]

Pennsylvania Power & Light Co., Allegheny Electric Cooperative, Inc., Susquehanna Steam Electric Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14, issued to Pennsylvania Power and Light Company (PP&L, the licensee), for operation of the Susquehanna Steam Electric Station, Unit 1, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

This environmental assessment has been prepared to address potential environmental issues related to the licensee's application of July 27, 1994, as supplemented September 16, October 27, and November 17, 1994, to amend the Susquehanna, Unit 1 operating license. The letter of February 7, 1994, provided responses to the staff's questions regarding this action. The proposed amendment would increase the licensed core thermal power from 3293 MWt to 3441 MWt, which represents an approximate increase of 4.5% over the current licensed power level.

The proposed action involves NRC issuance of a license amendment to uprate the authorized power level by changing the operating license, including Appendix A of the license (Technical Specifications). No change is needed to Appendix B of the license (Environmental Protection Plan—Non-radiological).

The Need for the Proposed Action

The proposed action is needed to permit an increase in the licensed core thermal power from 3293 MWt to 3441 MWt and provide the licensee with the flexibility to increase the potential electrical output of Susquehanna, Unit 1, providing additional electrical power to service domestic and commercial areas of the Pennsylvania Power and Light (PP&L) Company and Allegheny Electric Cooperative, Inc. grid.

Environmental Impacts of the Proposed Action

The ''Final Environmental Statement (FES) related to operation of Susquehanna Steam Electric Station, Units 1 and 2'' was issued June 1981 (NUREG–0564). By letter of June 15, 1992, the licensee submitted ''Licensing Topical Report NE–092–001 for Power Uprate with Increased Core Flow'' for Susquehanna Steam Electric Station (SSES), Units 1 and 2. The report was submitted to support future proposed amendments to Units 1 and 2 licenses to permit up to a 4.5-percent increase in reactor thermal power and an 8-percent increase in core flow for each unit. The NRC approved the topical report by letter of November 30, 1993. The licensee submitted a proposed amendment to implement power uprate for Unit 2 by a letter of November 24, 1993, which was addressed in an environmental assessment issued by the staff on March 11, 1994. The amendment for power uprate and increased core flow for Unit 2 was issued on April 11, 1994. The subject of this assessment is the power uprate and increased core flow for Unit 1.

Section II.4 of the above Topical Report provided an environmental assessment of the proposed power uprate, including projected non-radiological environmental effects and radiological effects from postulated accidents.

Sections 8.1, 8.2, and 8.3 of the Topical Report discussed the potential effect of power uprate on the liquid, gaseous, and solid radwaste systems. Sections 8.4, 8.5, and 8.6 discussed the potential effect of power uprate on radiation sources within the plant and radiation levels from normal and post-accident operation. Section 9.2 of the Topical Report presented the results of the calculated whole body and thyroid doses at uprated power versus current authorized power conditions at the exclusion area boundary and the low population zone (LPZ) that might result from the postulated design basis radiological accidents [i.e., loss-of-coolant accident (LOCA), main steam line break accident (MSLBA) outside containment, fuel handling accident (FHA) and control rod drop accident (CRDA)]. Other accidents (non-LOCA) that were previously analyzed in the licensee's Final Safety Analysis Report (FSAR) were also reassessed. All off-site radiological doses remain well below established regulatory limits for power uprate operation.

Supplemental information related to the non-radiological environmental assessment was also presented in the licensee's letter of February 7, 1994.

The licensee summarized their reassessment of potential radiological and non-radiological impacts of station operation at a slightly higher power level as follows:

Non-Radiological Environmental Assessment

Since power uprate will not significantly change the methods of generating electricity, nor of handling any influents from the environment or effluents to it, no new or different environmental impacts are expected. The conservative models and methods used in the environmental assessments of the original design, confirmed by studies conducted during actual operation, show that more than adequate margin exists for the proposed power uprate without exceeding the non-radiological environmental effects estimated in the original estimates and analyses and cited in the original permit applications and impact statements.

The maximum withdrawal rate from the river will increase from the current value of 38,800 gpm to 40,700 gpm after power uprate, an increase of 5%. The maximum blowdown rate will increase from the current value of 10,300 gpm to 10,800 gpm, an increase of 5%.

After reviewing the additional water withdrawal requirements and increased blowdown rate from the natural draft cooling towers at the Susuqehanna SES (SSES) associated with power uprate, PP&L determined that there will be no adverse effects to the river flow or river biota. This conclusion is based on two factors. First, the

projected number of fish estimated to be impinged per day would increase from 20 to 21 and the number of larvae estimated to be entrained would increase by only 13,000 to 363,000 per day. Biologically, these estimated increases represent a negligible impact to the river ecosystem. Second, the maximum cooling tower blowdown flow after power uprate is estimated to increase by only 5% which amounts to 500 gpm. This amounts to less than .5% of the average river flow.

The cooling blowdown from the cooling tower basin is through a diffuser into the river. The characteristics of the cooling tower are such that there is greater air flow through the tower caused by the higher circulating water return temperature at power uprate conditions. This increased air flow removes the additional heat load resulting in negligible cooling tower basin temperature changes.

Estimates, assuming that both SSES cooling towers are operating at the original 100% power level for a year, would result in 58,000 pounds of solids per year as salt drift, spread over a large area. Modelling indicated the heaviest localized deposition of solids would be 3 pounds/acre/year (SSES Environmental Report Section 5.3.4). The power uprate should have no impact on these estimates, especially with the conservatism built into the model by assuming 100% capacity factor. Note also that the design cooling tower drift is a function of circulating water flow which is not changing for power uprate.

Studies on the possible effects of salt drift have been conducted at the SSES since 1977. These studies have included monthly examination of natural vegetation during the growing season (1977 to date), annual quantitative vegetation studies (1977 to date), a two-year study on the effect of simulated salt drfit on corn and soybeans (1985–86), and annual forest inspections since 1982.

The monthly examinations have utilized several transects (salt drift transects) in the vicinity of the power station for possible salt damage to natural vegetation and incidence of parasitic plant diseases. The annual vegetation studies consider possible long-term changes in forest utilized salt spray approximating the composition of the cooling tower drift from the SSES at ''worst case'' concentration on agricultural crops in two fields.

None of the studies have found evidence for damage to agricultural crops or natural vegetation from salt drift. It should be noted that the water used at the SSES (from the Susquehanna River) does not contain the same salts as brackish water used at estuarine coo[l]ing tower[s]; its effects are more like plant micronutrients. The natural vegetation studies over 15 years have found no salt drift damage and plant diseases in accordance with host presence and location. The simulated salt drift studies utilized concentrations estimated at 5 and 10 times maximum salt drift concentration in the SSES plume. It is therefore unlikely that salt drift damage would occur from an approximate 5% consumptive rise in water usage.

There will be no changes to the cooling tower water chemistry as a result of power uprate. The pre-uprate levels of cycles of concentration will be maintained. Since there will be a 5% increase in blowdown flow, there will be a 5% increase in chemical discharge to the river.

The velocity of the intake water will increase by 5% to .37 ft/sec with power uprate which is below the recommended intake design velocity of 0.5 ft/sec.

Sound level monitoring was conducted at both near site (less than 1 mile) and far site locations (greater than 1 mile) from the Susquehanna SES site from 1972 and 1985. This survey was conducted prior to and during construction and during one and two unit operation. The two Cooling Towers were identified to be one of the major site noise sources. The cumulative effects of all noise sources associated with station operation were determined to be less than the U.S. Environmental Protection Agency recommended day-note equivalent sound level limit of 55 DBA at all monitoring locations. It is not expected that this level will be exceeded at any of the locations with the possible exception of an area approximately 2,200 feed southeast of the Cooling Towers where the measured sound level including a nighttime weighting factor of +10 DBA was 54 DBA. Sound levels will be monitored at power uprate conditions.

As indicated previously, water discharge flow from power uprate may increase 5% above the design discharge rate to 10,800 gpm. This is well below the maximum flow of 16,000 gpm reviewed in the SSES Environmental Report (Table 3.3–1 and, therefore, the additional flow from power uprate is not considered to be an adverse impact to the river.

At the Susquehanna SES cooling tower blowdown discharges into the river through a diffuser pipe located on the river bottom. Velocity of this discharge was calculated in Appendix G, Thermal Discharge, Response 1, pages THE–1.1 and 1.2 of the Environmental Report. Water discharges through 72–4″ ports into the river. The velocity associated with a 10,000 gpm discharge was calculated to be 5.83 fps and rounded to 6 fps. This rounded off value was used when preparing [the] SSES Environmental Report. The velocity associated with a 10,800 gpm discharge is also approximate 6 fps.

Thermal plume studies conducted in the fall, winter, and spring of 1986–87 indicated a maximum temperature rise of 1° F within an 80 foot mixing zone from the diffuser pipe. Present Pennsylvania Department of Environmental Resources water quality criteria states that ambient river temperature rise from thermal discharges shall not cause the temperature in the receiving water body to rise more than 2° F in one hour. The thermal discharges from the cooling tower blowdown from power uprate will not exceed this water quality criteria.

Chemical composition of the blowdown after power uprate will not exceed the NPDES permit limits.

The staff reviewed the potential effect of power uprate on plant makeup water usage. There will be no significant increase in makeup water requirements for any plant systems as a result of power uprate. This includes the reactor coolant system, the condensate, feedwater and steam systems, the emergency service water system, the reactor and turbine building closed cooling water systems or any of the normal service water systems. The only effect of power uprate on the component cooling water system and turbine plant cooling water system from power uprate is an increased heat load. The service water system removes heat from the heat exchangers in the turbine, reactor and radwaste buildings and transfers this heat to the cooling towers where it is dissipated. The increased heat load on intermediate systems is reflected in the discussion of potential impacts from increased cooling tower blowdown and thermal discharges remain acceptable. Inventory makeup is not affected. Makeup requirements for the auxiliary boiler, the fire protection system or other auxiliary systems are unaffected by power uprate.

The licensee has stated that there are no changes required to the SSES Environmental Protection Plan as a result of operation at uprated power. Specifically, the licensee stated:

Chapter 3, Consistency Requirements, Section 3.1, Plant Design Operations, of this plan discusses how proposed changes need to be addressed. Through the PP&L Unreviewed Environmental Question Program, changes such as that of power uprate will be reviewed.

An ''Unreviewed Environmental Question'' evaluation was conducted in accordance with each unit's ''Environmental Protection Plan'' to determine if power uprate could cause any significant environmental impacts. This included a review of the National Pollutant Discharge Elimination System (NPDES) Permit and other environmental permits, and indicated that power uprate should not contribute to any new noncompliances. No significant increase in generation of hazardous or nonhazardous waste is expected, except for a 3 to 5% increase in sediment removed from the cooling tower. Nor is any change expected in the load on the sewage treatment plant. River water use will remain within the existing agreement with the Susquehanna River Basi[n] Commission. PP&L has determined that power uprate is not an ''unreviewed environmental question.''

The proposed power uprate therefore requires no changes to the ''Environmental Protection Plans'' since it does not involve:

(a) A significant increase in any adverse environmental impact previously evaluated in the ''Environmental Report—Operating License Stage,'' or the ''Final Environmental Statement,'' or in any decision of the Atomic Safety and Licensing Board;

(b) A significant change in effluents or power levels, or

(c) A matter not previously reviewed and evaluated in the documents specified in paragraph (a) which might have a significant adverse environmental impact.

Radiological Environmental Assessment

As discussed previously, the licensee addressed potential radiological impacts attributable to operation at uprated power conditions in Sections 8, 9, and 11 of the initial Topical Report. The licensee concluded:

Adequate margin also exists for the proposed power uprate without exceeding regulatory limits for radiological effects. Current operating experience indicates that actual releases and waste disposal after power uprate will continue to be significantly less than the original estimates. For these reasons, power uprate is not expected to have an adverse effect on the routine operation ''dose commitment'' estimated by previous radiological environmental analyses, and no revision of these analyses is required.

The environmental assessment includes an estimate of potential exposure from all accident types combined. Regulatory Guide 1.49 requires calculation of accident doses at 102% of uprated thermal power, or 3510 MWt. Although direct comparison with the original analyses is not meaningful because of changes in methodology, a comparison on a consistent basis would show that the expected dose is approximately proportional to power. The original calculation was done at 3439 MWt. The estimated potential exposure from all accident types combined will therefore change by about the ratio of 3510/3439, or about 2 percent, which is not a significant change compared to the uncertainty in the probability estimates. No revision of these analyses is therefore required.

[Liquid radwaste throughput may increase up to 5% to a level which is within the processing capability of the system.] The activity levels of some radwaste streams containing coolant activation products may increase up to 10%, due to the 4.5% core flux increase and a 5% crud increase to the reactor which are assumed to occur.

Since the power uprate level of 3441 MWt is not significantly different from that analyzed previously, it is not anticipated there will be a significant increase in radiological effluents. Also, pre-power uprate technical specification limits will be maintained.

The Commission has completed its evaluation of the proposed action and the licensee's evaluation of the potential radiological and non-radiological impacts. The Commission found that the FES (NUREG–0564) is valid for operation at the proposed uprated power conditions for SSES Unit 1 (the second uprated unit at the site). The Commission also concluded that the plant operating parameters impacted by the proposed uprate would remain within the bounding conditions on which the conclusions of the FES are based.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impacts.

With regard to potential non-radiological impacts, the proposed action will not have a significant impact on the environs located outside the restricted area as defined in 10 CFR Part 20 or significantly affect non-radiological plant effluent or other environmental impacts. Therefore, the Commission concludes that this proposed action would result in no significant non-radiological environmental impacts.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environment and would result in preventing the facility from having the flexibility to generate the approximately additional 50 megawatts that are obtainable from the existing plant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the operation of Susquehanna Steam Electric Station, Units 1 and 2,'' dated June 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and consulted with the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources. The State Liaison Officer had no comment regarding the NRC's proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for amendment dated July 27, 1994, as supplemented September 16, October 27, and November 17, 1994, and letter dated February 7, 1994. These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 9th day of January 1995.

For the Nuclear Regulatory Commission.

Chester Poslusny,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–920 Filed 1–12–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–8012 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 to Regulatory Guide 8.29, ''Instruction Concerning Risks from Occupational Radiation Exposure.'' This guide is being revised to provide guidance on the instructions and information that should be provided to workers by licensees about health risks from occupational radiation exposure.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by March 15, 1995.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic

Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N, 8, 1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld. gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''F—Regulatory, Government Administration and State Systems,'' then selecting ''A—Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''A—U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Although a time limit is given for comments on this draft, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of December 1994.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

Deputy Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–921 Filed 1–12–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–277]

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Unit 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PECO Energy Company (the licensee) to withdraw its April 6, 1994 application for proposed amendment to Facility Operating License No. DPR–44 for the Peach Bottom Atomic Power Station, Unit No. 2, located in York County, Pennsylvania.

The proposed amendment would have revised the facility technical specifications to reflect incorporation of the end-of-cycle recirculation pump trip (EOC–RPT) and installation of an adjustable speed drive for the recirculation pumps.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 28, 1994 (59 FR 22011). However, by letter dated December 29, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 6, 1994, supplemental letters dated July 6, July 15, August 17 and August 28, 1994, and the licensee's letter dated December 29, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 9th day of January 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 95–922 Filed 1–12–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Westchester County, New York.

II

By letter dated November 30, 1993, as supplemented July 6, 1994, the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2, which specifies requirements to ensure that one train of redundant equipment necessary to achieve and maintain hot shutdown remains free of fire damage. Specifically, the licensee requested an exemption from Section III.G.2.f such that the redundant wide-range steam

generator water level sensing lines and the redundant pressurizer level sensing lines, located inside containment, need not be separated by noncombustible radiant energy shields.

The steam generator water level and the pressurizer water level are parameters needed to achieve and maintain safe shutdown following a fire. The wide-range steam generator water level sensing lines and the pressurizer level sensing lines transmit pressure changes from the steam generator and the pressurizer to their respective pressure transmitters.

The redundant wide-range steam generator sensing lines are routed within 20 feet of each other at elevation 48′–0″ (Fire Zone 70A). The lines run vertically along a wall from elevation 48′–0″ to their respective transmitters, which are located in a common instrument rack at elevation 68′–0″ (Fire Zone 70A). At this point, the sensing lines are separated by about 2 feet. The three redundant pressurizer level sensing lines are spaced about 8 feet apart at elevation 117′–0″ (Fire Zone 86A). From here the lines are routed down the outside of the concrete structure surrounding the pressurizer. At elevation 95′–0″ (Fire Zone 86A) the lines penetrate the floor and continue down the inside of the crane wall to the elevation of their respective low level sensing lines. At this point, each reference leg is paired with its variable leg. The redundant lines then run in opposite directions along the inside of the crane wall until they penetrate the wall at approximately the 65′–0″ elevation (Fire Zone 70A). The sensing lines enter a common instrument rack on elevation 68′–0″ (Fire Zone 87A).

The cables inside containment are rubber insulated with a glass/asbestos braided jacket. As reported in a fire test that was transmitted to the NRC by letter dated November 22, 1982, and accepted in NRC Safety Evaluation dated February 2, 1984, the cables will not propagate a fire to any significant degree.

Fire detection inside containment in Fire Zones 70A, 77A, and 71A at elevation 68′0″ includes four photo electric smoke detectors, one mounted above each reactor coolant pump. Fire suppression at this elevation includes nine carbon dioxide extinguishers and three water hose stations. In Fire Zones 70A and 71A, at elevation 46 feet, there are four water hoses, five carbon dioxide extinguishers, and three photoelectric smoke detectors located in the penetration area.

Section III.G.2 of Appendix R to 10 CFR Part 50 provides options for the protection of cables and equipment and associated nonsafety circuits of redundant trains located inside noninerted containments. Certain segments of the wide-range steam generator water level sensing lines and the pressurizer level sensing lines are not provided with the level of fire protection required by Section III.G.2 of Appendix R to 10 CFR Part 50. The licensee has requested an exemption from Section III.G.2.f which specifies that such equipment be separated by a noncombustible radiant energy shield.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present as set forth in 10 CFR 50.12(a)(2).

The staff was concerned that the lack of radiant energy shields between these redundant trains of instrument sensing lines could result in erroneous pressurizer or steam generator level indications in the event of a fire. The wide-range steam generator sensing lines are routed within 20 feet of each other starting at elevation 48′–0″ (Fire Zone 70A) up into the transmitter at elevation 68′–0″ (Fire Zone 70A). With the exception of reactor coolant pump lube oil (discussed below), the maximum fire severity of the in-situ combustibles located within 20 feet of the wide-range steam generator sensing lines is less than 6 minutes. A fire involving these combustibles would be of limited magnitude and extent. In addition, the smoke and hot gases from the fire would be directed upwards into the higher elevations of the containment and away from the sensing lines. Therefore, the staff does not believe that these in-situ combustibles present a threat to the sensing lines. A transient combustible fire appears to be the only type of fire that could directly expose the wide-range steam generator lines, because transient combustibles can only be placed in the vicinity of the lines at the instrument rack where they converge (Instrument Rack 21). The licensee has addressed this potential transient fire exposure by providing a radiant energy shield in the front of the instrument rack that will protect one channel of steam generator wide-level instrumentation from a floor-based transient combustible fire at elevation 68′–0″.

The three pressurizer sensing lines are spaced approximately 8 feet apart from their initiation point at elevation 117′–0″ (Fire Zone 86A) down the outside of the concrete structure surrounding the pressurizer down to the 95′–0″ level. After penetrating the 95′–0″ level (Fire Zone 86A) they are routed down the inside of the crane wall (Fire Zone 70A) to the elevation of their respective low-level sensing lines. The reference leg is paired with its variable leg. The redundant lines then run in opposite directions along the inside of the crane wall until they penetrate the wall at about the 65′–0″ elevation (Fire Zone 70A). Their route is terminated upon entering a common instrument rack (Fire Zone 87A).

A fire involving the cables in the vicinity of the pressurizer sensing lines could expose the sensing lines to elevated temperatures. However, it is expected that a cable fire in the vicinity of the sensing lines will not damage the sensing lines because of the large open containment and the limited potential for flame propagation along the cables.

Each of the four reactor coolant pumps is provided with a seismically designed oil collection system that collects oil from pressurized and unpressurized oil leakage sites from the reactor coolant pump lube oil system. This provides reasonable assurance that a lube oil leak will be contained by the oil collection system. The oil collection system should prevent escaping oil from reaching potential hot surfaces which will significantly reduce the probability of a fire.

Fire detection and manual fire suppression is available in the vicinity of the sensing lines. In the event of a fire, it is expected that the detector will alarm and the fire brigade will respond to extinguish the fire in its incipient stages.

On the basis of its evaluation, the NRC staff concludes that a postulated fire in the vicinity of the redundant wide-range steam generator water level sensing lines and the redundant pressurizer level sensing lines in containment Fire Zones 70A, 77A, and 86A would not prevent the operators from achieving and maintaining safe shutdown. The NRC staff also concludes that the level of fire protection provided for the wide-range steam generator water level sensing lines and the pressurizer level sensing lines is adequate and that the lack of radiant energy shields is an acceptable exemption from the technical requirements of Section III.G.2.f of Appendix R to 10 CFR Part 50.

In summary, the licensee has established that special circumstances

are present. The exemption request satisfies the criteria of 10 CFR 50.12(a)(2)(ii) as follows: The underlying purpose of the rule is to ensure that safe shutdown can occur notwithstanding the possibility of a fire. Application of the rule is not necessary to achieve the underlying purpose because with respect to the possibility of a fire affecting safe shutdown, (1) the fixed combustible loading in containment is insignificant and the location of the sensing lines are remote from the fixed combustibles that do exist; (2) automatic smoke detectors are installed above each of the reactor coolant pumps; (3) personnel access to the containment is restricted during power operations, thus, the potential for transient combustible material to accumulate is low; (4) the inherent fire retardant properties of the power cables used in containment would minimize fire propagation; and, (5) the effects of a fire inside containment are bounded by the worst case loss-of-coolant accident analysis, thus safe shutdown would be achievable.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that (1) the Exemption as described in Section III is authorized by law, will not endanger life or property, and is otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants the following Exemption:

(1) The Power Authority of the State of New York is exempt from the requirement of 10 CFR Part 50, Appendix J, Section III.G.2.f, to the extent that the redundant wide-range steam generator water level sensing lines and the redundant pressurizer level sensing lines, located inside containment, need not be separated by noncombustible radiant energy shields.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (59 FR 11810).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of January 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–923 Filed 1–12–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–96]

Initiation of Section 302 Investigation Regarding Policies and Practices of the Government of Colombia Concerning the Exportation of Bananas to the European Union; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination regarding initiation of investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412 (b)(1)(A)); request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Colombia affecting U.S. companies that export bananas from Colombia to the European Union. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on January 9, 1995. Written comments from the public are due on or before 12 noon, on Friday, February 10, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Edward Kaska, Director for European Services and Agriculture, (202) 395–3320; or Irving Williamson, Deputy General Counsel, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Section 302(b)(1)(A) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as ''Section 301''), with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, inter alia, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce.

On September 2, 1994, Chiquita Brands International, Inc. and the Hawaii Banana Industry Association filed a petition pursuant to section 302(a) of the Trade Act alleging that various policies and practices of the European Union (EU), Colombia, Costa Rica, Nicaragua and Venezuela concerning trade in bananas are discriminatory, unreasonable and burden or restrict United States commerce. In particular, the petition alleged that the March 29, 1994 Framework Agreement on Bananas between the EU and Colombia, Costa Rica, Nicaragua and Venezuela (Framework Agreement) aggravated the harm caused by the EU banana import regime and provided for the implementation of discriminatory measures against the U.S. banana companies.

On October 17, 1994, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the EU practices referred to in the petition, but decided not to initiate an investigation of the practices of Colombia, Costa Rica, Nicaragua and Venezuela because they had not yet implemented the Framework Agreement. The USTR called upon these governments to withdraw from the Framework Agreement before its implementation, and to seek reform of the EU's banana policy in a manner consistent with the EU's obligations under the GATT and the Agreement Establishing the World Trade Organization.

On December 1, 1994, the Government of Colombia issued Decree 2655, which governs banana exports from Colombia to the EU from January 1, 1995 through March 31, 1995 and implements the Framework Agreement.

Accordingly, on January 9, 1995, the USTR determined that an investigation should be initiated under section 302(b)(1)(A) of the Trade Act to determine whether, as a result of Colombia's implementation of the Framework Agreement, the policies and practices of Colombia regarding the exportation of bananas to the EU are unreasonable and discriminatory and burden or restrict U.S. commerce. On January 9, 1995, the USTR also initiated such an investigation regarding these policies and practices.

Investigation and Consultations

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Colombia concerning the issues under investigation. UUTR will seek information and advice from the appropriate committees established pursuant to section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 12 months after the date on which this investigation was initiated (i.e., on or before January 9, 1996), pursuant to section 304 of the Trade Act the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine

what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies, and practices of the Government of Colombia that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Friday, February 10, 1995. Comments must be in English and provided in twenty copies to: Sybia Harrison, Office of the General Counsel, Room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–96) open to public inspection in the USTR Reading Room pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in: room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–937 Filed 1–12–95; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–97]

Initiation of Section 302 Investigation Regarding Policies and Practices of the Government of Costa Rica Concerning the Exportation of Bananas to the European Union; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination regarding initiation of investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A)); request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Costa Rica affecting U.S. companies that export bananas from Costa Rica to the European Union. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on January 9, 1995. Written comments from the public are due on or before 12 noon, on Friday, February 10, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Edward Kaska, Director for European Services and Agriculture, (202) 395–3320; or Irving Williamson, Deputy General Counsel, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Section 302(b)(1)(A) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as ''section 301''), with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, inter alia, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce.

On September 2, 1994, Chiquita Brands International, Inc. and the Hawaii Banana Industry Association filed a petition pursuant to section 302(a) of the Trade Act alleging that various policies and practices of the European Union (EU), Colombia, Costa Rica, Nicaragua and Venezuela concerning trade in bananas are discriminatory, unreasonable and burden or restrict United States commerce. In particular, the petition alleged that the March 29, 1994 Framework Agreement on Bananas between the EU and Colombia, Costa Rica, Nicaragua and Venezuela (Framework Agreement) aggravated the harm caused by the EU banana import regime and provided for the implementation of discriminatory measures against the U.S. banana companies.

On October 17, 1994, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the EU practices referred to in the petition, but decided not to initiate an investigation of the practices of Colombia, Costa Rica, Nicaragua and Venezuela because they had not yet implemented the Framework Agreement. The USTR called upon these governments to withdraw from the Framework Agreement before its implementation, and to seek reform of the EU's banana policy.

On December 27, 1994, the Government of Costa Rica issued Decree No. 23917 COMEX–MAG, which implements the Framework Agreement.

Accordingly, on January 9, 1995, the USTR determined that an investigation should be initiated under section 302(b)(1)(A) of the Trade Act to determine whether, as a result of Costa Rica's implementation of the Framework Agreement, the policies and practices of Costa Rica regarding the exportation of bananas to the EU are unreasonable and discriminatory and burden or restrict U.S. commerce. On January 9, 1995, the USTR also initiated such an investigation regarding these policies and practices.

Investigation and Consultations

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Costa Rica concerning the issues under investigation. USTR will seek information and advice from the appropriate committees established pursuant to section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 12 months after the date on which this investigation was initiated (i.e., on or before January 9, 1996), pursuant to section 304 of the Trade Act the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of Costa Rica that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set

forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Friday, February 10, 1995. Comments must be in English and provided in twenty copies to: Sybia Harrison, Office of the General Counsel, Room 223, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301–97) open to public inspection in the USTR Reading Room pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday and is located in: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–939 Filed 1–12–95; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–94]

Request for Public Comment Concerning Proposed Determinations and Action Pursuant to Section 301: European Community Banana Import Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comment concerning (1) whether acts, policies, and practices of the European Union (EU) are actionable under section 301 (a) or (b) of the Trade Act of 1974, as amended (Trade Act); and (2) if so, what action, if any, should be taken pursuant to section 301(c) of the Trade Act.

SUMMARY: The USTR seeks public comment concerning upcoming determinations pursuant to section 304 and possible action pursuant to section 301 of the Trade Act with respect to the investigation of the EU's trade regime regarding importation of bananas.

DATES: Written comments from the public are due on or before 12 noon, on Friday, February 10, 1994.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Edward Kaska, Director for European Services and Agriculture, (202) 395–3320; or Irving Williamson, Deputy General Counsel, (202) 395–3432.

SUPPLEMENTARY INFORMATION: On October 17, 1994, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the following practices of the EU: (1) Council Regulation (EEC) No. 404/93 and related rules implementing a Community banana policy discriminating against U.S. banana marketing companies importing bananas from Latin America, including a restrictive and discriminatory licensing scheme designed to transfer market share to firms traditionally trading bananas from African, Caribbean and Pacific (ACP) sources and from EU overseas territories and dependencies; and (2) the March 29, 1994 Framework Agreement on Bananas between the EU and Colombia, Costa Rica, Nicaragua and Venezuela (Framework Agreement). By **Federal Register** notice dated October 24, 1994 (59 FR 53495), USTR requested public comment on the issues raised in the petition. The comment period was subsequently extended by a **Federal Register** Notice dated November 21, 1994 (59 FR 60026).

Since initiation of the investigation, the USTR has conducted consultations and bilateral discussions with the EU concerning the issues in the petition. The USTR also requested the EU to delay implementation of the Framework Agreement because implementation would aggravate the harm caused by Regulation 404. These efforts have failed to bring about reform of the EU practices.

Section 304(a) of the Trade Act provides that in each investigation initiated under section 302 of the Trade Act, the USTR must determine whether the act, policy or practice is actionable under section 301. The USTR requests comments from the public by February 10, 1995 regarding the actionability under section 301 of the EU practices referred to above.

If this determination is affirmative, the USTR must also determine what action would be appropriate under subsection (a) or (b) of section 301. Actions that would be permitted in the case of a positive determination with respect to the EU include action to suspend, withdraw or prevent the application of benefits of trade agreement concessions to the EU; imposition of duties or other import restrictions on goods of the EU or fees or restrictions on services of the EU; and restriction or denial of service sector access authorizations with respect to services of the EU. The USTR requests comments from the public by February 10, 1995 regarding the appropriateness of such actions, including identification of goods or services of the EU to which such measures might appropriately be applied, as well as identification of other measures which could be taken with respect to trade of the EU.

Public Comment

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55FR 20593) and must be filed by 12 noon, Friday, February 10, 1995. Comments must be in English and provided in twenty copies to: Sybia Harrison, Office of the General Counsel, Room 223, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301–94) open to public inspection in the USTR Reading Room pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2005.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–938 Filed 1–12–95; 8:45 am]

BILLING CODE 3190–01–M

Generalized System of Preferences (GSP); Initiation of a Review to Consider the Designation of Moldova as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Moldova for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Moldova as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 513, Washington, D.C. 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Moldova meets the designation criteria of the GSP law and should be designated as a beneficiary developing country for purposes of the GSP, which is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in sections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Moldova for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided to other developed countries, expropriation without compensation, enforcement of arbitral awards, support of international terrorism, and protection of internationally recognized worker rights. Other practices taken into account relate to the extent of market access for goods and services, investment practices and protection of intellectual property rights.

Comments must be submitted in 15 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, N.W., Room 513, Washington, D.C. 20506. Comments must be received no later than 5 p.m. on Wednesday, March 1, 1995. Information and comments submitted regarding Moldova will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the document contains business confidential information, 15 copies of a nonconfidential version of the submission along with 15 copies of the confidential version must be submitted. In addition, the submission should be clearly marked ''confidential'' at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either ''public version'' or ''non-confidential'').

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–882 Filed 1–12–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35198; File No. 600–24]

Self-Regulatory Organizations; Delta Government Options Corp.; Notice of Filing and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

January 6, 1995.

On December 28, 1994, Delta Government Options Corporation (''Delta'') filed with the Securities and Exchange Commission (''Commission'') a request pursuant to Section 19(a)[1] of the Securities Exchange Act of 1934 (''Act'') for extension of its registration as a clearing agency under Section 17A[2] of the Act for a period of two years.[3] The Commission is publishing this notice and order to solicit comments from interested persons and to grant Delta's request for an extension of its temporary registration as a clearing agency through January 31, 1997.

On January 12, 1990, the Commission granted Delta's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a) of the Act[4] on a temporary basis for a period of thirty-six months.[5] On February 11, 1993, the Commission approved Delta's request for an extension of its temporary registration as a clearing agency through January 12, 1995.[6] Delta now requests that the Commission grant an extension of its original order granting Delta temporary registration as a clearing agency subject to the same terms and conditions for a period of two years.

As discussed in detail in the order granting Delta's initial temporary registration as a clearing agency,[7] one of the primary reasons for Delta's registration is to enable it to provide for the safe and efficient clearance and settlement of transactions involving the over-the-counter (''OTC'') trading of options on U.S. Treasury securities. Delta has functioned effectively in this capacity as a registered clearing agency for the past five years. In light of Delta's past performance, the Commission believes that Delta has the capacity to comply with the statutory obligations set forth under Section 17A(b)(3) of the Act[8] as the prerequisites for registration as a clearing agency. Comments received during Delta's temporary registration will be considered in determining whether Delta should receive permanent registration as a clearing agency under Section 17A(b) of the Act.[9]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Delta. All submissions should refer to File No. 600–24 and should be submitted by February 3, 1995.

Conclusion

On the basis of the foregoing, the Commission finds that Delta's request for extension of temporary registration

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[1] 15 U.S.C. 78s(a)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] Letter from Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (December 28, 1994).

[4] 15 U.S.C. 78q–1(b)(2) and 78s(a) (1988).

[5] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890 [File No. 600–24].

[6] Securities Exchange Act Release No. 31856 (February 11, 1993), 59 FR 9005 [File No. 600–24].

[7] *Supra* note 5.

[8] 15 U.S.C. 78q–1(b)(3) (1988).

[9] 15 U.S.C. 78q–1(b) (1988).

as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is Therefore Ordered, that Delta's temporary registration as a clearing agency (File No. 600–24) be, and hereby is, extended through January 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–913 Filed 1–12–95; 9:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20823; 812–9322]

Croft-Leominster Income Fund, et al.; Notice of Application

January 9, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Croft-Leominster Income Fund (the ''Fund''), Leominster Income, L.P. (the ''Partnership''), and Croft Leominster, Inc. (the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the exchange of shares of the Fund for portfolio securities of the Partnership. Thereafter, the Partnership will dissolve and distribute the shares it received in the exchange *pro rata* to its partners.

FILING DATES: The application was filed on November 14, 1994. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 207 East Redwood Drive, Suite 802, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized in 1991 as a limited partnership under Maryland law. It has not been registered under the Act in reliance upon section 3(c)(1) of the Act, and the Partnership interests have not been registered under the Securities Act of 1933 (the ''Securities Act'') in reliance upon section 4(2) thereof. The Adviser is the sole general partner of the Partnership and has exclusive control over the management of its business. The Adviser has maintained an investment in the Partnership not less than 1% of the net assets of the Partnership, and is allocated net income, gains, and losses of the Partnership in proportion with its investment.

2. The Fund is one of two initial series of the Croft Funds Corporation, an open-end investment company organized under Maryland law (the ''Corporation''). The Fund filed a notification of registration under the Act on Form N–8A and a registration statement under the Act and the Securities Act on Form N–1A on July 22, 1994. The N–1A registration statement has not yet been declared effective, and no offering of shares has commenced. The Adviser will act as investment adviser to the Fund.

3. Applicants propose that the Partnership exchange its assets, less funds required to pay the liabilities of the Partnership, for shares of the Fund. Thereafter, the Partnership will dissolve and distribute the shares of the Fund it receives to its partners *pro rata.* The exchange was proposed to permit the limited partners of the Partnership to invest in a larger fund, and to eliminate administrative burdens, filing requirements, and complicated allocation calculations currently faced by the Partnership. The Fund was designed as a successor investment vehicle to the Partnership, with investment objectives and policies substantially the same as those of the Partnership. The same persons who selected the investments for the Partnership will select them for the Fund.

4. The Fund will be sold without any load or sales charge, and will adopt a plan of distribution pursuant to rule 12b–1 under the Act. Under the rule 12b–1 plan, the Fund will pay a rule 12b–1 distribution fee of up to 0.25% of its average daily net assets. Applicants anticipate that shares of the Fund will be marketed to essentially the same classes of persons and in the same manner as the interests in the Partnership have been marketed.

5. The proposed exchange will be effected pursuant to an agreement and plan of reorganization (the ''Plan'') to be approved by the limited partners of the Partnership. Under the Plan, the portfolio securities of the Partnership will be acquired at their independent ''current market price,'' as defined in rule 17a–7 under the Act. The Fund will not acquire securities that, in the opinion of the Adviser, would result in a violation of the Fund's investment objectives, policies, or restrictions. Any remaining securities will be liquidated by the Partnership for cash and these proceeds distributed *pro rata* to the partners of the Partnership.

6. The general partner of the Partnership will consider the desirability of the exchange from the point of view of the Partnership and must conclude that (a) the exchange is in the best interests of the Partnership and its partners and (b) upon the exchange, the interests of the partners of the Partnership will not be diluted as a result of the exchange.

7. The board of directors of the Fund will consider the desirability of the exchange from the point of view of the Fund, and a majority of the directors, including a majority of the non-interested directors, must conclude that (a) the exchange is desirable as a business matter from the point of view of the Fund, (b) the exchange is in the best interest of the Fund, (c) upon the exchange, the interests of existing shareholders of the Fund will not be diluted as a result of the exchange, and (d) the terms of the exchange as reflected in the Plan have been designed to meet the criteria contained in section 17(b) of the Act.

8. The exchange will not be effected unless: (a) the registration statements of the Fund have been declared effective; (b) the limited partners of the Partnership have approved the Plan and an amendment to the partnership agreement authorizing the general partner to take such actions as it deems necessary or appropriate to effect the

[10] 17 CFR 200.30–3(a)(50)(i) (1994).

exchange; (c) the requested order has been granted; and (d) the limited partners have received an opinion of counsel that: (i) The distribution of Fund shares from the Partnership to its limited partners, which will be in liquidation of the Partnership, will not cause taxable gain or loss to be recognized by the limited partners, which will be in liquidation of the Partnership, will not cause taxable gain or loss to be recognized by the limited partners; (ii) the basis to the limited partners for the Fund shares will be equal to the adjusted basis of the limited partners' interests in the Partnership; and (iii) the limited partners' holding periods with respect to the Fund shares will include their holding periods for their Partnership interests.

9. If the Plan is approved and consummated, the Partnership, the Fund, and the Adviser will each pay their respective costs in connection with the forming of the Fund and completing the exchange. No brokerage commission, fee, or other remuneration will be paid in connection with the exchange.

10. After the exchange is accomplished, the Adviser intends for the foreseeable future to manage the assets of the Fund in substantially the same manner as it did for the Partnership, except as may be necessary or desirable to qualify the Fund as a regulated investment company under the Internal Revenue Code of 1986, as amended, to comply with the investment restrictions adopted by the Fund in accordance with the requirements of the Act or securities laws of states where the Fund shares will be offered, or in light of changed market conditions.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security or other property. The Fund and the Partnership may be deemed to be affiliated persons of each other because they are under the common control of the Adviser. Thus, the proposed exchange may be prohibited by section 17(a). Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act.

2. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). They contend that, because the Fund and the Partnership have similar investment objectives and policies, the Fund will attempt to assemble a portfolio of securities substantially similar to that held by the Partnership. The Fund will acquire the Partnership's portfolio securities at their independent ''current market price.'' In addition, by acquiring suitable securities from the Partnership, the Fund will avoid incurring brokerage and other transactions costs. Applicants believe that neither the limited partners nor the Adviser will be in a position to influence the valuation of the securities acquired by the Fund. Applicants believe that the exchange can be viewed as a change in the form in which the assets are held, rather than as a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–914 Filed 1–12–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8423]

Pennsylvania; Declaration of Disaster Loan Area

Blair County and the contiguous counties of Bedford, Cambria, Centre, Clearfield, and Huntingdon in the State of Pennsylvania constitute an economic injury disaster area as a result of damages caused by a fire which occurred on December 16, 1994 in Logan Township. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on October 10, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: January 9, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–891 Filed 1–12–95; 8:45 am]

BILLING CODE 8025–01–M

Hartford District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting at 8:30 a.m. on Monday, January 23, 1995, at 2 Science Park, New Haven, Connecticut 06511, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: January 9, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–892 Filed 1–12–95; 8:45 am]

BILLING CODE 8025–01–M

Vermont District Advisory Council Meeting

The U.S. Small Business Administration Vermont District Advisory Council will hold a public meeting at 2 p.m. on Monday, January 30, 1995, at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: January 4, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–840 Filed 1–12–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–003]

Prevention Through People

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard announces the establishment of a task group formed by the Chief, Office of Marine Safety, Security and Environmental Protection, to assess how to improve safety and pollution prevention through improvements in areas where people are the major factor in accidents. The task group's purpose will be to develop a long-term strategy for the Coast Guard ''Prevention Through People'' program which stresses solutions outside the regulatory process.

ADDRESSES: Comments may be mailed to CDR Craig Bone, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be made by telephone at (202) 267–6827, or by fax at (202) 267–4547.

FOR FURTHER INFORMATION CONTACT: CDR Craig Bone, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6827.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard invites suggestions and recommendations giving insight on where processes or people-issues have a potential for improved safety or efficiencies, either because of changes by the Coast Guard or by industry. Interested persons submitting comments should submit them to the Coast Guard where indicated under **ADDRESSES.**

Background and Purpose

The analyses of marine casualties which have occurred over the past 30 years have prompted the safety regime of the international maritime community to evolve from one based primarily upon technical requirements, to one which recognizes the importance of the human element in the system. This analyses indicates that 65 to 80 percent of casualties are caused by people. The maritime safety and pollution prevention programs have spent the majority of available resources addressing design requirements and technical ''fixes'' to eliminate the ''human element'' or to provide redundancy and alarms which can actually result in the need for increased technical skills of the operating personnel. These initiatives have been mostly successful but, human factors and people issues still dominate casualty cases. Consequently, it is necessary to better address the root causes of safety and pollution problems and to address them properly with adequate resources.

Historically, the international maritime community has approached maritime safety from a predominantly technical perspective. The conventional wisdom was to apply engineering and technological solutions to promote safety and minimize the consequences of marine casualties. Accordingly, international standards have addressed equipment requirements such as the type and amount of lifesaving and firefighting apparatus required on board. Design requirements such as protectively located segregated ballast tanks, double hulls, and improved steering gear standards have been adopted to make the operation of tankers safer and to minimize the extent of pollution in the event of a casualty. Innovations in structural fire protection engineering have significantly improved the fire safety of today's modern cruise vessels. State-of-the-art electronics have had a profound effect on the accuracy of navigation. Finally, advances in materials and computer assisted construction techniques have improved quality and reliability throughout the industry.

Despite these engineering and technological innovations, significant marine casualties continue to occur. To further reduce casualties, the role of ''human error'' in the maritime safety equation has been evaluated. The term ''human error'' may be broadly defined as the acts or omissions of personnel which adversely affect the proper functioning of a particular system, or the successful performance of a particular task. As indicated, recent studies have suggested that in excess of 80 percent of all high-consequence marine casualties may be directly or indirectly attributable to ''human error.'' The term ''human factors'' may be defined as the study and analysis of the design of the equipment, and the interaction of the equipment and the human operator, and most importantly, the procedures the crew and management follow. The purpose of studying human factors is to identify how the crew, the owner, operator, the classification societies, and the regulatory bodies can each work to sever the chain of errors which are associated with every marine casualty.

Consequently, the international maritime community has started to emphasize participatory shipboard management. As noted by the International Chamber of Shipping and the International Shipping Federation,

> [T]he task facing all shipping companies is to minimize the scope for human decisions to contribute, directly or indirectly, to a casualty or pollution incident. Decisions made ashore can be as important as those made at sea, and there is a need to ensure that every action affecting safety or the prevention of pollution, taken at any level within the company, is based upon sound understanding of its consequences.

There is a clear need to critically address people-issues. The issues must be addressed, not only from the traditional man and machine interface and ergonomics aspects, but must also include an assessment of entire processes including navigating the vessel, cargo loading and unloading, and responding to emergencies.

The Coast Guard study team will consult with industry, including vessel operators and crew as well as cargo transfer operators, to obtain insight on where processes or people-issues have a potential for improved safety or efficiencies, either because of changes by the Coast Guard or by industry. Small study groups may be formed, if appropriate, and public meetings may be held to get input from a broad interest base. If the Coast Guard decides to hold a public meeting, the date and time will be announced by a later notice in the **Federal Register**.

Dated: January 5, 1995.

J.C. Card,

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

[FR Doc. 95–946 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–95–2]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 2, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 5, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27720
Petitioner: Aircraft Associates, Inc.
Sections of the FAR Affected: 14 CFR 45.25
Description of Relief Sought: To allow Aircraft Associates, Inc., to operate its Piper PA–31–350 Chieftain, registration number N100EM, for a period not to exceed 36 months, with the registration numbers positioned over the wing on each side of the fuselage and on the top of the right wing and bottom of the left wing, until the aircraft is repainted.

Docket No.: 27808
Petitioner: Nikolaus Steigler, Inc.
Sections of the FAR Affected: 14 CFR 135.13(a)(1)
Description of Relief Sought: To allow Nikolaus Steigler, Inc., to be eligible for a Commercial Operator certificate under part 135 of the FAR without meeting citizenship requirements.

Docket No.: 27929
Petitioner: Airline Training Center Arizona, Inc.
Sections of the FAR Affected: 14 CFR 61.93(c)(1) (i), (ii), and 2(iii)
Description of Relief Sought: To permit Airline Training Center Arizona, Inc., student pilots to operate aircraft for practice solo airwork within 50 nautical miles of Phoenix Goodyear Airport prior to receiving instruction required by the above mentioned sections of the FAR. This exemption is requested due to airspace restrictions surrounding Phoenix Goodyear Airport.

Docket No.: 27931
Petitioner: Mr. Edward Thornton
Sections of the FAR Affected: 14 CFR 61.27
Description of Relief Sought: To permit the reissuance of Edward R. Thornton's pilot certificate at the grade of commercial pilot on the basis of oral tests and flight checks without written testing. Reissuance is necessary because Mr. Thornton erroneously surrendered his ATP certificate for cancellation instead of requesting issuance of a certificate of a lower grade.

Docket No.: 27966
Petitioner: Reeve Aleutian Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought: To permit Reeve Aleutian Airways, Inc., to operate its Lockheed L–188 aircraft without TCAS–II installed within Alaska and foreign Airspace (as approved by foreign civil aviation authorities).

Docket No.: 27992
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 25.832
Description of Relief Sought: To allow Learjet, Inc., to type certificate the Model 45 aircraft without incurring the performance and cost penalties that would be inherent in the installation of ozone converting equipment carried to comply with the cabin ozone concentration limits of § 25.832. This request, if granted, would permit the petitioner a permanent exemption applicable to the Model 45 aircraft from the requirements of § 25.832, as amended by Amendment 25.56.

Dispositions of Petitions

Docket No.: 008SW
Petitioner: Bell Helicopter Textron, Inc.
Sections of the FAR Affected: 14 CFR 29.1303(g)(1)
Description of Relief Sought/Disposition: To allow use of a stand-by attitude indicator that is usable through pitch attitudes of + or − 60 degrees for the Bell Helicopter Textron, Inc., Model 412 series transport category helicopter.
Grant, November 14, 1994, Exemption No. 5985

Docket No.: 26149
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/Disposition: To extend Exemption No. 5600, which allows Boeing to conduct training of its pilot flight crew personnel while operating under special flight permits issued for the purpose of production flight testing.
Grant, December 6, 1994, Exemption No. 5600A

Docket No.: 27435
Petitioner: Air France
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought/Disposition: To extend Exemption No. 5799, as amended, which permits Air France to operate Concorde Aircraft that are not equipped with an approved traffic alert and collision avoidance system (TCAS II).
Partial Grant, December 15, 1994, Exemption No. 5799B

Docket No.: 27482
Petitioner: Airflite, Inc.
Sections of the FAR Affected: 14 CFR 61.57(d)
Description of Relief Sought/Disposition: To permit pilots employed by Airflite who hold an Airline Transport Pilot (ATP) certificate, to act as pilot in command (PIC) of aircraft carrying passengers at night without having made at least three takeoffs and landings to a full stop, at night, during the preceding 90 days in the category and class of aircraft in which the pilot is to act as PIC.
Denial, October 11, 1994, Exemption No. 5976

Docket No.: 27918
Petitioner: Alaska Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.19(a) and 133.51
Description of Relief Sought/Disposition: To permit Alaska Helicopters, Inc., to perform external-load operations in Canadian-registered rotorcraft.
Grant, December 13, 1994, Exemption No. 5998

[FR Doc. 95–952 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before February 2, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 5, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27878
Petitioner: Mr. John P. Riordan
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: to permit Mr. Riordan to serve as a pilot in an airplane engaged in operations under part 121 of the FAR after reaching your 60th birthday.

Dispositions of Petitions

Docket No.: 18324
Petitioner: American Airlines
Sections of the FAR Affected: 14 CFR 43.3(a) and 121.709(b)(3)
Description of Relief Sought/Disposition: To extend Exemption No. 2678, as amended, which allows American Airlines' properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight, and to make an entry in the aircraft maintenance logbooks in reference to that function.
Grant, November 30, 1994, Exemption No. 2678I

Docket No.: 25628
Petitioner: Moody Aviation
Sections of the FAR Affected: 14 CFR appendix A of part 141
Description of Relief Sought/Disposition: To extend Exemption No. 5032, as amended, which permits Moody Aviation to continue to graduate a part 141 student with a ''night flying prohibited'' limitation on the private pilot certificate.
Grant, November 15, 1994, Exemption No. 5032C

Docket No.: 26936
Petitioner: Woods Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a)
Description of Relief Sought/Disposition: To permit Woods Air Fuel, Inc., to operate its Douglas DC–6A aircraft, serial number 43522 and registration number N861TA, at a 5 percent increased zero fuel and landing weight for the purpose of distributing fuel by air service under the terms of part 125 of the FAR.
Grant, November 9, 1994, Exemption No. 5984

Docket No.: 27617
Petitioner: American Airsport Association
Sections of the FAR Affected: 14 CFR 103.1(a), (b), and (e)
Description of Relief Sought/Disposition: To permit American Airsport Association to operate powered, two-place ultralight vehicles that weigh less than 500 pounds, have a fuel capacity not exceeding 10 U.S. gallons, are not capable of more than 90 miles per hour at full power in level flight, and have a power-off stall speed of 40 miles per hour or less, with one or two occupants, for recreational, sport, and instructional purposes.
Denial, November 25, 1994, Exemption No. 5990

Docket No.: 27826
Petitioner: Douglas Aircraft Company
Sections of the FAR Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/Disposition: To allow export airworthiness approvals to be issued for Class I products for Matrix Aeronautica in Tijuana, Baja California, Mexico.
Grant, November 23, 1994, Exemption No. 5992

[FR Doc. 95–953 Filed 1–12–95; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–95–4]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemptions (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 30, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AFC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 5, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28024
Petitioner: Sun Country Airlines, Inc.
Sections of the FAR Affected: 14 CFR part 121
Description of Relief Sought: To allow Sun Country Airlines, Inc., an exemption from the March 1, 1995, compliance date of the final rule ''Flight Attendant Duty Period Limitations and Rest Requirements,'' pending judicial review of the rule in the US District Court. The final rule would require air carriers, air taxi, and commercial operators to provide duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce.

Dispositions of Petitions

Docket No.: 25351
Petitioner: USAir
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend Exemption No. 5005, as amended, which allows USAir to utilize certain foreign original equipment manufacturers (OEM) and related repair facilities to perform maintenance, preventive maintenance, and alterations on the components, parts, and appliances produced by these foreign manufacturers and used on British Aerospace BAC–111 and BAE–146, Boeing B–737–300, B–737–400, B–757, and B–767–200ER, and Fokker F–28 and F–100 aircraft operated by USAir.
Grant, December 29, 1994, Exemption No. 5005D

Docket No.: 25506
Petitioner: Department of the Navy
Sections of the FAR Affected: 14 CFR 91.215(b)
Description of Relief Sought/ Disposition: To allow certain U.S. military aircraft to conduct flight operations in designated airspace above 10,000 feet mean sea level (MSL) without having to operate the transponders of those aircraft.
Grant, December 29, 1994, Exemption No. 5156A

Docket No.: 26101
Petitioner: American West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123(a)
Description of Relief Sought/ Disposition: To authorize America West to operate four flights (two arrivals and two departures) at Washington National Airport (DCA). These ''exemption slots'' were granted previously to Braniff Airlines under FAA Exemption No. 3927.
Grant, December 1, 1994, Exemption No. 5133F

Docket No.: 26559
Petitioner: Helicopter Association International
Sections of the FAR Affected: 14 CFR 43.3(a)
Description of Relief Sought/ Disposition: To allow properly trained pilots to exchange liquid oxygen (LOX) containers after such containers have been depleted.
Grant, December 16, 1994, Exemption No. 6002

Docket No.: 26983
Petitioner: Martin Aviation
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)
Description of Relief Sought/ Disposition: To allow Martin Air to operate in extended overwater operations using a single operational high frequency (HF) communications systems.
Grant, December 28, 1994, Exemption No. 5598A

Docket No.: 27001
Petitioner: Jetstream Aircraft Limited
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5587, as amended, which allows Jetstream Aircraft Limited exemption from §§ 25.562(c)(5) and 25.785(a) in regard to Head Injury Criterion (HIC) for front row passenger seating in Jetstream Series 4100 airplanes.
Partial grant, December 20, 1994, Exemption No. 5587B

Docket No.: 27157
Petitioner: Dornier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(b)(2)
Description of Relief Sought/ Disposition: To permit Dornier Luftfahrt GmbH exemption from § 25.562(b)(2) floor distortion test requirements for captain's and first officer's seats in Dornier Model 328 airplanes.
Grant, December 20, 1994, Exemption No. 5704B

Docket No.: 27995
Petitioner: American Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123(c)(2) and 93.227(a)
Description of Relief Sought/ Disposition: To allow the operations of large aircraft in certain commuter slots at O'Hare International Airport (ORD) and John F. Kennedy International Airport (JFK). These large aircraft currently are permitted to operate only in air carrier slots. Additionally, American requests that the FAA exempt the non-use of its commuter slots currently operated with Aerospatiale/Alenia (ATR) aircraft from the use-or-lose requirement of § 93.227(a). Finally, American requests the use of extra sections for commuter aircraft operations at ORD, JFK, and Washington National Airport (DCA), pursuant to §§ 93.123(b) (3) and (4).
Grant, December 9, 1994, Exemption No. 5996

Docket No.: 27978
Petitioner: Delta Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/ Disposition: To permit Delta to use FAA-approved simulators to meet certain flight experience requirements of part 61.
Grant, December 23, 1994, Exemption No. 5995

[FR Doc. 95–954 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–5]

Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 2, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27609
Petitioner: Mr. Aubrey Mark Shannon
Sections of the FAR Affected: 14 CFR 91.9 and 91.531
Description of Relief Sought: To amend Exemption No. 5899, which allows the operation of Cessna Citation 500 models (Serial Nos. 0001 through 0349 only) by one pilot without a second-in-command, subject to certain conditions and limitations. The amendment, if granted, would change the business address for M. Shannon & Associated to 4038 128th Avenue SE., Suite 112, Bellevue, Washington 98006, and increase the scope of the exemption to include all Cessna Citation 500, 550, and s550 models.

Docket No.: 27948
Petitioner: E.I. du Pont de Nemours and Company
Sections of the FAR Affected: 14 CFR 61.57(d)
Description of Relief Sought: To allow pilots employed by DuPont to maintain night takeoff and landing recent experience requirements by extending the time limitations from 90 days to 6 calendar months.

Dispositions of Petitions

Docket No.: 23901
Petitioner: General Motors Corporation
Sections of the FAR Affected: 14 CFR 21.197(a)(1)
Description of Relief Sought/Disposition: To Extend Exemption No. 5136, as amended, which allows General Motors Corporation to operate its Cessna Model 650 aircraft when flaps fail in the up position, without obtaining a special flight permit.
Grant, November 22, 1994, Exemption No. 5136C

Docket No.: 25052
Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/Disposition: To extend and revise Exemption No. 4760, as amended, which permits TEMSCO and other air taxi/commercial operators (ATCO) to conduct seaplane operations inside Ketchikan, Alaska, class E airspace under Special Visual Flight Rules below 500 feet above the surface. The revision, if granted, would permit aircraft other than seaplanes to operate under the exemption, and would replace ''control zone'' with ''class E airspace.''
Partial Grant, December 7, 1994, Exemption No. 4760D

Docket No.: 25337
Petitioner: ERA Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To extend Exemption No. 5582, which allows pilots employed by ERA Aviation, Inc., to remove and reinstall aircraft cabin seats in the company's aircraft.
Grant, December 7, 1994, Exemption No. 5582A

Docket No.: 25731
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 45.25 and 45.29
Description of Relief Sought/Disposition: To extend Exemption No. 5019C, as amended, which allows the operation of historic military airplanes with 2-inch high nationality and registration marks located under the horizontal stabilizer.
Grant, November 22, 1994, Exemption No. 5019C

Docket No.: 26178 Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought/Disposition: To extend Exemption No. 5256, as amended, which extended the compliance date for installation of required windshear equipment in Continental's, American's, Eastern's, and Northwest's aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installation of existing reactive windshear systems.
Denial, December 2, 1994, Exemption No. 5256B

Docket No.: 26474
Petitioner: Deere & Company
Sections of the FAR Affected: 14 CFR 21.197(a)(1)
Description of Relief Sought/Disposition: To amend Exemption No. 5348, as amended, which allows Deere to operate its Cessna Model 650, N400JD, serial number 650–0035, and Model 650 N900JD, serial number 650–213, aircraft without obtaining a special flight permit when the flaps fail in the up position. The amendment allows Deere to add their Cessna Model CE–650, N600JD, serial number 650–0236 to this exemption.
Grant, December 6, 1994, Exemption No. 5348C

Docket No.: 26964
Petitioner: LR Services, Inc.
Sections of the FAR Affected; 14 CFR 91.115(a) and 135.165(b) (6) and (7)
Description of Relief Sought/Disposition: To extend Exemption No. 5579, which permits LR Services, Inc., to operate its turbojet aircraft equipped with a single HF radio in extended overwater operations.
Grant, November 30, 1994, Exemption No. 5579A

Docket No.: 26966
Petitioner: Airman Flight School, Inc.
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought/Disposition: To extend Exemption No. 5559, which permits Airman Flight School, Inc., to recommend graduates of its approved certification courses for flight instructor certificates and ratings without the graduates having to take the FAA written or practical tests.
Grant, November 30, 1994, Exemption No. 5559A

Docket No.: 27011
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/Disposition: To extend Exemption No. 5572, which permits United Airlines, Inc., to use FAA approved simulators to meet certain flight experience requirements of part 61of the FAR.
Grant, December 13, 1994, Exemption No. 5572A

Docket No.: 2717
Petitioner: General Electric—Aircraft Engines

Sections of the FAR Affected: 14 CFR 21.325(b)(1)

Description of Relief Sought/Disposition: To extend Exemption No. 5637, which allows export airworthiness approvals to be issued for Class I product (engines) from the Toulouse, France and Zurich, Switzerland, facilities of Airbus Industries RIE, SNECMA, and Swissair.

Grant, November 22, 1994, Exemption No. 5637A

Docket No.: 27405

Petitioner: British Airways

Sections of the FAR Affected: 14 CFR 129.18

Description of Relief Sought/Disposition; To extend the termination date of Exemption No. 5798, as amended, which permits British Airways to operate Concorde Aircraft that are not equipped with an approved traffic alert and collision avoidance system (TCASII).

Partial Grant, December 6, 1994, Exemption No. 5798B

Docket No.: 27662

Petitioner: Boeing Commercial Airplane Group

Sections of the FAR Affected: 14 CFR 25.807(c)(1) and 25.857(e)

Description of Relief Sought/Disposition: To allow carriage of up to five persons in addition to two crewmembers in the flight compartment of the Model 767–300F freighter airplane.

Partial Grant, November 23, 1994, Exemption No. 5993

Docket No.: 27850

Petitioner: Dassault Aviation

Sections of the FAR Affected: 14 CFR 25.562(a) and (c)

Description of Relief Sought/Disposition: To allow temporary exemption from the requirements of § 25.562(c) for side-facing sofas in the Falcon Model 2000 airplane.

Partial Grant,November 28, 1994, Exemption No. 5991

Docket No.: 27938

Petitioner: Kuwait Airways

Sections of the FAR Affected: 14 CFR 129.18

Description of Relief Sought/Disposition: To permit Kuwait Airways to operate an Airbus A310–308 aircraft without an approved traffic alert and collision avoidance system (TCAS II) between Frankfurt, Germany, and New York, New York.

Denial, December 6, 1994, Exemption No. 5994

[FR Doc. 95–955 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–13–M

Type Approval of Differential Global Positioning System (DGPS) Ground Stations Request for Industry Input

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration requests information and assistance in exploring various methods and criteria for evaluation and approval of commercially developed ground facilities designed to provide local area augmentation to the Global Positioning System (GPS) by the production and delivery of differential corrections and integrity messages. The FAA will host a meeting of interested parties to provide a forum for information exchange that will assist the agency in evaluating the technical merits, efficiency, and cost effectiveness of the alternative methods under consideration. In addition, interested parties are invited to propose other methods or criteria, not identified in this notice but worthy of consideration, that may improve or expedite the evaluation and approval process. The methods identified thus far for consideration by the FAA are:

Mathematical modeling and predictive analysis

Evironmental exposure testing

Bench testing

Operational testing

Spurious and harmonic radio frequency emission and sensitivity testing

Software audit and validation

Flight testing

In addition to information on these or other testing methods, comments on their relative merit and benefits are welcome.

DATES: The meeting will be held on February 7–8, 1995.

LOCATION: The site of the meeting will be: The Hotel Sofitel, 425 N. Sam Houston Parkway East, Houston, Texas 77060, (713) 445–9000.

Those persons staying at the hotel must make reservations not later than January 26. Reservations should be requested as the type-acceptance industry meeting group.

ADDRESSES: To insure that adequate facilities are available, individuals or organizations that will attend are requested to notify the FAA of their intention to attend. Responses should be mailed to: Federal Aviation administration, Office of the Associate Administrator for Air Traffic Services, Attn: Airway Facilities Advanced Technologies Implementation Staff, ALM–6, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: William Dixon, Manager, Advanced Technologies Implementation Staff, ALM–6, Airway Facilities Requirements and Life Cycle Management, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–9147.

SUPPLEMENTARY INFORMATION: The evaluation and approval of DGPS ground facilities is being conducted to support early implementation of Special Category I (SCAT–I) approaches. These efforts are based upon the recommendations of RTCA Special Committee 159, as documented in the Minimum Aviation System Performance Standards DGNSS Instrument Approach System: Special Category I (SCAT–I), DO–217, and the guidance provided by FAA Order 8400.11, IFR Approval for Differential Global Positioning System (DGPS) Special Category I Instrument Approaches Using Private Ground Facilities.

Issued in Washington, DC on January 6, 1995.

Joaquin Archilla,

Director of Airway Facilities.

[FR Doc. 95–951 Filed 1–12–95; 8:45 am]

BILLING CODE 49010–13–M

RTCA, Inc.; Special Committee 172, Twelfth Meeting; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 172 meeting to be held January 30—February 1, 1995 starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room 1140 Connecticut Avenue, NW, Suite 1020, Washington DC, 20036.

Agenda will be as follows: (1) Introductory remarks; (2) Accept agenda; (3) Review summary of 11th plenary; (4) Review first draft of 8.33kHz MOPS; (5) Review issues necessary (including the layers not in the (MASPS) to proceed with (CSMA, TDMA) VDR MOPS; (6) Begin joint (SC's 172), 165 and AEEC VDR) review, evaluation and selection of CODEC for MOPS, Spec's. for TDMA circuit mode voice applications. (Wednesday, February 1); (7) Other business; (8) Date and place of next meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 1995.

David W. Ford,

Designated Officer.

[FR Doc. 95–956 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–3]

Bicycle and Pedestrian Planning at the State and Metropolitan Planning Organization Levels; Interim Technical Guidance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice publishes the text of a joint FHWA and Federal Transit Administration (FTA) document entitled ''Interim Technical Guidance for Bicycle and Pedestrian Planning at the State and Metropolitan Planning Organization (MPO) Levels under the Intermodal Surface Transportation Efficiency Act (ISTEA).'' A memorandum issuing this Guidance was released on November 28, 1994. The Guidance provides legislative and regulatory background to explain the requirements for Bicycle and Pedestrian Planning, and provides guidance on components of bicycle and pedestrian transportation plans. By publishing this notice, the FHWA and the FTA seek to inform the public and ensure the widest possible dissemination of this information. The FHWA and FTA also will accept comments from all interested people. After review of all comments received, a final version of this guidance will be issued. Until that time, this interim version shall be used.

DATES: This interim technical guidance became effective November 28, 1994. Comments must be submitted on or before March 14, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–3, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Fegan, Bicycle and Pedestrian Program Manager, (202) 366–5007, or Mr. Reid Alsop, Environmental and Right-of-Way Law Branch, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590; or Mr. Sean Libberton, Community Planner, (202) 366–0055, or Mr. Scott A. Biehl, Assistant Chief Counsel, (202) 366–0952, Federal Transit Administration, 400 Seventh Street, SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

The ISTEA, Pub. L. 102–240, 105 Stat. 1914, expanded the eligibility of bicycle and pedestrian projects for Federal transportation funding, and required the inclusion of bicycle and pedestrian components in transportation planning documents. The FHWA and FTA developed this interim technical guidance to ensure that States and MPOs could implement bicycle and pedestrian plans effectively. The text of the guidance is set forth below:

[Memorandum]

Action: Distribution of Interim Technical Guidance for Bicycle and Pedestrian Planning at the State and MPO Levels

From: Acting Associate Administrator for Program Development, FHWA, Associate Administrator for Grants Management, FTA

To: Regional Highway Administrators, Regional Transit Administrators, Federal Lands Highway Program Administrator, Director, Joint ITS Program Office

Attached are copies of the FTA/FHWA interim technical guidance for conducting planning for bicyclists and pedestrians at the State and MPO levels as called for by ISTEA. Specifically, at both the MPO and State levels, transportation plans and programs are required to ''provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system.'' Final regulations issued by FHWA and FTA on October 28, 1993 [58 FR 58040], contain specific references to the inclusion of bicycle and pedestrian planning in overall State or MPO planning.

The purpose of this interim technical guidance is to offer guidance to State and MPO officials responsible for conducting bicycle and pedestrian planning. In addition, this guidance outlines the items that should be included in the bicycle and pedestrian components of State and MPO transportation plans.

In addition to this guidance, a 1-day training course, ''Bicycle and Pedestrian Planning Under ISTEA,'' is being offered by FHWA through the National Highway Institute (NHI). The course presents the requirements for this planning, and the recommended items to be included in the bicycle and pedestrian part of the State and metropolitan level transportation plans and the transportation improvement programs. The course also explains how this planning can be accomplished and the role of public involvement in the process. The NHI course number is 15135. The NHI contact is Harry Hersey who can be reached at (703) 285–2778. This course has been presented in nine sessions across the country. Additional presentations of the course are available upon request to NHI.

This interim technical guidance will be published in the **Federal Register** to obtain comments from all interested persons. After review of all comments received, a final version will be issued. Until that time, this interim version shall be used.

Please distribute the attached copies of this technical guidance to FHWA Division offices, to transit providers, and to State and MPO personnel responsible for conducting the bicycle and pedestrian planning for the statewide and MPO transportation plans, and let them know of the availability of the NHI course. Questions on the Interim Guidance should be directed to John Fegan (FHWA, HEP–50, on (202) 366–5007) or to Sean Libberton (FTA, TGM–21, on (202) 366–0055).

(Original signed by)

Robert H. McManus (Federal Transit Administration)

William A. Weseman (Federal Highway Administration)

[Technical Guidance]

FHWA/FTA Interim Technical Guidance for Bicycle and Pedestrian Planning at the State and MPO Levels under the Intermodal Surface Transportation Efficiency Act (ISTEA).

This Interim Guidance covers planning for bicycle transportation facilities and pedestrian walkways regardless of facility type ranging from on-road treatments to separate off-road facilities. A one day training course, ''Bicycle and Pedestrian Planning Under ISTEA,'' (course number 15135) is available to expand upon this guidance upon request to FHWA's National Highway Institute.

Bicycle and Pedestrian Transportation Planning

Introduction: Sections 1024 and 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) require that States and Metropolitan Planning Organizations (MPOs) develop transportation plans and Transportation Improvement Programs (TIPs) which consider and include, as appropriate, bicycle and pedestrian projects and programs. These plans and TIPs will be used to define transportation projects and programs for Federal transportation funding at State and metropolitan levels.

Purpose: This document offers technical guidance on meeting the requirements for consideration and appropriate inclusion of bicycle and pedestrian elements in Statewide and MPO transportation plans and TIPs.

Federal Transportation Policy: It is Federal transportation policy to promote the increased use and safety of bicycling and walking as transportation modes.

Specific Legislative Requirements: Specifically, Section 1024 of the ISTEA, ''Metropolitan Planning,'' amends Section 134 of Title 23, United States Code (U.S.C.) as follows:

''* * * metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation.''

Similarly, Section 1025 of the ISTEA, ''Statewide Planning,'' amends Section 135 of Title 23 U.S.C. as follows:

''Subject to section 134 of this title, the State shall develop transportation plans and programs for all areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal State transportation system.''

In addition, in Section 1025 of the ISTEA, 23 U.S.C. 135 is amended to read:

''Each State shall undertake a continuous transportation planning process which shall, at a minimum, consider the following:

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in projects where appropriate throughout the State.''

Final regulations implementing the State and MPO requirements for transportation plans and programs were published in the **Federal Register** on October 28, 1993, by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) as 23 CFR Part 450.

23 CFR 450.214, ''Statewide transportation plan,'' states that the Statewide transportation plan shall:

''(3) Contain, as an element, a plan for bicycle transportation, pedestrian walkways and trails which is appropriately interconnected with other modes;''

23 CFR 450.216, ''Statewide transportation improvement program (STIP),'' states:

''In addition the STIP shall: (6) Contain all capital and non-capital transportation projects (including transportation enhancements, Federal lands highway projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects * * *''

23 CFR 450.322, ''Metropolitan transportation planning process: Transportation plan,'' states:

''In addition the plan shall: (2) Identify adopted congestion management strategies including, as appropriate, traffic operations, ridesharing, pedestrian and bicycle facilities * * * and (3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217 (g).''

23 CFR 450.324, ''Transportation Improvement Program: General,'' states:

''(f) The TIP shall include: (1) All transportation projects, or identified phases of a project, (including pedestrian walkways, bicycle transportation facilities and transportation enhancement projects) within the metropolitan area proposed for funding under title 23, U.S.C., * * *''

Note: These items are presented as specific references to bicycling and walking in the metropolitan and statewide planning requirements of the ISTEA. All other provisions of the ISTEA and the final regulations issued on October 28, 1993, by the FHWA and the FTA also apply as appropriate to the bicycle and pedestrian elements of State and MPO plans and TIPs.

Deadlines: The final regulations published in the **Federal Register** on October 28, 1993, by the FHWA and the FTA require that the statewide transportation plans must be completed by January 1, 1995. The MPO Plans for nonattainment areas requiring Transportation Control Measures were due on October 1, 1994, and all other metropolitan areas shall comply by December 18, 1994.

Scope: The inclusion of the bicycle and pedestrian elements in transportation plans and programs may be accomplished by addressing bicycle and pedestrian issues throughout the transportation planning process and integrating bicycle and pedestrian elements as appropriate in the transportation plan and programs. A separate section on bicycle and pedestrian specific issues in addition to or in place of an integrated element may be appropriate. This approach would address the ISTEA mandate of developing transportation facilities that will function as an intermodal transportation system.

The bicycle and pedestrian plan elements should contain policy statements and goals as well as, whenever possible, the inclusion of specific projects and programs. The plan and the TIP should identify the financial resources necessary to implement the bicycle and pedestrian projects and programs.

Bicycle and pedestrian projects may be on- or off-road facilities. For off-road trails, all such facilities that serve a transportation function must be consistent with the planning process.

A trail serves a valid transportation purpose if it serves as a connection between origins and destinations. Trails funded through programs requiring FHWA or FTA approval, except for the National Recreational Trails Fund Act (NRTFA), are determined to serve primarily a transportation purpose. These must be included in statewide and MPO plans.

For Statewide Transportation Improvement Programs (STIPs), if a bicycle or pedestrian project is determined to be regionally significant (as defined in the Planning Rule) and is funded by or requires an action by the FHWA or the FTA, it must be included. If it is funded using other Federal or non-Federal funding, it should be included for informational purposes. Projects can be grouped in STIPs.

For Metropolitan Transportation Improvement Programs (TIPs), if a bicycle or pedestrian project is determined to be regionally significant (as defined in the Planning Rule) and is funded by or requires approval of the FHWA or the FTA, it must be included. In air quality nonattainment or maintenance areas, if it is funded using other Federal or non-Federal funding, it shall be included for informational purposes. Projects can be grouped in TIPs.

A trail serving a recreational purpose with no transportation function is a recreational trail. For example, a closed loop trail within a park or recreation

area would be a recreational trail. Similarly, a linear facility serving only recreational users would be a recreational trail. Any trails funded through the National Recreational Trails Fund Act (NRTFA) are determined to be primarily recreational in nature and are intended to enhance the recreational opportunity and resources of the park or recreation area. The NRTFA planning requirements are met in each State's Statewide Comprehensive Outdoor Recreation Plan (SCORP). Except as noted below, projects funded under the NRTFA are not required to be on statewide or metropolitan plans or TIPs. However, their inclusion is recommended.

It is essential to coordinate the statewide and metropolitan transportation plans with the SCORP document with regards to trail policies and plans. Also, it is essential to coordinate recreational trail projects with the STIPs and TIPs. This coordination will help protect the continuity of existing and proposed trail and greenway corridors.

Bicycle and Pedestrian Considerations in a Transportation Planning Process

The bicycle and pedestrian element of transportation plans should include:

1. Vision and Goal Statements, and Performance Criteria: The vision statements express concisely what the plan is expected to accomplish. For example:

The vision of this program is a nation of travellers with new opportunities to walk or ride a bicycle as part of their everyday life. The vision of this program is the creation of a changed transportation system that offers not only choices among travel modes for specific trips, but more importantly presents these options in a way that they are real choices that meet the needs of individuals and society as a whole.

The goals to reach the vision, and the time frame for reaching each goal should be spelled out. They should be clear and objectively measurable. For example, some goals would be:

To double the percentage of trips taken by bicycling and walking for all transportation purposes, and to reduce by 10 percent the number of bicyclist injuries and fatalities by the year 2000.

To increase the number of bicyclists and pedestrians or to increase facility mileage by a certain amount by a given year.

To improve the connections among bicycle, pedestrian, and transit systems.

To allow people to bicycle safely, conveniently, and pleasurably within five miles of their homes, and to make streets and roads ''bicycle friendly'' and well-designed to accommodate both motorized and nonmotorized modes of transportation.

Network performance criteria also should be developed. Some applicable criteria would be accessibility, directness, continuity, route attractiveness, low numbers of conflicts with other route users, number of bicycle links with transit, cost, ease of implementation, etc.

Specific State and MPO goals and performance criteria should be developed to support locally determined bicycle and pedestrian program implementation efforts.

2. Assessment of Current Conditions and Needs: A baseline of information should be collected on which to base strategies and actions necessary to reach the vision and goal statements. The information collected in this step should determine the extent to which the existing transportation system meets the needs of bicyclists and pedestrians. The Intermodal Management System should provide information on existing and needed bicycle and pedestrian access to major intermodal transportation terminals such as commuter rail stations. Specifically, this assessment could include:

Determination of current levels of use for bicycling and walking transportation trips, and current numbers of injuries and fatalities involving bicyclists and pedestrians.

Evaluation of the existing transportation infrastructure (including on- and off-road facilities) to determine current conditions and capacities and to identify gaps or deficiencies in terms of accommodating potential and existing bicycle and pedestrian travel.

Determination of the capacities and the type and security level of bicycle parking offered at intermodal connections such as transit facilities and destination points.

Identification of desired travel corridors for bicycle and pedestrian trips.

Examination of existing land use and zoning, and the patterns of land use in the community.

Planning, design standards, and agency policies and the extent to which they affect the accessibility of the transportation system for bicyclists and pedestrians, e.g., do they meet policies and design guidance issued by the American Association of State Highway and Transportation Officials (AASHTO) for bicycle and pedestrian facilities?

State and local laws and regulations affecting the vision and goals, e.g., growth management and trip reduction laws, or constitutional restraints on expending highway funds on bicycle and pedestrian facilities.

Availability of bike-on-bus or bike-on-rail access; including hours service is available, routes where available, and incentives and barriers to using the service (i.e., training, permit, or additional charges required).

3. Identification of activities required to meet the vision and goals developed above. These activities or strategies could include:

Basis of the need for modifications to the transportation system through surveys, origin destination studies, public input, or other data collection techniques.

Needed modifications to the existing transportation system of on- and off-road facilities to meet the vision and goal statements.

Development and application of criteria to prioritize and to identify specific facility-related improvements.

Identification of changes required to planning, design standards, and agency policies.

Specification of education, encouragement, and law enforcement components to support facility development.

Identification of nonconstruction activities such as mapping, parking facilities, etc., that are needed to reach the vision and goals developed above.

Investigation of the effects on bicyclist and pedestrian safety.

The relationship of statewide, MPO, and local plans for bicyclists and pedestrians, i.e., ensuring that such plans are coordinated among the involved jurisdictions.

The consideration, as appropriate, of the 23 statewide transportation planning factors and the 15 metropolitan planning process factors in the development of bicycle and pedestrian projects and programs.

The inclusion of recreational bicycling and walking facilities such as recreational trails is encouraged, but not required. Nevertheless, the coordination of transportation and recreational bicycle and pedestrian facilities and programs is essential.

Provide a mechanism for evaluating the performance of the transportation system containing implemented projects against the performance of the original system.

4. Implementation of the bicycle and pedestrian elements in the statewide and MPO transportation plans and transportation improvement programs:

Inclusion in the Plans: The bicycle and pedestrian elements as a set of policy statements and/or a list of projects will be included in statewide and metropolitan transportation plans

and will be updated appropriately as statewide and MPO plans are updated.

Inclusion in the TIPs: The bicycle and pedestrian element of the transportation plan should be implemented by including identified projects in the TIP in accordance with priorities established by MPO's, States, and transit operators, and in accordance with 23 CFR Part 450, sections 216 and 324.

5. *Evaluation of progress:* Using the performance measures developed previously, regularly determine progress in reaching the identified vision and goals. Appropriate changes to either the vision and goals or to the strategies and proposed projects should be made.

6. *Public Involvement:* As required by the ISTEA and the FHWA/FTA joint planning regulations published on October 28, 1993, *public involvement is essential* in the development of transportation plans and programs including the bicycle and pedestrian components. Public involvement should include, to the extent possible, input from individuals who will be affected by the transportation plan and programs. This involvement must meet the requirements for statewide planning spelled out in the regulations in 23 CFR 450.212, and those for MPO planning spelled out in 23 CFR 450.316(b). Any subsequent policy statements and guidance provided by the FHWA and FTA also needs to be considered.

The regulations require that State departments of transportation and MPO's have public involvement processes which are followed in preparing transportation plans and programs. Bicycle and pedestrian groups should be aware of the opportunity to participate in the development of these public involvement processes and to comment on them before they are adopted. This is in addition to the opportunity to participate according to the public involvement processes in the development of transportation plans and programs. Public involvement will occur at key decision points as described in the public involvement procedures for the planning process.

7. *Transportation Conformity Requirements for Air Quality:* Per 40 CFR Parts 51 and 93, bicycle and pedestrian facilities are exempt from transportation conformity requirements. Their inclusion as part of a larger project that does not meet the conformity requirements could result in delay while the requirements for the larger project are satisfied.

Trails funded through the National Recreational Trails Fund Act (NRTFA) that may have an air quality impact in air quality nonattainment areas must be analyzed to determine if they conform with the State Implementation Plan (SIP). Such projects must be included in the transportation plan and TIP. To be eligible for Federal funding or approval, such projects must come from a conforming plan and TIP and may not cause or contribute to a new or existing violation of the air quality standards. In air quality nonattainment areas only projects from a conforming TIP shall be included on the STIP. The following kinds of projects are determined to have no significant air quality impact: Projects funded under the following paragraphs of Section 1302(e)(1) of the ISTEA: (A), (B), and (E); (F) except for facilities that may cause air quality impacts such as parking facilities; and (C), (D), and (G–K) for nonmotorized trails.

The following kinds of projects must be analyzed for air quality impact: All motorized recreational trail projects in nonattainment areas; and provision of parking facilities.

Authority: 23 U.S.C. 315; Sec. 1024, 1025, 1033, 1302 of Pub. L. 102–240, 105 Stat. 1914, 1955, 1962, 1975, 2064; 49 CFR 1.48.

Issued on: January 6, 1995.

Rodney E. Slater

Federal Highway Administrator.

[FR Doc. 95–889 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–22–P

Environmental Impact Statement; City of Houghton, Houghton County, Michigan

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 the proposed improvements to US–41 (College Avenue) from Vivian Street westerly to Franklin Square in the City of Houghton, Houghton County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Stoner, District Engineer, Federal Highway Administration, 315 W. Allegan Street, Room 207, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Ronald Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed reconstruction of US–41 from Vivian Street westerly to Franklin Square, City of Houghton, Houghton County, Michigan. The proposed project is approximately 0.8 kilometers (0.5 miles) in length, and is needed to accommodate current and future traffic volumes and to improve the operating conditions and safety of the traveling public. The present facility consists of two 4.6 meter (15 foot) lanes with curb and gutter through a mostly residential area. The speed limit along College Avenue is 55 kph (35 mph).

The alternatives under consideration include (1) No Action, (2) Three Lane Alternative, (3) Four Lane Alternative, (4) Five Lane Alternative, (5) South Boulevard, and (6) One-way Pair Alternative, which requires construction of a new westbound roadway along the side of the bluff north of College Avenue.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies with scoping information attached. Letters have also been sent to organizations and citizens who have previously expressed interest or are known to have interest in this proposal to provide them the opportunity to comment. A public information meeting was held on August 13, 1992, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal agency scoping meeting is planned at this time.

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 or questions concerning this proposed action and the EIS should be directed to the FHWA at the address 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.)

A. George Ostensen,

Division Administrator, Lansing, Michigan.

[FR Doc. 95–888 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–002; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1972 Volkswagen Van-Type Wagons Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1972 Volkswagen Van-Type Wagons are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1972 Volkswagen Van-Type Wagon that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1972 Volkswagen Van-Type Wagons are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1972 Volkswagen Van-Type Wagon that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Volkswagenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1972 Volkswagen Van-Type Wagon to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1972 Volkswagen Van-Type Wagon, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1972 Volkswagen Van-Type Wagon is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence * * *, 103 Deferring and Defogging Systems, 104 Windshield, Wiping and Washing Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 111 Rearview Mirror, 205 Glazing Materials, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, and 211 Wheel Nuts, Wheel Discs and Hubcaps.

Petitoner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: inscription of the appropriate symbol on the controls for the lights, hazard warning signal, windshield wiper, and windshield washer.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses and rear sidemarkers.

Standard No. 116 Brake Fluid: Installation of a label with the required information on or near the brake fluid cap.

Standard No. 206 Door Locks and Door Retention Components: Installation of U.S.-model rear door locks.

Standard No. 208 Occupant Crash Protection: Installation of a seat belt warning system with a lighted symbol.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a) (1) (A) and (b) (1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–890 Filed 1–12–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 4, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0188.

Form Number: ATF F 5100.1.

Type of Review: Extension.

Title: Signing Authority for Corporate Officials.

Description: ATF F 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or office to sign for the corporation in ATF matters. The form identifies the corporation, the individual or office authorized to sign, and documents the authorization.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 250 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930 Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–943 Filed 1–12–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

January 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0025.

Form Number: ATF F 2 (5320.2).

Type of Review: Extension.

Title: Notice of Firearms Manufactured or Imported.

Description: The National Firearms Act requires license importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 590.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,900 hours.

OMB Number: 1512–0115.

Form Number: ATF F 5220.4 (2140).

Type of Review: Extension.

Title: Monthly Report—Export Warehouse Proprietor.

Description: Proprietors who are qualified to operate export warehouses that handled untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions and on-hand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 213.

Estimated Burden Hours Per Respondent: 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,070 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–944 Filed 1–12–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

January 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0043

Form Number: IRS Form 972

Type of Review: Extension

Title: Consent of Shareholder to Include Specific Amount in Gross Income

Description: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount in income and to determine if the corporation claimed the correct amount.

Respondents: Individuals or households, Businesses of other for-profit

Estimated Number of Respondents/ Recordkeepers: 400

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.

Learning about the law or the form—3 min.

Preparing the form—14 min.

Copying, assembling, and sending the form to the IRS—31 min.

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 408 hours

OMB Number: 1545–0236

Form Number: IRS Form 11–C

Type of Review: Extension

Title: Occupational Tax and Registration Return for Wagering

Description: Form 11–C is used to register persons accepting wagers (IRC section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (IRC section 4412), and to verify that the tax on wagers is report on Form 730.

Respondents: Individuals or households, Businesses or other for-profit

Estimated Number of Respondents/ Recordkeepers: 11,500

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 10 min.
Learning about the law or the form—28 min.
Preparing the form—1 hr., 32 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 108,560 hours
OMB Number: 1545–1143
Form Number: IRS Form 706–GS(D–1)
Type of Review: Extension
Title: Notification of Distribution From a Generation-Skipping Trust
Description: Form 706–GS(D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 80,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 33 min.
Learning about the law or the form—1 hr., 41 min.
Preparing the form—41 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 340,800 hours
OMB Number: 1545–1144
Form Number: IRS Form 706–GS(D)
Type of Review: Extension
Title: Generation-Skipping Transfer Tax Return for Distributions
Description: Form 706–GS(D) is used by the distributees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—12 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—19 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 1,020 hours
OMB Number: 1545–1145
Form Number: IRS Form 706–GS(T) and Schedules A and B
Type of Review: Extension
Title: Generation-Skipping Transfer Tax Return for Terminations
Description: Form 706–GS(T) is used by trustees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 100
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 706–GS(T)	Sched. A	Sched. B
Recordkeeping	40 min	13 min	13 min.
Learning about the law or the form	28 min	17 min	4 min.
Preparing the form	32 min	38 min	20 min.
Copying, assembling, and sending the form to the IRS	20 min	20 min	20 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 689 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 95–945 Filed 1–12–95; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 9
Friday, January 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 26, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 pm at Sutton Junior/Senior Highschool, Boston Road, Sutton Massachusetts for the following reasons:

1. Presentation from Town of Sutton
2. Election of Officers
3. Commission Business
4. Other

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,
Executive Director.

[FR Doc. 95–1044 Filed 1–11–95; 2:42 pm]

BILLING CODE 4310–70–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 18, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 11, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–1031 Filed 1–11–95; 10:39 am]

BILLING CODE 6210–01–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3–95

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Fri., Jan. 20, 1995 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on January 10, 1995.

Jeanette Matthews,
Administrative Assistant.

[FR Doc. 95–1012 Filed 1–11–95; 9:39 am]

BILLING CODE 4410–01–P

Corrections

Federal Register

Vol. 60, No. 9

Friday, January 13, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5102-1]

Reconsideration of the Protection of Stratospheric Ozone Rule

Correction

In rule document 94–30082 beginning on page 63255 in the issue of Thursday, December 8, 1994 make the following correction:

§82.174 [Corrected]

On page 63256, in the second column, in §82.174(e), in the next to last line, ''March 8, 1985,'' should read ''March 8, 1995,''.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618; FCC 94-265]

New Personal Communications Services

Correction

In rule document 94–27558 beginning on page 55372 in the issue of Monday, November 7, 1994, make the following correction:

§15.323 [Corrected]

On page 55374, in the first column, in §15.323(e), in the seventh line, ''20 milliseconds/X'' should read ''10 milliseconds/X''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for the Provision of Technical and Other Non-Financial Assistance to Community and Migrant Health Centers

Correction

In notice document 94–31555 beginning on page 66316 in the issue of Friday, December 23, 1994, make the following correction:

On page 66317, in the first column, in the second and third lines ''(insert 30 days from date of publication)'' should read ''January 23, 1995''.

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3 (Sub-No. 115)]

Missouri Pacific Railroad Company—Abandonment—in Miami, Franklin, and Osage Counties, KS; Notice

Correction

In notice document 94–31998 appearing on page 67719 in the issue of Friday, December 30, 1994 the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP No. 1015]
RIN 1121-AA27

Grants to Combat Violent Crimes Against Women

Correction

In proposed rule document 94–31877 beginning on page 66830 in the issue of Wednesday, December 28, 1994, on the same page, in the second column, in the first full paragraph, text was omitted from the second sentence, it should read as set forth below:

''Units of local government, Indian tribal governments and non-porfit, non-governmental victim service programs are eligible to apply to States for subgrants under this program. Indian tribal governments are also eligible to apply directly to the Office of Justice Programs for discretionary grants under Subpart C of these regulations.''

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AG15

Incentive Awards; Pay and Leave Administration

Correction

In rule document 94–31822 beginning on page 66629 in the issue of Wednesday, December 28, 1994 make the following correction:

§550.404 [Corrected]

On page 66633, in the third column, in §550.404(b)(2), in the last line, after ''regular'' insert ''pay''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27663; Amdt No. 121-247, 129-24, 135-54]

RIN 2120-AF24

Traffic Alert and Collision Avoidance System, TCAS I

Correction

In rule document 94–32108 beginning on page 67584 in the issue of Thursday, December 29, 1994, make the following corrections:

§121.356 [Corrected]

1. On page 67586, in the third column, in §121.356, in the first line, paragraph ''(b) * * *'' should read ''(a) * * *''.

2. On the same page, in the same column, in §121.356(b), in the fifth line, after ''passenger'' insert ''(combi) airplane that has a passenger''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94-104; Notice 1]

49 CFR Part 571

RIN 2127-AF45

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

Correction

In proposed rule document 94–29053 beginning on page 60596 in the issue of Friday, November 25, 1994 make the following corection:

On the same page, in the third column, under the heading **Effective Date**, in the second line, ''December 27, 1994.'' should read ''[30 days after publication in the Federal Register].''

BILLING CODE 1505–01–D

federal register

Friday
January 13, 1995

Part II

Department of Education

Office of Elementary and Secondary Education

Consolidated State Plans Under Section 14302 of Title I of the Improving America's Schools Act; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Consolidated State Plans Under Section 14302 of Title I of the Improving America's Schools Act

AGENCY: Department of Education.

ACTION: Notice of proposed criteria and request for comment.

SUMMARY: The Department of Education proposes criteria for optional State consolidated plans submitted under section 14302 of the Elementary and Secondary Education Act of 1965 (ESEA), as recently reauthorized by the Improving America's Schools Act, Pub. L. 103–382 (IASA). Submitting a consolidated plan will allow a State to obtain funds under many Federal programs through a single plan, rather than through separate and detailed program funding plans or applications. The consolidated plan would explain how all of the resources of Federal programs included in the plan would work together to promote the State's educational goals for all students while effectively meeting the needs of the programs' intended beneficiaries. To receive fiscal year (FY) 1995 program funds, a State educational agency (SEA) would need only to describe how it would develop its final plan over the following year, and to submit basic information needed to ensure fiscal accountability.

DATES: Written comments must be received on or before February 13, 1995.

ADDRESSES: All comments should be addressed to Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–6100. The Internet address for submitting comments is: consolidated____plan@ed.gov. The fax number is (202) 205–0303.

FOR FURTHER INFORMATION CONTACT: William Wooten, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–6100. Telephone: (202) 260–1922. The Internet address is: consolidated____plan@ed.gov. The fax number is (202) 205–0303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 14302 of the ESEA, as reauthorized by Title I of the IASA, permits the Secretary to establish criteria under which any SEA may obtain certain Federal program funds through a single consolidated plan rather than through separate funding applications or plans. As explained in section 14301, this consolidated plan would enhance cross-program coordination, planning and service delivery, and the integration of Federal program services with services offered by States and localities as keys to increased student achievement.

So that the development and use of consolidated plans can achieve their maximum potential, the Secretary proposes to offer States a two-phase process for completing their consolidated plans: (1) Submission in the spring of 1995 of a relatively simple preliminary plan, followed by (2) the State's development and submission the next year of a final consolidated plan. This final plan would focus specifically on how the Federal programs included in the plan, while still serving their intended beneficiaries, would support State goals and education reform strategies. In developing its consolidated plan, a State is encouraged to consider the relationship of this plan to the State's overall reform efforts, including efforts under the Goals 2000: Educate America Act or the School-to-Work Opportunities Act. A State also is encouraged to consider what waivers it may need to carry out its reforms effectively. Finally, each State is encouraged to consider how its local educational agencies (LEAs) and schools can tap the full potential of consolidated plans at the local level through the authority offered to them under section 14305 of the ESEA.

These provisions for development of consolidated State plans—particularly when coupled with the Secretary's new waiver authority, contained in section 14401 of the ESEA (as well as in the Goals 2000 and School-to-Work statutes) and other provisions of the IASA that offer new opportunities for flexibility—also enable the Department to refocus its administration of programs in ways that can better assist a State in meeting its education goals and objectives. Indeed, the information contained in a consolidated plan may help to clarify why an SEA or LEA needs a waiver of certain program requirements in order to improve student achievement. The Department will soon issue separate guidance describing the process for obtaining waivers of programmatic requirements under section 14401.

Development of a consolidated State plan, either in preliminary or final form, is voluntary. It is the State's decision whether to submit a consolidated plan, which of the eligible programs to include in it if one is submitted, and whether to add to a final consolidated plan programs that were not included in a preliminary plan. Moreover, an SEA that submits a preliminary plan for FY 1995 could choose to forgo development of the final consolidated plan during the following year, and instead submit individual program plans or applications. Likewise, an SEA that chooses for FY 1995 to submit individual program plans or applications could, in any subsequent fiscal year, submit a final consolidated plan.

Approval of a consolidated plan, whether in preliminary or final form, permits the Secretary to award funds under the programs included in the plan. Approval of a consolidated plan also eliminates the need for an SEA, under those included programs, to submit separate program applications or develop separate program planning documents that otherwise would be required by the program statutes. Moreover, approval of a consolidated plan establishes a different context for any Departmental review of an SEA's administration of the included programs.

The Secretary stresses that approval of a consolidated plan does *not* alter the obligation of an SEA and its grantees to continue to comply with all requirements of each program, including those that would have been described in plan or application descriptions or assurances under the statute. (See further discussion and examples under ''Assurances'' to be submitted as part of the first-year (preliminary) consolidated plan.) In addition, while an SEA that meets the conditions of section 14201 of the ESEA may consolidate administrative funds under specified programs, approval of a consolidated State plan does not authorize commingling of program funds. However, the Secretary is authorized to waive certain program requirements under waiver provisions contained in the IASA, the Goals 2000: Educate America Act, and the School-to-Work Opportunities Act.

The remainder of this notice identifies the programs that might be included in a consolidated plan, and proposed questions that a State might address in both the preliminary and final consolidated plans. Appendix A to this document contains the Department's preliminary guidance on the consolidated plan; this guidance was provided to members of the public who attended a Federal program conference

in Baltimore, Maryland, on December 2, 1994. Subject to review of the comments received on this proposal, the Secretary plans to announce final criteria for consolidated State plans in February, 1995.

Programs That a State May Include in a Consolidated Plan

Section 14302 permits an SEA to include any of the following State-administered programs in its consolidated State plan:

(1) Title I, Part A of the ESEA (LEA Program).

(2) Title I, Part B of the ESEA (Even Start Program).

(3) Title I, Part C of the ESEA (Migrant Education).

(4) Title I, Part D of the ESEA (Neglected, Delinquent, or At-Risk Children).

(5) Title II of the ESEA (State and local programs) (Professional Development).

(6) Title III, Part A, subpart 2 of the ESEA (Technology for Education).

(7) Title IV, Part A (other than the Governor's Programs in section 4114) of the ESEA (Safe and Drug-Free Schools and Communities).

(8) Title VI of the ESEA (Innovative Education Program Strategies (formerly Chapter 2)).

(9) State leadership programs under Title II of the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act).

(10) Programs under the Goals 2000: Educate America Act.

(11) Programs under the School-to-Work Opportunities Act.

In addition, under section 14302(a)(2)(F) of the ESEA, the Secretary proposes to designate the following additional programs that a State may include in a consolidated plan:

(12) Subtitle B of Title VII of the Stewart B. McKinney Homeless Assistance Act (the Education for Homeless Children and Youth program) (enacted in Title III, Part B of the IASA).

(13) All other State formula grant programs under the Perkins Act.

The Secretary is considering whether to designate Title VII, Part C of the ESEA (the Emergency Immigrant Education Program) for possible inclusion in the consolidated State plan, but is not proposing to do so at this time in view of the significant relationship of this program to other Federal initiatives for addressing immigration-related issues.

Certain programs that the statute specifically identifies for possible inclusion in a consolidated State plan, such as the Technology for Education program in Title III, Part A, subpart 2 of the ESEA, are competitive, rather than formula, grant programs. These competitive programs (and others that the Secretary later may designate) can promote innovation in specific aspects of a State's reform effort, and so can play an important role in a consolidated State plan for the overall use of Federal program funds. On the other hand, competitive grant programs present special challenges for consolidated plans; not only must their applications be reviewed against competitive selection criteria and processed on a longer time-line than is needed for formula grant programs, but the programs often fund projects with a National purpose. Until these competing principles can be better resolved, the Secretary proposes that an SEA that includes a competitive grant program in its consolidated State plan still will need to meet the application content, selection criteria, and closing dates established for that program.

As stated in the ''Invitation to Comment'' section of this notice, the public is invited to suggest other grant programs, both formula and discretionary, that should be available for inclusion in a consolidated State plan, and how that plan can best accommodate these other programs.

The Preliminary (First-Year) Consolidated Plan Descriptions

The preliminary consolidated plan for FY 1995 program funds would identify the Federal programs that the plan covers, and address the following three areas with respect to the programs included in it:

1. Goals or Objectives

What are the goals and objectives that the SEA hopes to achieve through the development and use of a consolidated program plan, and how do they relate to the needs of the intended beneficiaries of programs included in the plan? In answering these questions, include:

- Ways in which consolidated plans for use of Federal program funds are already being developed and used, and the impediments to success that are now most evident.

2. Process for Developing the Final Consolidated Plan

What process and timelines will the SEA use during the following year to develop its final consolidated plan? Include the State's strategies for—

- Coordinating the planning for the use of Federal program funds with the State's overall education reform efforts (including planning under Goals 2000 and School-to-Work for participating States).
- Bringing together all key individuals—Governors, State program officials, LEA and school administrators, teachers, adult education administrators, parents, and others who can play a key role in coordinating and integrating each program included in the plan with State and locally funded activities—in the development and review of the final consolidated State plan.

3. Fiscal Accountability

To ensure fiscal accountability and the availability of information that the Secretary needs to distribute program funds, provide for each included program, where applicable—

- The amount of funds provided under each program that will be used to carry out State-level activities (whether or not those activities are performed by the SEA), and a general description of how these funds will be used.
- The procedures and criteria that the SEA will use to distribute program funds within the State where the program statute provides no in-State funding formula. (Programs that the Secretary thus far has identified as having no statutory in-State funding formula are the following: Even Start, Migrant Education, Neglected, Delinquent, or At-Risk Children (the local agency program in Part D, Subpart 2), Safe and Drug-Free Schools and Communities, Innovative Education, McKinney Homeless Assistance, and the Perkins Act, Title III.)
- The amount of funds, if any, provided under each program that the State would consolidate for State administration under section 14201 of the ESEA, along with a statement confirming that the SEA has determined that a majority of its resources come from non-Federal sources.

Assurances

In addition, an SEA also would provide in its preliminary plan a set of assurances that include the following:

- Those required by section 14306 of the ESEA, which are repeated in Appendix B.
- A general assurance that, unless and until these requirements are waived, the SEA and its subgrantees will continue to comply with all operational requirements of each program, including those that the program statute may express in terms of application or plan descriptions or assurances.

Example 1: An SEA includes the Migrant Education Program (MEP) (Title I, Part C of the ESEA) in its preliminary

consolidated plan. The SEA does not need to submit a State application, or any of the descriptions described in section 1304 of Title I, Part C. It also does not need to prepare the separate comprehensive service-delivery plan, as otherwise required for the MEP under section 1306(a) of the ESEA; that MEP plan is not required because it is addressed within the consolidated State plan. However, the SEA's receipt of MEP funds under an approved, preliminary consolidated plan still would require the SEA to develop and carry out activities for migratory children as identified in the comprehensive plan requirements of section 1306(a).

Example 2: An SEA includes the Safe and Drug-Free Schools and Communities program (Title IV, Part A, of the ESEA) in its preliminary consolidated plan. The SEA does not need to submit the State application under section 4112 of Title IV, Part A, or any of the application descriptions, such as the description contained in section 4112(b)(4) of how the SEA will coordinate its program activities with the Governor's drug and violence prevention programs funded under section 4114, and prevention efforts of other State agencies. However, the SEA's receipt of Safe and Drug-Free Schools and Communities program funds under an approved, preliminary consolidated plan still would require the SEA to meet all applicable program requirements, including coordinating its program with relevant programs and activities of the Governor and other State agencies.

Example 3: An SEA includes the Title I, Part A (ESEA) program in its preliminary consolidated plan. The SEA does not need to submit the State plan, or any of the State plan descriptions described in section 1111 of Title I, Part A.

However, the SEA's receipt of Title I, Part A program funds under an approved, preliminary consolidated plan still would require the SEA to carry out all of the requirements contained in section 1111 with regard to standards and assessments and other provisions to support teaching and learning.

The Secretary is considering whether the final instructions for the preliminary consolidated plan should include a list, program-by-program, of all application and plan descriptions and assurances that the SEA's general assurance would cover in the absence of a waiver.

Relationship to the Goals 2000 and School-to-Work Initiatives

The Goals 2000 statute provides States and communities with an opportunity to strengthen and broaden their education reform efforts by developing comprehensive plans to enable all children to learn to challenging academic standards. The School-to-Work Opportunities initiative may also play a significant role in a State's education reform efforts by helping to establish transition systems for youth that integrate challenging academic content with high quality work-based learning experience leading to postsecondary education and career-oriented entry into the workforce. A State's participation in these initiatives is voluntary, as it is with all Federal programs. States that choose to participate in Goals 2000 and School-to-Work are encouraged to integrate their development of consolidated State plans under section 14302 of the ESEA with their Goals 2000 and School-to-Work plans and activities. However, since these initiatives are designed as possible frameworks for the use of local, State and Federal resources to support a State's overall education reform strategy, the Secretary is not proposing that submission of a consolidated State plan, in either preliminary or final form, would alter application or planning requirements under Goals 2000 or School-to-Work.

The Final (Second-Year) Consolidated State Plan

The final consolidated plan will provide an opportunity for SEAs to consider how the resources of those Federal programs included in the plan can be used directly to support their States' overall improvement strategies. The following proposal for the content of this final plan reflects the Department's current thinking on what issues and questions a State might address in a final, second-year plan. After reviewing comment on this notice, the Department intends to continue collaboration with the public on modifications that may be needed, as well as on the formulation of additional examples that can better illustrate how States might address the questions presented.

Possible Issues To Be Addressed in a Final (Second-Year) Consolidated Plan

1. What is the SEA's vision (including specific goals) for improving its educational system throughout the State? How do these goals relate directly to raising student academic achievement, geared to challenging academic standards, of all children who benefit from Federal programs included in the consolidated plan? In answering these questions, the State must address the following:

- How the State will meet the standards and assessment requirements of Title 1, Part A, section 1111(b) of the ESEA to ensure the use of challenging academic content standards and high-quality assessments aligned with the standards.
- What goals and performance indicators will the State establish to determine the effectiveness of programs included in the plan (e.g., improved professional development based upon realigned teacher certification requirements under the Eisenhower Professional Development program (Title II, Part B of the ESEA), or additional performance indicators for safe and drug-free schools under the Safe and Drug-Free Schools and Communities program (Title IV, Part A of the ESEA).

2. How will the Federal resources of those programs support, on the basis of identified needs, State and local efforts to reach the State's specific goals and enable intended program beneficiaries to reach the challenging academic standards established in the State? (The Secretary recognizes that, given varying SEA responsibilities for the programs that a State might include in its consolidated plan, not all of the issues raised by this question may be equally relevant to individual programs.)

Example 1: If a State determines that one of its goals to improve education is increasing the percentage of youth who complete high school, the State might describe how Federal program funds fit into State efforts to reach that goal.

Example 2: If the State has established overall goals for professional development, it should describe how it will use resources (not limited to Title II, ESEA) to reach these goals.

In answering Question 2, a State should consider addressing such critical areas as the following:

- How the needs of children served by the program are identified.
- The most significant barriers to more effective use of Federal funds, and how the State and individual programs will work together to overcome these barriers.
- Any waivers of Federal statutes or regulations the State may need to support its consolidated plan.
- How program administrators in the State will maintain the kind of communication and coordination needed to draw effectively on all Federal resources as outlined in the plan.
- How program administrators throughout the State will make the strategies outlined in the consolidated plan part of their daily work.

• If a State chooses to consolidate its use of State administration funds (under section 14201 of the ESEA), how the consolidation of these funds relates to the consolidated State plan under section 14302.

• Any critical timelines and benchmarks that will guide related and ongoing activities.

3. How will the State enable interested local educational agencies, in accordance with section 14305 of the ESEA, to develop their own consolidated plans for the use of Federal funds, and help to develop the capacity of LEAs and schools to use all of their funds to support high academic achievement for all intended program beneficiaries?

4. For an individual school whose activities are supported with Federal funds, how can the needs of its students be better met through implementation of the consolidated plan? The answer to this question might illustrate how a State's thinking about the usefulness of a consolidated plan is rooted in the daily activities of schools and students.

An SEA also would provide an update on any significant changes in the procedures for distribution of funds, as well as in the amounts and general uses of funds reserved for administrative and State-level activities, from those described in the preliminary consolidated plan.

Review of Consolidated Plans

The Secretary proposes that the State's preliminary consolidated plan be approved without peer review, but is strongly considering using a peer review process that involves the assistance and advice of State officials, and others with relevant expertise, for approving the final State consolidated plan.

Public Participation Requirements

Section 14303(7) of the ESEA requires, as one of the SEA's general assurances, that ''before the [consolidated plan] was submitted to the Secretary, the State has afforded a reasonable opportunity for public comment on the plan * * * and has considered such comment.'' (This assurance applies both to consolidated State plans under section 14302 and to all individual State plans or applications submitted under individual programs.)

Invitation to Comment

The Secretary invites comments from all interested members of the public on this proposal for the content of the consolidated State plan. The Secretary is particularly interested in receiving comments on whether—

• There are additional grant programs, either formula or discretionary, that the Secretary should consider designating for possible inclusion in a consolidated State plan, and how that plan can best accommodate these programs.

• The proposed contents of the preliminary (first-year) consolidated plan are reasonable and whether they need to be modified or clarified.

• The issues proposed to be addressed in the final, (second-year) consolidated plan are clearly expressed and properly formulated, and what additional examples, if any, should be included to clarify the kind of information that the State would need to provide.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4000, Portals Building, 1250 Maryland Avenue SW., Washington, DC 20202.

Dated: January 6, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

Appendix A—Department of Education Preliminary Guidance Document: The IASA Consolidated Plan (December 1, 1994)

(**Note:** This document was distributed to those who attended the Office of Elementary and Secondary Education/Office of Bilingual Education and Minority Languages Affairs conference in Baltimore, Maryland, on December 2, 1994. It is intended to provide useful background information.)

A New Approach

• The recently enacted Improving America's Schools Act (IASA) stresses, in a variety of ways, the need to rethink how Federal, State and local education programs can fit together into a unified system that focuses on one principal goal: Enabling all students to achieve to challenging standards. The Act reinforces the Federal government's *limited* supporting role in this effort. At the same time, it encourages the Secretary of Education to remove barriers to State and local efforts to meet student educational needs. Indeed, the IASA permits the Secretary to take steps to ensure that the way in which the Department administers its programs is itself a part of, rather than a hindrance to, educational reform.

• The IASA authorizes the Secretary to waive statutes or regulations that impede efforts to increase the quality of student instruction or improve student academic performance. It also permits the Secretary to eliminate the need for States to submit to the Department a myriad of different program funding applications. Instead, the IASA authorizes submission of a single consolidated plan that, for the programs that it covers, focuses on cross-program coordination, integration of services and improved service delivery as keys to student achievement. This authority extends to State formula grant programs in the Elementary and Secondary Education Act (ESEA),[1] as well as to the Goals 2000: Educate America Act, the School-to-Work Opportunities Act, and State leadership programs under the Perkins Vocational Education Act.

• To make educational reform truly comprehensive, its reach must extend beyond challenging content standards and new teaching methods to the very way in which we administer our many programs. A consolidated plan can become a driving force for thinking about how all Federal, State and local activities might work together in a common and coherent effort. Indeed, this consolidated plan, when used along with other means of promoting State systemic reform under the IASA, Goals 2000 and the School-to-Work Act, can go a long way toward helping all of us change the way in which we do business, so that student academic achievement, rather than individual program administration, truly is the focus of our work.

The Department's Strategy

General Approach to Consolidated Planning. The new authority that the IASA gives to the Secretary to approve a consolidated program plan offers an unprecedented opportunity to tap the full potential of Federal programs. This authority can convert the current program-by-program application process into a process for renewed thinking about how these programs collectively can fit together, notwithstanding their distinct purposes and different beneficiaries, to increase the quality of student instruction and the level of student academic performance.[2] A truly consolidated application—one that is more than a repackaged compilation of even the best individual program applications—can reflect the kind of broad, creative planning effort that is needed to complement other educational reform efforts and strategies.

The Department is working hard to develop criteria for a State's consolidated plan that can help State and local officials, teachers and other school staff, and parents begin to take advantage of the opportunities that a consolidated plan presents. Because the law was only recently passed, because the issues are complex, and because extensive collaboration with stakeholders is required, any decisions thus far are preliminary. However, knowing the substantial interest that the prospect of a consolidated plan has generated, and the reality that State planning under the IASA already has begun, the Department wants to offer whatever guidance that it currently can provide about what a plan might contain and how it might be developed. The Department expects to provide more information in coming weeks.

[1] The ESEA was reauthorized in Title I of the Improving America's Schools Act.

[2] Congress expressed the purpose of consolidating existing program applications into a single plan in section 14301 of the ESEA: ''To improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery under this Act and enhanced integration of programs under this Act with educational activities carried out with State and local funds.''

Because a spring 1995 deadline for plan submission and review would not permit full public discussion of how to achieve the maximum potential of consolidated planning, the Department intends to implement the IASA's consolidated plan provision in two stages. States choosing to submit a consolidated plan as the basis for its FY 1995 program funding will only have to prepare a first year ''preliminary'' plan. During the following year, these States would develop and submit a final, comprehensive, consolidated plan that will be the basis for program funding for FY 1996 and beyond. Each State that submits a consolidated plan under this process may choose among the programs that are eligible for inclusion under the Act. Submitting individual program applications for FY 1995 does not preclude a State from submitting a full comprehensive plan the following year.

The First Year Consolidated Plan. The preliminary consolidated plan for FY 1995 funding would describe—for programs that the State expects the final plan to cover—how the State will develop a specific and comprehensive plan to support the kinds of cross-program coordination, program integration and effective modes of service delivery that will better enable all children to achieve to challenging standards. This preliminary plan also would address certain program-by-program application requirements that the Secretary determines must be reviewed *before* FY 1995 grant awards are made. The Secretary intends to keep the number of these additional requirements that must be addressed in the preliminary plan to the minimum needed for basic accountability. The Secretary plans to announce these minimum-content requirements by mid-February, 1995.

State Planning Activities During the First Year. During the first year after the preliminary plan is approved, States would have the opportunity to continue their consolidated planning process. In doing so, States would be able, among other things, to: (1) engage in consolidated planning that is integrated with other broad-ranging and systemic efforts such as those under Goals 2000 and the School-to-Work Acts; and (2) request from the Department—as they can do at any time—waivers of program requirements that they may need to implement their consolidated plans effectively.

During this planning period, States also would be responsible for implementing the requirements of their individual programs whether or not those requirements were addressed in the preliminary consolidated plan.

The Final Consolidated Plan. On the basis of their comprehensive planning, States would develop and submit to the Secretary their final, comprehensive, consolidated plans. The Department soon will begin working with interested States and others to develop guidance on how consolidated State planning can support an integrated, Statewide service delivery system that promotes higher student achievement. These plans also might need to include some minimum program-specific information that will be determined by the Secretary in close consultation with the field. Approval of this comprehensive plan—along with any waivers that may be needed to implement it—would be the basis on which funds for covered programs would be awarded for FY 1996 and beyond.

Questions and Answers

The following information tries to address significant questions about the Department's strategy for implementing the consolidated plan provisions in the IASA.

Q1. What programs may a State include in its consolidated plan?

(**Note:** The following answer contains both a limited number of minor clarifications to the list of programs that the statute specifically identifies for possible inclusion in a consolidated State plan, and those additional programs that the Secretary is proposing to designate for possible inclusion in the plan. These clarifications and additions, which are reflected in the foregoing notice, were made after release of the guidance document.)

A1. ESEA programs may include: Title I, Part A (LEA Program); Title I, Part B (Even Start); Title I, Part C (Migrant Education); Title I, Part D (Neglected, Delinquent, or At-Risk Children); Title II (State and local programs) (Professional Development); Title III, Part A, subpart 2 (Technology for Education); Title IV, Part A (other than the Governor's Programs in section 4114) (Safe and Drug-Free Schools and Communities); and Title VI (Innovative Education Program Strategies (formerly Chapter 2)). A State also may include the following non-ESEA programs: State leadership programs under Title II of the Carl D. Perkins Vocational and Applied Technology Education Act; Programs under the Goals 2000: Educate America Act; and Programs under the School-to-Work Opportunities Act. (See section 14302, and the definition of ''covered program'' in section 14101 of the ESEA.)

The IASA authorizes the Secretary to designate other programs that may be included as well. The Secretary proposes to designate Subtitle B of Title VII of the Stewart B. McKinney Homeless Assistance Act (the Education for Homeless Children and Youth program) (enacted in Title III, Part B of the IASA), and all other State formula grant programs under the Perkins Act. The Secretary plans to provide a final list of designated programs by mid-February.

Q2. Will States that submit a consolidated plan to the Department have the option of choosing which among these programs to include?

A2. Yes, selection of programs to include in a consolidated plan, like the decision to submit a consolidated plan at all, is entirely at the discretion of the State.

Q3. Will a State have to submit any other funding application for programs that are included in its consolidated plan?

A3. No. For programs that a State includes in its consolidated plan, that plan will substitute for any application requirements that are contained in the individual program statutes.

Q4. Since the ESEA authorizes the Secretary to approve many individual program applications for the duration of the Act, why would review and approval of the consolidated plan be performed in two stages?

A4. Section 14301 of the ESEA, unlike many of the application requirements for individual programs, does not require the Secretary to approve a consolidated plan for any particular period of time. Rather, it gives the Secretary broad authority to ''establish procedures and criteria'' that will govern the process for submitting the consolidated plan. The Secretary believes that a two-stage process, with submission of an initial plan in the spring of calendar year 1995, followed later by submission of a more comprehensive plan, is the best and most practical way to promote the broad and critical thinking at all levels that is needed to develop a strong consolidated plan.

Q5. Could funds awarded under a consolidated plan be co-mingled and treated as if they were from one funding source?

A5. No, unless the State receives a waiver of existing requirements that govern the way it accounts for funds—perhaps as part of the State's overall reform strategy under Goals 2000. Otherwise, while the Secretary's approval of a consolidated plan permits the Department to award funds under each program that the plan covers, it does not change the existing responsibility of States to account for those funds separately.

Q6. Would the Secretary's approval of a consolidated plan in any way change the basic purposes or beneficiaries of programs that the plan covers?

A6. No.

Q7. For those programs that a State includes in its consolidated plan, would the State be expected to address any application requirements that are contained in individual program statutes?

A7. Yes. In order to administer programs properly, a State's consolidated plan also would need to address certain application requirements under individual program statutes that the Secretary determines must be reviewed *before* program grant awards are made.

Q8. If program application requirements are not addressed in the consolidated plan, do these requirements still have to be met?

A8. Yes. Unless a State receives a waiver of a requirement under the applicable authority in the IASA, Goals 2000, or School-to-Work Acts, the Secretary's approval of a consolidated plan eliminates the need to provide further application information, but does not affect the State's responsibility to meet requirements identified in program statutes.

Q9. Can a State that already has an approved plan under Goals 2000 use the plan as the basis of its IASA consolidated plan?

A9. Yes. In fact, the Department would encourage it to do so.

Q10. Will there be discussion with the public about the specific content and program-by-program information required to be included in the consolidated plan?

A10. Yes. Section 14302(b) of the Act requires the Secretary to collaborate with SEAs, and, as appropriate, with other State agencies, LEAs, public and nonprofit organizations and institutions, private

schools, and representatives of parents, students and teachers in implementing consolidated plans. Many officials, agencies and organizations at all levels are interested in the potential benefits of developing consolidated plans, and the Department strongly desires to include all those interested in the discussion of what plans should contain. The Department likely will use a range of direct and indirect means of conveying information and soliciting reaction.

Q11. When does the Department anticipate that State and local officials and others will receive specific instructions about what to include in the first-year consolidated plan, and the time-line for submission and review?

A11. The Department is aware that early and careful planning about the content of good first-year consolidated plans will require early notice about their expected content. The Department intends to distribute more information on the content of consolidated plans during January, so that States have sufficient time to (1) think carefully about how a consolidated plan can propel new dynamic thinking about real program coordination (2) how [sic] their consolidated planning supports reform strategies that they may be developing under Goals 2000, and (3) prepare a proposed plan and solicit and review public comment on its content if they choose to submit a consolidated plan.

The Department expects to issue final guidance on the content and format of the preliminary consolidated plan by mid-February, as well to announce any other programs that may be included in it. While no schedule for submission and review of preliminary plans has yet been developed, the Department would like that schedule to be the same as schedules established for submission and approval of individual FY 1995 program applications.

Q12. Does the IASA contain any requirement that a State discuss the content of a preliminary consolidated plan with the public before submitting it to the Secretary?

A12. Yes. The Act requires a State to offer a reasonable opportunity for the public to comment on its consolidated plan, and to consider that comment, before submitting the plan to the Secretary. This requirement would apply both to the preliminary consolidated plans and to the final consolidated plans. Public comment on a consolidated plan does not necessarily, by itself, meet any other individual program requirements for public comment.

Appendix B—General Assurances Applicable to Each Program Covered by the Preliminary (First Year) Consolidated Plan

- Each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications.
- The control of funds provided under each program and title to property acquired with program funds will be in a public agency, in a nonprofit private agency, institution, or organization, or in an Indian tribe if the law authorizing the program provides for assistance to these entities.
- The public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer the funds and property to the extent required by the authorizing law.
- The State will adopt and use proper methods of administering each program, including—

(A) The enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

(B) The correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

(C) The adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of each program.

- The State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal officials.
- The State will use fiscal control and fund accountability procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program.
- The State will—

(A) Make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary's duties under each program; and

(B) Maintain records, provide information to the Secretary, and afford access to the records as the Secretary may find necessary to carry out the Secretary's duties.

- The State has afforded a reasonable opportunity for public comment on the plan and has considered this comment.

[FR Doc. 95–868 Filed 1–12–95; 8:45 am]

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federal register

Friday
January 13, 1995

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Entertainment, Gift, and Recreation Costs for Contractor Employees; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–25, FAR Case 94–750]

RIN 9000–AG33

Federal Acquisition Regulation; Entertainment, Gift, and Recreation Costs for Contractor Employees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule amends the Federal Acquisition Regulation to revise the cost principles governing entertainment, gift and recreation costs for contractor employees. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: January 13, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 14, 1995 to be considered in the formulation of a final rule.

ADDRESSES: All 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 FAC 90–25, FAR case 94–750 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence M. Belton, Team Leader, Cost Principles Team, at (703) 602–2357, 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 FAC 90–25, FAR case 94–750.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces Federal Acquisition Regulation (FAR) revisions developed under FAR case 94–750 to implement Section 2192 of the Act. This interim rule revises the cost principles at FAR 31.205–13 and 31.205–14.

To comply with the requirements of paragraph (a)(1) of Section 2192 of the Act, the interim rule provides that the costs of gifts are expressly unallowable and that the costs of recreation are expressly unallowable, except for the costs of employee sports teams. The allowability of costs for employee sports teams is further limited to off-duty activities and to a nominal cost per participating employee. ''Recreation'' is removed from the examples of allowable costs at 31.205–13, and ''wellness/fitness centers'' are added to that listing to differentiate them from recreation costs. The entire listing of allowable costs for morale, health, welfare, food service, and dormitory costs is further limited in allowability to reasonable amounts per employee.

To comply with the requirements of paragraph (a)(2) of Section 2192 of the Act, the interim rule revises the cost principle at 31.205–14 to incorporate the statutory wording relating to unallowability of entertainment costs under any other cost principle.

These revisions specifically disallow gift, recreation, and entertainment costs which some may have previously considered allowable.

Paragraph (c) of Section 2192 of the Act states that ''[a]ny amendments to the FAR made pursuant to subsection (a) shall apply with respect to costs incurred after the date on which the amendments made by Section 2101 apply (as provided in Section 10001) or the date on which the amendments made by Section 2151 apply (as provided in Section 10001), whichever is later.'' Therefore, this interim rule is being published now in order to meet the statutory deadlines imposed by paragraph (a) of Section 2192 and is effective immediately. However, the revised cost principles will apply only to costs incurred after all of the proposed rules implementing requirements of Sections 2101 and 2151 become effective. The proposed rules at issue are being processed under FAR cases 94–751, 94–752, and 94–754.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–750). If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before February 13, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

The interim 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 most contracts awarded to small businesses are awarded through sealed bidding on a firm fixed price basis. The cost principles apply only where contracts are based on cost or pricing data. 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 cite 5 U.S.C 601, *et seq.* (FAR Case 94–750), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Section 2192 of the Federal Acquisition Streamlining Act of 1994 specifically requires that the cost principle at FAR 31.205–14 be amended not later than 90 days after enactment of the Act and that other FAR revisions addressing contractor costs of gifts or recreation to improve employee morale or welfare be made within 120 days of enactment of the Act. Pubic Law 103–355 was enacted October 13, 1994.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 9, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

Number 90–25

Federal Acquisition Circular (FAC) 90–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–25 is effective January 13, 1995.

Dated: January 4, 1995.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement, NASA.

Dated: January 9, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

Dated: January 8, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 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 31.205–13 is revised to read as follows:

31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraph (a)(2) of this section, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, recreation, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(2) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(3) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (a)(4) of this section).

(4) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103–355.

(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b)(2), (3), and (4) of this section, and to the extent that the net amount per employee is reasonable. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(2) Costs of gifts are unallowable.

(3) Costs of recreation are unallowable, except for the costs of contractor employees' participation in sports teams designed to improve company loyalty, team work, or employee physical fitness, conducted during off duty hours at a nominal cost per participating employee.

(4) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(5) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (b)(6) of this section).

(6) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (b)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

3. Section 31.205–14 is revised to read as follows:

31.205–14 Entertainment costs.

(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205–1 and 31.205–13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103–355. Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

[FR Doc. 95–849 Filed 1–12–95; 8:45 am]

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federal register

Friday
January 13, 1995

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5139–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate substitutes for the ODSs, and regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors.

On March 18, 1994, EPA promulgated its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes (59 FR 13044). In today's Notice, EPA issues decisions on the acceptability of substitutes not previously reviewed by the Agency. The intended effect of this action is to expedite movement away from ozone depleting compounds. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media sector end-use screening assessment of risks to human health and the environment.

EFFECTIVE DATE: January 13, 1995.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–7548. The docket may be inspected between 8 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy at (202) 233–9727 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, SW., Mail Code 6205J, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into six sections, including this overview:

I. Overview of This Notice
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Listing of Acceptable Substitutes
IV. Listing of Substitutes Pending Review
V. Additional Information
Appendix A Summary of Acceptable and Pending Decisions

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register.**

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but

may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

Since the SNAP FRM, EPA has published a Notice listing acceptable alternatives on August 26, 1994 and a Notice of Proposed Rulemaking restricting the use of certain substitutes on September 26, 1994.

III. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for class I substitutes in the following industrial sectors: refrigerants and air conditioning, foam blowing, solvent cleaning, fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks. These decisions represent substitutes not previously reviewed in the final rulemaking for SNAP (59 FR 13044; March 18, 1994) and, consequently, add to the lists of acceptable substitutes under SNAP. For copies of the full list, contact the EPA Stratospheric Protection Hotline at the number listed in Section V of this Notice.

Parts A through D below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but like the listings themselves, are not regulatory in nature. Thus, adherence to recommendations in the comments are not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

Please refer to the final SNAP rule for detailed information pertaining to the designation of end-uses, additional requirements imposed under sections 608 and 609, and other information related to the use of alternative refrigerants.

1. R–401A and R–401B

R–401A and R–401B, which consist of HCFC–22, HFC–152a, and HCFC–124, are acceptable as substitutes for CFC–11, CFC–12, R–500, and R–502 in the following end-uses:

- New and Retrofitted Reciprocating Chillers.
- New Industrial Process Refrigeration.
- New Cold Storage Warehouses.
- New Refrigerated Transport.
- New Retail Food Refrigeration.
- New Commercial Ice Machines.
- New Vending Machines.
- New Water Coolers.
- New Household Refrigerators.
- New Household Freezers.
- New Residential Dehumidifiers.

Please note that different temperature regimes may affect the applicability of these substitutes within these end-uses.

Two of the constituents in these blends are HCFCs and thus contribute to ozone depletion; HCFC production will be phased out according to the accelerated schedule. While the GWP of HCFC–22 is somewhat high, refrigerant leak regulations should reduce its contribution to global warming. The GWPs of the other components are low. Although these blends do contain one flammable constituent, HFC–152a, the blends themselves are not flammable. In addition, each blend is a near azeotrope, and it does not fractionate in normal operation. Finally, leak testing of each blend demonstrated that while the vapor and liquid compositions changed, neither phase became flammable. Testing of these blends with centrifugal compressors is inadequate, and therefore such use is not recommended by the manufacturer. Further testing may resolve this uncertainty.

2. CO_2

CO_2 is acceptable as follows:

- *As a substitute for CFC–13, R–13B1, and R–503 in Very Low Temperature Refrigeration, Retrofit and New.*
- *As a substitute for CFC–13, R–13B1, and R–503 in Industrial Process Refrigeration, Retrofit and New.*
- *As a substitute for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in Non-mechanical Heat Transfer, Retrofit and New.*

CO_2 was historically used in refrigeration systems. It is a well-known, nontoxic, nonflammable gas. Its GWP is defined as 1, and all other GWPs are indexed to it. Since it is readily available as a waste gas, no additional chemical will need to be produced. Thus, the use of CO_2 as a refrigerant will not contribute to global warming. CO_2's usefulness is limited to temperatures above $-70°F$.

3. HCFC–22

HCFC–22 is acceptable as a substitute for R–400(60/40) and CFC–114 in New Industrial Process Air Conditioning.

EPA recommends that HCFC–22 only be used where ambient temperatures are lower than 115°F because of very high system pressures.

HCFC–22 has been used in a variety of air conditioning and refrigeration applications for many years. HCFC–22 contributes to ozone depletion and is considered a transitional alternative. HCFC–22 production will be phased out according to the accelerated phaseout schedule. HCFC–22's GWP and atmospheric lifetime are higher than other HCFCs. HCFC–22 is not flammable and it is compatible with existing oils used in most refrigeration and air conditioning equipment.

4. HFC–134a

HFC–134a is acceptable as a substitute for R–400(60/40) and CFC–114 in New Industrial Process Air Conditioning.

EPA recommends that HFC–134a only be used where ambient temperatures are lower than 125°F because of very high system pressures. HFC–134a does not contribute to ozone depletion. HFC–134a's GWP and atmospheric lifetime are close to those of other alternatives which are acceptable in this end-use. While HFC–134a is compatible with most existing refrigeration and air conditioning equipment parts, it is not compatible with the mineral oils currently used in such systems. An appropriate ester-based, polyalkylene glycol-based, or other type of lubricant should be used.

5. R–401A

R–401A and R–401B, which consist of HCFC–22, HFC–152a, and HCFC–124, is acceptable as a substitute for R–400(60/40) and CFC–114 in Retrofitted Industrial Process Air Conditioning.

See the discussion on R–401A for more information about this blend.

6. R–404A

R–404A, which consists of HFC–125, HFC–143a, and HFC–134a, is acceptable as a substitute for CFC–12 in new household refrigerators.

None of this blend's constituents contains chlorine, and thus this blend poses no threat to stratospheric ozone. However, HFC–125 and HFC–143a have very high GWPs, and the GWP of HFC–134a is somewhat high. EPA strongly encourages recycling and reclamation of this blend in order to reduce its direct global warming impact. Although HFC–143a is flammable, the blend is not. Leak testing has demonstrated that its composition never becomes flammable.

7. R–507

R–507, which consists of HFC–125 and HFC–143a, is acceptable as a substitute for CFC–12 in new household refrigerators.

None of this blend's constituents contains chlorine, and thus this blend poses no threat to stratospheric ozone. However, HFC–125 and HFC–143a have very high GWPs. EPA strongly encourages recycling and reclamation of this blend in order to reduce its direct global warming impact. Although HFC–143a is flammable, the blend is not. Leak testing has demonstrated that its composition never becomes flammable.

8. Hydrocarbon Blend B

Hydrocarbon Blend B is acceptable as a substitute for CFC–12 in retrofitted and new industrial process refrigeration systems.

This blend contains several hydrocarbons. It does not contribute to ozone depletion, nor does it contribute significantly to global warming. This blend contains flammable refrigerants, and EPA recommends but does not require that it only be used at industrial facilities which already manufacture or use hydrocarbons in the process stream. Such facilities are designed to comply with the safety standards required for managing flammable chemicals. Note that EPA only finds this product acceptable in this specific end-use because other flammable refrigerants are acceptable and sufficient occupational safety rules exist to protect workers.

B. Foams

1. Rigid Polyurethane Appliance

a.Vacuum Panels—Vacuum panels are acceptable substitutes for CFC–11 blown rigid polyurethane appliance foam. The Agency has reviewed data on existing and proposed models of vacuum panels and believes that this alternative technology offers lower risk than continued use of CFC–11 blown polyurethane foam.

IV. Substitutes Pending Review

The Agency describes submissions as pending if data are incomplete or for which the 90-day review period is underway and EPA has not yet reached a final decision. For submissions that are incomplete, the Agency will contact the submitter to determine a schedule for providing the missing information if the Agency needs to extend the 90-day review period. EPA will use its authority under section 114 of the Clean Air Act to gather this information, if necessary. Any delay of the review period does not affect a manufacturer's ability to sell a product 90 days after notification of the Agency. Substitutes currently pending completion of review are listed in Appendix A.

V. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice can also be retrieved electronically from EPA's Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. If you have a 1200 or 2400 bps modem, dial (919) 541–5742. If you have a 9600 bps modem, dial (919) 541–1447. For assistance in accessing this service, call (919) 541–5384.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 28, 1994.

Mary D. Nichols,

Assistant Administrator.

Note: The following appendix will not appear in the Code of Federal Regulations:

APPENDIX A.—SUMMARY OF ACCEPTABLE AND PENDING DECISIONS

REFRIGERANTS ACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–12 Reciprocating Chillers (Retrofit & New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–11, CFC–12, R–502 Industrial Process Refrigeration (Retrofit).	Hydrocarbon Blend B	Acceptable	This refrigerant is highly flammable.
CFC–11, CFC–12, R–502 Industrial Process Refrigeration (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable.	
	Hydrocarbon Blend B	Acceptable	This refrigerant is highly flammable.
CFC–13, R–13B1, R–503 Industrial Process Refrigeration (Retrofit and New Equipment/NIKs).	CO_2	Acceptable.	
CFC–12, R–502 Cold Storage Warehouses (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12, R–500, R–502 Refrigerated Transport (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.

APPENDIX A.—SUMMARY OF ACCEPTABLE AND PENDING DECISIONS—Continued

REFRIGERANTS ACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–12, R–502 Retail Food Refrigeration (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12, R–502 Commercial Ice Machines (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12 Vending Machines (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12 Water Coolers (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12 Household Refrigerators (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12, R–502 Household Freezers (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–12, R–500 Residential Dehumidifiers (New Equipment/NIKs).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–13, R–13B1, and R–503 Very Low Temperature Refrigeration (Retrofit and New Equipment/NIKs).	CO_2	Acceptable	
CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer, Retrofit and New.	CO_2	Acceptable	
CFC–114 Industrial Process Air Conditioning (Retrofit).	R–401A	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
	R–401B	Acceptable	This substitute is subject to containment and recovery regulations covering HCFCs.
CFC–114 Industrial Process Air Conditioning (New Equipment/NIKs).	HCFC–22	Acceptable	HCFC–22 should only be used where ambient temperatures are below 115°F because of excessive compressor pressures. This substitute is subject to containment and recovery regulations covering HCFCs.
	HFC–134a	Acceptable	HFC–134a should only be used where ambient temperatures are below 125°F because of excessive compressor pressures. EPA strongly encourages the containment and reclamation of this refrigerant.

REFRIGERANTS PENDING DECISIONS

Application	Substitute	Comments
CFC–12 Motor Vehicle Air Conditioning	HCFC Blend Delta	EPA has requested additional data.

FOAMS SECTOR ACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–11 Polyurethane Appliance	Vacuum Panels	Acceptable	

FOAMS SECTOR PENDING DECISIONS

End-use	Substitute	Comments
HCFC–141b, HCFC–22 Rigid polyurethane and polyisocyanurate laminated boardstock.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.

FOAMS SECTOR PENDING DECISIONS—Continued

End-use	Substitute	Comments
HCFC–141b, HCFC–22 Polyurethane, rigid appliance.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
HCFC–141b, HCFC–22 Polyurethane, rigid commercial, refrigeration, spray and sandwich panels.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
	HFC–134a	Agency has not completed review of data.
HCFC–141b, HCFC–22, HCFC–142b Polyurethane, rigid slabstock and other.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
HCFC–22, HCFC–142b Polystyrene, extruded boardstock and billet.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
HCFC–141b, HCFC–22, HCFC–142b Phenolic, insulation boardstock and bunstock.	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
HCFC–22 Polyurethane, integral skin	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.
	HFC–134a	Agency has not completed review of data.
HCFC–22, HCFC–142b Polyolefin	Saturated light hydrocarbons C3–C6	Agency has not completed review of data.

SOLVENT CLEANING PENDING

End-use	Substitute	Comments
Metals cleaning w/CFC–113, MCF and HCFC–141b.	HCFC–225	
Metals cleaning w/CFC–113, MCF and HCFC–141b.	HCFC–122	
Electronics cleaning w/ CFC–113, MCF and HCFC–141b.	HCFC–122	
Electronics cleaning w/ HCFC–141b.	Perfluorocarbons (C5F12, C6F12, C6F14, C7F16, C8F18, C5F11NO, C6F13NO, C7F15NO, and C8F16).	
Precision cleaning w/CFC–113, MCF and HCFC–141b.	HCFC–122	
Precision cleaning w/HCFC–141b	Perfluorocarbons (C5F12, C6F12, C6F14, C7F16, C8F18, C5F11NO, C6F13NO, C7F15NO, and C8F16).	

FIRE SUPPRESSION AND EXPLOSION PROTECTION PENDING DECISIONS

End-use	Substitute	Comments
Halon 1211	CF_3I	Pending publication of the upcoming NPRM and subsequent FRM.
Streaming Agents	HFC–227ea	Complete SNAP submission and personal monitoring data required.
Halon 1301	[HFC Blend] A	Agency analysis of this agent is not yet complete.
Total Flooding Agents	[Inert Gas Blend] B	Pending publication of upcoming NPRM and subsequent FRM.
	[Inert Gas Blend] C	Pending publication of upcoming NPRM and subsequent FRM.
	[Powdered Aerosol] A	For use in occupied areas, pending medical assessment by peer review panel.
	[Water Mist System] A	Pending receipt of medical assessment by peer review panel.
	[Water Mist System] B	Pending receipt of medical assessment by peer review panel.

STERILANTS PENDING DECISIONS

End-use	Substitute	Comments
12/88 Blend of EtO/CFC–12	HFC–125	Pending FIFRA registration and completion of Agency review.
Sterilant	HFC–227ea	Pending FIFRA registration and receipt of complete SNAP submission.

AEROSOLS PENDING

End-use	Substitute	Comments
CFC–11, CFC–113, MCF, HCFC–141b as aerosol solvents.	Volatile methyl siloxanes	EPA investigating feasibility of meeting exposure standards for this class of chemicals when used in occupational settings.

ADHESIVES, COATINGS AND INKS PENDING DECISIONS

End-use	Substitute	Comments
Metals cleaning w/CFC–113 MCF	Monochloro-toluene/benzo-trifluorides.	Agency has not completed review of data. Evaluation of exposure and toxicity data still ongoing.

[FR Doc. 95–929 Filed 1–12–95; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Drug Elimination Technical Assistance Program; Funding Availability—FY 1995; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3841; FR–3790–N–01]

Public Housing Drug Elimination Technical Assistance Program; Funding Availability—FY 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Public Housing Drug Elimination Technical Assistance Program Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces the FY 1995 availability of $3 million to fund qualified applicants. The purpose of this program is to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), and incorporated resident councils (RCs) that are combating drug-related crime and abuse of controlled substances in public and Indian housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. This document describes the purpose of the NOFA, applicant eligibility, selection criteria, eligible and ineligible activities, application processing, consultant eligibility, and consultant application processing.

DATES: This NOFA is effective January 13, 1995. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance funds available under this NOFA. Technical assistance applications will be reviewed on a continuing basis, until funds available under this NOFA are expended.

ADDRESSES: (a) An application kit may be obtained from the local HUD Field Office with jurisdiction or by calling HUD's Drug Information and Strategy Clearinghouse at (800) 578–3472; or for hearing- or speech-impaired persons (202) 708–0850 (TDD) (The TDD number is not a toll-free number). The application kit contains information on all exhibits and requirements of this NOFA.

(b) An applicant must submit the application to the address specified in the application kit.

(c) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Native American Programs with jurisdiction over the relevant housing authority. This copy must be addressed to Director, Public Housing Division, or Administrator, Office of Native American Programs, as appropriate.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Room 4116, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing- or speech-impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0133.

I. Purpose and Substantive Description

(a) Authority

Funds for both training and this technical assistance (TA) program have been appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

The TA program is intended to provide immediate, short-term (90 days for completion) training, recommendations, and assistance to assess needs, train staff and residents, identify and design appropriate strategies to eliminate drugs and drug-related crime, and generally prepare and educate public housing and resident organization staff and residents to address problems related to crime and the abuse of controlled substances in public housing communities. HUD encourages housing authorities and eligible resident organizations with or without a drug elimination grant in their communities to use this resource. Technical assistance is not intended for program implementation or the financial support of existing programs.

(b) Allocation Amounts

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) appropriated $290 million for the Drug Elimination Program, of which $3 million is to be used for funding this technical assistance and training program. Of this $3 million, not more than $200,000 may be used for applicants who received sufficient points for funding under the Fiscal Year (FY) 1994 Notice of Funding Availability (NOFA) after FY 1994 funds were exhausted. The remaining amount will be available for new applications for short-term technical assistance of up to $25,000 per request.

(c) Eligibility

The following is a listing of eligible applicants, eligible consultants, eligible activities, ineligible activities, and general program requirements under this NOFA.

(1) Eligible Applicants

(i) Public housing agencies (PHAs), Indian housing authorities (IHAs), incorporated resident councils (RCs), resident organizations (ROs) in the case of IHAs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this NOFA.

(ii) An eligible RC or RO must be an incorporated nonprofit organization or association that meets each of the following requirements:

(A) It must be representative of the residents it purports to represent.

(B) It may represent residents in more than one development or in all of the developments of a PHA or IHA, but it must fairly represent residents from each development that it represents.

(C) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(D) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

(iii) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with an IHA. An RMC must have each of the following characteristics:

(A) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(B) It may be established by more than one resident organization or resident

council, so long as each such organization or council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation.

(C) It must have an elected Board of Directors.

(D) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(E) Its voting members must be residents of the development or developments it manages.

(F) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(G) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this NOFA for a resident organization.)

(iv) Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other TA requests from the same applicant.

(v) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public Housing Drug Elimination Program.

(vi) In circumstances determined by HUD to be crime and drug-related and to require immediate attention because of drug and crime issues, eligible parties may receive technical assistance initiated and approved by HUD. These circumstances may include, for example, consistently poor applications for drug elimination funds, the need for training, pervasive drug-related violence, disputes among tenants, and disputes between tenants and management. HUD will use the procedures of this NOFA to select a consultant in these cases.

(vii) The applicant must have substantially complied with the laws, regulations, and Executive Orders applicable to the Drug Elimination TA Program, including applicable civil rights laws. Noncompliance may be evidenced by: an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; a deferral of Federal funding based upon civil rights violations; a pending civil rights suit brought against it by the Department of Justice; or an unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) Eligible Consultants

Consultants who want to provide short-term technical assistance services under this NOFA must be listed in the Consultant Database approved by HUD's Crime Prevention and Security Division (CPSD). To be included in that database, consultants must complete, in accordance with the requirements of section I(c)(2)(ii), below, of this NOFA, a consultant application packet available from the Drug Information and Strategy Clearinghouse at (800) 578–3472, or (202) 708–0850 (TDD), and submit the packet to the address specified in the application kit. (The TDD number is not a toll-free number.)

(i) Consultant eligibility. HUD is seeking individuals or entities who have experience working with public or Indian housing or other low-income populations to provide short-term technical assistance under this NOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply, but they are encouraged to update their file with more recent experience and rate justification. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(A) PHA/IHA-related experience: agency organization and management; facility operations; program development; experience working with residents and community organizations.

(B) Anti-crime- and anti-drug-related experience: prevention/intervention programs; enforcement strategies; alternative programs.

(C) HUD especially encourages PHAs, IHAs, PHA/IHA employees, RMCs, incorporated resident councils and resident organizations, and public and Indian housing residents, with experience in the above areas, to submit a consultant application for eligibility under this NOFA. Eligible consultants will be entered into the Consultant Database for possible recommendation to technical assistance applicants.

(ii) Applying to be a consultant. Individuals or entities interested in being listed in the TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(A) The Consultant Resource Inventory Questionnaire, including three references;

(B) A resume;

(C) A narrative statement regarding the consultant's experience in the specific skills identified on the Resource Inventory Questionnaire, and outlining the consultant's overall approach;

(D) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this NOFA. For consultants who can justify up to the equivalent of ES–IV per day, this evidence can include an accountant's statement, W–2 Wage Statements, or payment statements, and it should be supplemented with a signed statement or other evidence from the employer of days worked in the course of the particular project (for a payment statement) or the tax year (for a W–2 Statement).

For consultants who can justify above the equivalent of ES–IV per day, there must be three forms of documentation of the daily rate: (1) A previous payment statement showing the daily rate paid, or the overall amount paid and the number of days for work of a similar nature to that offered in this TA program; (2) a certified accountant's statement outlining the daily rate; and (3) a signed statement from the consultant that the certified daily rate was charged for work of a nature similar to that being provided for the Drug Elimination Technical Assistance Program. The accountant must be able to demonstrate independence from the consultant's business.

(iii) Consultant payment. HUD will determine a specific fee to pay a consultant under this NOFA based upon the evidence submitted in section I(c)(2)(ii)(D), above, of this NOFA.

(iv) Conflicts of interest. In addition to the conflict of interest requirements in 24 CFR part 85:

(A) No person who is an employee, agent, officer, or appointed official of the applicant may be funded as a consultant to the applicant by this Drug

Elimination Technical Assistance Program.

(B) Consultants who wish to provide drug elimination technical assistance services through this program may not have any involvement in the preparation or submission of the TA proposal that requests their services. Any involvement of the consultant will be considered a conflict of interest, which makes the consultant ineligible for providing consulting services to the applicant and could disqualify the consultant from future consideration.

(3) Eligible Activities

To assist the eligible applicants identified in section I(c)(1), above, of this NOFA, in responding immediately to drug-related problems in public and Indian housing developments, HUD has supplemented the Public Housing Drug Elimination Program (PHDEP) and Youth Sports Program (YSP) with funds for short-term technical assistance. Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The TA program is intended to provide short-term, immediate assistance to PHAs, IHAs, RMCs, RCs, and ROs in developing and/or implementing their strategies to eliminate drugs and drug-related crime. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below, or to fund the use of consultants who will assist the applicant in undertaking a task such as program planning and development for future strategies to eliminate drugs and drug-related crime, or conducting a needs assessment or survey. To assist housing authorities and resident councils, the TA program funds efforts in:

(i) Assessing drug problems in public or Indian housing development(s) and surrounding community(ies);

(ii) Designing and identifying appropriate anti-crime and anti-drug-related practices and programs in the following areas:

(A) Law enforcement strategies, including negotiating with the local police, working with Federal law enforcement, Operation Safe Home, Weed and Seed, and other federal anti-crime efforts;

(B) Management techniques;

(C) Youth initiatives;

(D) Family management/parenting;

(E) Resident intervention and assistance programs;

(F) Community organization and leadership development; and

(G) Other areas that meet the purposes of eliminating drugs and drug-related crime described in this NOFA, as determined by HUD.

(iii) Training for housing authority staff and residents in anti-crime and anti-drug practices, programs, and management;

(iv) Improving overall agency management, operations, and programming so that the applicant can more effectively respond to crime and drug problems in the targeted public housing development(s).

(4) Ineligible Activities

(i) Funding is not permitted for any type of monetary compensation for residents unless they are listed in the TA Consultant Database and are working as consultants.

(ii) Funding is not permitted for any activity that is funded under any other HUD program.

(iii) Funding is not permitted for salary or fees to the staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(iv) Funding is not permitted for underwriting conferences.

(v) Funding is not permitted for conference speakers unless the speaker will also be providing additional TA as outlined in the eligible activities in sections I(c)(3) (i)–(iv), above, of this NOFA.

(vi) Funding is not permitted for program implementation, proposal writing, the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

(5) General Program Requirements

(i) Applications for short-term technical assistance may be funded up to $25,000 per request, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs.

(ii) Applicants that have not previously received technical assistance under this program may submit only one application initially. After the applicant's initial technical assistance report has been received and reviewed by HUD or the contractor administering the program, as appropriate, the applicant may submit multiple applications.

(d) Selection Criteria/Ranking Factors

An application must include the minimum required elements and cannot request assistance for ineligible activities as listed in I(c)(4), above, of this NOFA. Applications will be scored according to the criteria outlined below:

(1) The extent to which the applicant needs short-term technical assistance. This will be measured by the applicant's discussion of the problems that triggered the request for assistance under this NOFA. (Maximum points: 10)

(2) The extent to which the applicant clearly describes the kind of technical assistance and skills needed to address the problems, and how well the technical assistance requested will address the problems. (Maximum points: 10)

(3) The likelihood that the requested technical assistance will assist the applicant's current strategy to eliminate drugs and drug-related crime, as described in the application; or, if the applicant does not currently have a strategy, the extent to which the technical assistance will help them develop a strategy to eliminate drugs and drug-related crime. (Maximum points: 10)

(e) Application Review, Awards, and Payment

(1) Application Review

Applications will be reviewed as they are received, and will be time- and date-stamped to determine their order of receipt. An application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding. All applications that qualify on the basis of the minimum required elements will be scored on the basis of the selection criteria in section I(d), above, of this NOFA. Applications that receive a total of 15 or more points, with no less than 3 points in any of the three selection criteria in section I(d), above, of this NOFA will be eligible for funding. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the program administrator until all funds are expended. The basis for each funding decision under this section will be documented.

(2) Application Awards

(i) If the application includes the descriptive letter (or forms) requesting eligible activities, the certification statement (or form), and scores at least 15 points as described in section I(e)(1), above, of this NOFA, it is eligible for funding. If sufficient funds are available

to fund the technical assistance request, staff will confer with the applicant to confirm the work requirements. The TA Consultant Database will be searched to choose at least three consultants who: (1) Have a principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent; or (2) appear to have the requisite knowledge and skills to assist the applicant in addressing its needs. The applicant's preference for a consultant will be taken into account. An employee of a housing agency (HA) may not serve as a consultant to his or her employer. An HA employee who serves as a consultant to someone other than his or her employer must be on annual leave to receive the consultant fee. A list of the suggested consultants will be forwarded to the applicant. From this list, the applicant will recommend a consultant to provide the requested technical assistance. Instructions for consultants who wish to be included in the TA Consultant Database are outlined above in section I(c)(2)(ii), above, of this NOFA.

(ii) The applicant must contact each TA consultant from the list provided. After making contact with each consultant, the applicant must send a written justification to HUD with a list of the consultants in order of preference, indicating any that are unacceptable, and state the reasons for its preference. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the TA if the request is not in conflict with other requests for the consultant's services.

(iii) Staff designated by HUD will work with the consultant and applicant to develop a statement of work that includes a timeline and estimated budget. The statement of work should also include a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; and a description of the current crime and drug elimination strategy, and how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a crime and drug elimination strategy. When the statement of work is approved, the consultant will be authorized to start work. The consultant must receive written authorization from HUD or its authorized agent before he or she can begin to provide technical assistance under this NOFA. The applicant and the relevant Field Office or Office of Native American Programs will also be notified. Because this program is for short-term technical assistance, consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work.

(3) Payment of TA Consultants.

The consultant must submit a report of its activities, findings and recommendations, a fee invoice, and expenses and original receipts to the address specified in the application kit. A copy of the report must also be submitted to the applicant. The ''Guidelines for Consultants'' book, available from the Clearinghouse, describes the required elements of these reports. After the report and expenses have been approved, and a verbal or written evaluation is received from the applicant, payment will be issued to the consultant.

II. Application Process

(a) Application Kit.

An application kit may be obtained from the local HUD Field Office or Office of Native American Programs, or by calling HUD's Drug Information and Strategy Clearinghouse at (800) 578–3472 or (202) 708–0850 (TDD). (The TDD number is not a toll-free number). The application kit contains information on all exhibits and requirements of this NOFA.

(b) Application Submission.

This NOFA is effective upon publication. Short-term (90 days for completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance grants available under this NOFA. Technical assistance applications will be reviewed on a continuing first-come, first-served basis, until funds under this NOFA are no longer available.

(1) An applicant must submit the application and the necessary assurances to the address specified in the application kit.

(2) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Native American Programs with jurisdiction over the relevant housing authority. This copy must be addressed to Director, Division of Public Housing, or Administrator, Office of Native American Programs, as appropriate.

III. Checklist of Application Submission Requirements

Each application for a grant under this program must include the following:

(a) An application will not be considered for funding unless it includes, at a minimum, the following elements:

(1) An application letter of no more than four pages that responds to each of the selection criteria in section I(d), above, of this NOFA, or the completed application forms available in the application kit; and

(2) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority and the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the NOFA;

(b) HUD Form 2880; and

(c) If the applicant has a particular consultant to recommend to provide the technical assistance, the response should identify the consultant and the basis for the recommendation. A consultant recommended by an applicant is not guaranteed to be approved to provide the requested technical assistance. If the consultant recommended by an applicant is not listed in the Consultant Database approved by HUD's Crime Prevention and Security Division (CPSD), the consultant must apply as outlined in section I(c)(2)(ii), above, of this NOFA. These consultant applications to be included in the TA Consultant Database will be given expedited review by HUD. However, a consultant must be listed to be eligible for funding under this NOFA.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing or by telephone, of any curable technical deficiencies, such as a missing signature in the application. A log of telephone notifications will be maintained. The applicant must correct the deficiency in accordance with the information specified in HUD's notification. The application will not be given further consideration until the deficiency is corrected.

(b) Curable technical deficiencies relate to items that are not necessary to make a determination of an applicant's eligibility. The items necessary for this determination are listed at section III(a), above, of this NOFA, although missing signatures on the application letter, certification, or forms are curable.

V. Other Matters

(a) Nondiscrimination and Equal Opportunity

The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–20) (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (title II of the Civil Rights Act of 1968) (25 U.S.C. 1301–1303) (ICRA) provides that no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(5) The requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulations at 29 CFR part 1640, 28 CFR part 35, and 28 CFR part 36.

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of Debarred, Suspended, or Ineligible Contractors

Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Drug-Free Workplace Act of 1988

The requirements of the Drug-Free Workplace Act of 1988 and implementing regulations at 24 CFR part 24, subpart F apply under this notice.

(d) Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and therefore are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(e) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance, and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their anti-drug-related efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would indirectly affect the quality of life for housing residents.

(f) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have federalism implications within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their anti-drug efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-drug efforts under this technical assistance program and therefore should have positive effects on the target population. As such, the program helps housing authorities to combat serious drug problems in their communities, but it does not have federalism implications.

(g) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

Public Notice

HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

(h) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD, and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received, based on the amount of assistance received, or contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register**

on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

Dated: January 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–958 Filed 1–12–95; 8:45 am]

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federal register

Friday
January 13, 1995

Part VI

The President

Proclamation 6765—Martin Luther King, Jr., Federal Holiday

Federal Register
Vol. 60, No. 9
Friday, January 13, 1995

Presidential Documents

Title 3—

The President

Proclamation 6765 of January 11, 1995

Martin Luther King, Jr., Federal Holiday, 1995

By the President of the United States of America

A Proclamation

> As long as there is poverty in the world I can never be rich, even if I have a billion dollars. . . . I can never be what I ought to be until you are what you ought to be. This is the way our world is made. No individual or nation can stand out boasting of being independent. We are interdependent.

With resolution and eloquence, Dr. Martin Luther King, Jr., stirred people around the globe to action. He dedicated his life to ending the oppression of racism, and his vision of a nation driven by love instead of hate changed our world forever. We are all the beneficiaries of his legacy, and we are grateful.

Dr. King taught that the goals of civil rights are not merely the goals of any specific group—they are the goals of our Nation. To give people opportunity, to treat them with fairness, and to distinguish them only by their potential—we will continue to work toward these goals as long as people in this Nation are in need of housing, medical care, and subsistence. We will continue to work as long as neighborhoods are ravaged by drugs and violence. We will continue to work as long as any person, because of circumstance of birth, is granted anything less than the full measure of his or her dignity.

Three decades have passed since Dr. King stood in front of the Lincoln Memorial and told the world of his dream for a future in which our children are judged ''not by the color of their skin, but by the content of their character.'' Today, with an entire generation of voting Americans who did not witness firsthand the great civil rights victories of the 1960s, it is more important than ever to remind the Nation about Dr. King and his inestimable gifts to this country, so that all of us continue to grow in our commitment to justice and equality.

This year, the Martin Luther King, Jr., holiday is celebrated with a national day of service, a call to join together in purpose and care for one another. On this occasion, I urge the citizens of this great country to reflect upon Dr. King's teachings and to take positive and life-affirming action in his memory. Give back to your community, help the homeless, feed the hungry, attend to the sick, give to the needy. In whatever way you choose to serve the public good, do something to make life better for the people around you. As Dr. King said on many occasions, ''Life's most persistent and urgent question is, 'What are you doing for others?' ''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1995, as the ''Martin Luther King, Jr., Federal Holiday.''

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–1151
Filed 1–12–95; 11:07 am]
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