

6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Collections from Central Valley Project Power Contractors to Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: The Western Area Power Administration (Western) is, by publication of this notice, announcing its final procedures for the assessment and collection of restoration fund payments from the Central Valley Project (CVP) power contractors. These final procedures supersede the procedures published in the Federal Register on April 8, 1994. Western published the proposed procedures in the Federal Register on April 13, 1998. Included in this notice is a discussion of the comments on the proposed procedures.

DATES: The final procedures will become effective [Insert date 30 days after date of publication in the FEDERAL REGISTER] and will remain in effect until superseded.

ADDRESSES: Information regarding the final procedures, including comments, letters, and other supporting documents made or kept by Western to develop these final procedures, is available for public inspection and copying at Western's Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, California.

FOR FURTHER INFORMATION CONTACT: Ms. Zola M. Jackson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power

Administration, 114 Parkshore Drive, Folsom, California, 95630-4710, (916) 353-4421.

SUPPLEMENTARY INFORMATION: Section 3407 of the CVP Improvement Act of 1992 (Act) (Pub. L. 102-575, 106 Stat. 4706, 4726) establishes in the Treasury of the United States the CVP Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting the CVP water and power contractors' shares of the annual total restoration payment obligation.

Western is responsible for the marketing and transmission of CVP power. Western has agreed to administer the assessment and collection of the Restoration Payments from CVP power contractors. Western has executed a letter of agreement with Reclamation to establish procedures for depositing the collections from CVP power contractors into the Restoration Fund.

Western will assess the annual power restoration payment obligation, determined by Reclamation, to CVP power contractors. Western will issue a monthly Restoration Fund Bill to each CVP power contractor. This bill will reflect the amount the CVP power contractor must pay into the Restoration Fund. The CVP power contractor pays that amount to Western, who will transfer all amounts collected from CVP power contractors to Reclamation for deposit into the Restoration Fund.

Western published final procedures in the Federal Register on April 8, 1994 (59

FR 16801). Those procedures provided that Western review the procedures if an apparent inequity in the assessment method is discovered. An apparent inequity was discovered and Western initiated the public process to replace the procedures.

Public Notice and Comment

Summarized below is the process Western used to ensure involvement of interested parties in the development of the final procedures for the assessment and collection of Restoration Fund payments from CVP power contractors.

1. Western published a notice in the Federal Register (63 FR 18005) on April 13, 1998. This notice officially announced the proposed procedures, initiated the public consultation and comment period, and announced the public information and comment forums.

2. Western sent letters on April 16, 1998, to all CVP preference customers and interested parties transmitting the Federal Register notice dated April 13, 1998, and announcing the times and locations for the two public forums.

3. Western held the public information and comment forums on April 29, 1998, at its Sierra Nevada Customer Service Region in Folsom, California. At the public information forum, Western explained the proposed procedures, detailed a proposed option, and answered questions. Western held the public comment forum after the public information forum, to give the public the opportunity to comment for the record. Two representatives made oral comments.

4. Western mailed letters to all CVP preference customers and interested parties on May 1, 1998, informing them of the information provided at the April 29,

1998, public information forum. The information contained a description of the option that Western was offering for public comment.

5. Western received four comment letters during the public consultation and comment period. Western reviewed and considered all comments received by the end of the public consultation and comment period, May 13, 1998, in developing the final procedures.

Western received written comments from the following organizations:

Ecosystem Management International, Inc. (Arizona)

Trinity County Public Utilities District (California)

Sacramento Municipal Utility District (California)

City of Redding (California)

Representatives of the following organizations made oral comments:

Sacramento Municipal Utility District (California)

U.S. Bureau of Reclamation, Mid-Pacific Region (California)

Summarized below are the paraphrased comments Western received and Western's responses to those comments. Western used specific comments for clarification where necessary.

A. Alternative Method for Assessing the Annual Power Restoration Payment Obligation (PRPO)

Comment: The alternative method should be the primary method for assessing the annual PRPO and the other proposed method in the Federal Register (63 FR 18005) notice of April 13, 1998, should be the alternative method.

Response: The commentator did not provide sufficient justification for changing

Western's proposal. Furthermore, Western presented the alternative method, as proposed in the Federal Register notice of April 13, 1998, to various CVP power contractors at customer meetings. The resulting consensus from these meetings was that there is not enough general support for making the alternative method the primary method. Western will continue to offer the alternative method as an option for assessing the annual PRPO.

Comment: Including an alternative method for assessing the annual PRPO in the procedures is encouraging. The alternative method should give CVP contractors a method to average the payments over the entire year without significant changes caused by large midyear adjustments.

Response: Western agrees with the comment to offer the alternative method as an option for assessing the annual PRPO. Under the alternative method, Western determines the CVP power contractor's Restoration Fund payment amount monthly by prorating the CVP power contractor's share of the annual PRPO based on the CVP power contractor's forecasted or prior year's power purchases. CVP power contractors who prefer the alternative method must notify Western in writing before August 31, 1998.

B. Option that Changes the Assessment Year Period and the Assessment Month

Comment: The information presented on the option at the public information forum and as provided in Western's letter dated May 1, 1998, lacked the necessary supporting historical load data to support the advantage of moving the month when

assessments are made and then billed. The commentator is not opposed to moving the month when assessments are made and then billed, if Western can provide supporting details showing that this better balances the capacity and energy usage on a percentage basis for each customer group for the first 6 months of the assessment year.

Response: Western's May 1, 1998, letter offered to provide additional information on the option if requested. The supporting data for this option is part of the record and is available for review. The supporting data shows that this method better balances the capacity and energy usage.

C. Assessing the Annual PRPO Based on a Percentage Split of 50 Percent to Capacity and 50 Percent to Energy

Comment: Western should present an analysis of using a 40/60, a 60/40, and a 50/50 percent split of the PRPO, as well as any other percentage combinations that they see as necessary for evaluating the sharing of the PRPO to capacity and energy. The commentator believes an analysis of how the PRPO is shared by different customer groups for different combinations of capacity and energy, over a projected 5-year period (or based on historical capacity and energy sales data for the last 5 years), would help justify Western's decision to continue to use a 50/50 percent split between capacity and energy sales.

Response: Western reviewed the procedure in assessing the annual PRPO based on a percentage split of 50 percent to capacity and 50 percent to energy. Western believes that continuing to assess the annual PRPO based on this 50/50

percentage split would reflect the actual percentage split used. Western performed an analysis with CVP power contractors' historical capacity and energy amounts, delivered or scheduled with Western, for Fiscal Year (FY) 1994 (when assessment and collection of restoration fund payments began) through FY 1996 (complete data for FY 1997 was unavailable at the time). The results of this analysis showed that the historical average capacity and energy percentage splits were close to a 50/50 basis. Western presented these results to various CVP power contractors at customer meetings. The consensus from these meetings recommended that Western continue to use the procedure in assessing 50 percent of the annual PRPO to capacity and 50 percent to energy. Furthermore, the 50/50 percent split is consistent with the recent CVP rate adjustment proceeding, in which Western's cost of the CVP power generation was allocated 50 percent to capacity and 50 percent to energy. The analysis is part of the record and is available for review.

D. Adjustment to the Annual PRPO

Comment: Some advantages may exist in lowering the proposed 25 percent deviation figure used to determine if adjustments are needed to the capacity and energy multipliers. A benchmark in the range of 10 to 15 percent is suggested. The lower figure would reduce the risk of how carryover funds will be treated for the over collected situations and would reduce the burden for makeup payments in a following year for the under collected situations.

Response: Western evaluated the issue and agrees with the comment. As a result, Western is including a 15 percent greater or less benchmark figure to determine

if adjustments are needed to the capacity and energy multipliers, in the final procedures.

E. Other Comments

Comment: An inequity will continue to exist if the procedures are adopted as published in the Federal Register notice of April 13, 1998. The legislative authority to construct the Trinity River Division (TRD) included provisions to mitigate the resulting local economic and environmental impacts. However, those provisions have not come close to compensating the people of Trinity County for the TRD's impacts. Yet the TRD has provided tremendous benefits to the Central Valley, including reducing the environmental losses to the Central Valley's ecosystem. Contributions to the Restoration Fund mean that the people of Trinity County pay twice to restore the Central Valley's ecosystem. This is clearly an inequity that Western could end by exempting Trinity County from further Restoration Fund charges. The CVP Improvement Act of 1992 provides Western significant discretion on how to allocate the cost of the Restoration Fund among its contractors. The commentator urges Western to use this discretion to limit Restoration Fund payments to those who have benefited from the ecological losses.

Response: Western analyzed the CVP Improvement Act of 1992 regarding the assessment of the Restoration Fund's cost, and similar costs under other related legislation affecting CVP power contractors. Western has discretion in how the Restoration Fund's cost that is assessed to power is allocated. Western also analyzed Trinity County's contribution toward the restoration programs compared to contributions

made by other CVP power contractors. Western concluded from this analysis that Trinity County may, at times, be paying a greater share of the costs for these restoration programs. Based on these findings, it is appropriate to adjust the amounts of Restoration Fund payments assessed to Trinity County by prospectively applying a credit to the monthly Restoration Fund bills for Trinity County. The amount and timing of the credits will be determined by Western and set forth in an agreement with Trinity County. The credit will not be greater than Trinity County's share of the PRPO.

Comment: How much revenue has been transferred to the Bureau of Reclamation under the aegis of the CVP Improvement Act since 1993? What rate was charged to the power contractors for the actual capacity and energy for 1993 through 1997? Has the addition of the Restoration Fund caused the repayment period for the CVP to be extended? What percentage of the total revenues does the Restoration Fund represent? Is it 1 percent of the total revenue or larger?

Response: Western provided the data requested by the commentator. The data is part of the record and is available for review.

Comment: The commentator requested that Western clarify the statement found in the Federal Register notice of April 13, 1998, that any balances remaining on the CVP power contractor's Restoration Fund bill(s) must be paid in full by the thirtieth (30th) of September for each assessment year. Western should state that September 30 is the last day for Western to transfer all Restoration Fund payments received from CVP power contractors to Reclamation for deposit into the Restoration Fund. The clarification is requested to ensure that the reference date of September 30

is not confused with the actual due date for Restoration Fund Bills.

Response: Western agrees with the comment and has clarified this statement in the final procedures.

Changes to Proposed Procedures

Western considered all comments received during the 30-day public consultation and comment period and has made changes to the proposed procedures. While the decisions outlined in the final procedures may not reflect a consensus on every issue, Western believes the final procedures to be an equitable distribution of the total restoration payment obligation among the CVP power contractors. The final procedures will provide the mechanism required to assess and collect an amount that is reasonably expected to equal the amount allocated to power by Reclamation.

Under the proposed procedures, the assessment month was defined as the service month 1 month prior to the billing month. The assessment year was defined as the period that uses the service months from August 1 through July 31 for which CVP power contractors will be billed for Restoration Payments. These definitions have been changed. In the final procedures, the assessment month is defined as the service month which is 3 months prior to the billing month, and the assessment year is defined as the period that uses the service months from June 1 through May 31 for which CVP power contractors will be billed Restoration Payments.

The proposed procedures provided for a midyear adjustment period. If the actual payment amounts are 25 percent greater or less than projected, Western would adjust the capacity and energy multipliers for the remaining months of the subject

assessment year. The 25 percent deviation amount has been changed to 15 percent.

The proposed procedures included a reviewing process for Western to review the procedures every 5 years, or if one of three provisions occurs. The final procedures added another provision in which Western will review the procedures if any significant change occurs that affects the procedures.

Final Procedures

A. Acronyms and Definitions

As used herein, the following acronyms and definitions when used with initial capitalization, whether singular or plural, will have the following meanings:

Administrator: The Administrator of the Western Area Power Administration.

Assessment Month: The service month, which is 3 months prior to the Billing Month.

Assessment Year: The period that uses the service months from June 1 through May 31 for which CVP Power Contractors will be billed Restoration Payments.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (Act): Title 34 of Public Law 102-575, 106 Stat. 4706, et seq. A legislative act, which was enacted on October 30, 1992, and defines provisions for habitat restoration, improvement and acquisition, and other fish and

wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Fiscal Year (FY): The year which begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatt-hour, the electrical unit of energy that equals the generation of 1,000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93-SAO-10156, a written agreement between Reclamation and Western that established procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration Fund.

Load Adjustment(s): The adjustment(s) to CVP Power Contractors' forecasted monthly capacity and energy purchases from Western as determined by Western based on CVP Power Contractors' actual capacity and energy amounts delivered by or scheduled with Western.

Midyear Adjustment: The adjustment to the annual Power Restoration Payment Obligation as determined by Reclamation on or about April 1 of the Assessment Year.

Power: Capacity and energy.

Power Contractor: An entity purchasing firm capacity and/or energy from Western for a period in excess of 1 year.

Power Restoration Payment Obligation (PRPO): The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power

Contractors by Reclamation.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by Section 3407 of the Act, into which revenues provided by the Act are deposited, and from which funds are used by the Secretary to carry out the habitat restoration, improvement and acquisition provisions of the Act.

Restoration Fund Bill(s): The instrument prepared and issued monthly by Western as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of Energy.

Total Restoration Payment Obligation: The total amount of payments to be collected from the CVP water and power contractors, calculated annually by Reclamation.

Western: United States Department of Energy, Western Area Power Administration.

B. Determination of the Power Restoration Payment Obligation (PRPO)

Reclamation is responsible for determining the annual PRPO for CVP Power Contractors. Prior to each Assessment Year, on or about July 1, Reclamation will, by letter, provide to Western's Regional Manager of the Sierra Nevada Customer Service Region the amount determined to be the PRPO and a detailed explanation of the

computation of the amount for the upcoming Assessment Year. Upon receiving this letter from Reclamation, Western's Sierra Nevada Customer Service Region will notify each CVP Power Contractor of the annual PRPO, the capacity and energy multipliers for the Assessment Year, and for CVP Power Contractors choosing the alternative method for assessing the annual PRPO, the resulting monthly Restoration Payment amount. An adjustment to the annual PRPO may be accomplished through the Midyear Adjustment determined by Reclamation.

C. Assessing the PRPO

For each Assessment Year, Western will prorate the annual PRPO to actual capacity and energy amounts delivered by or scheduled with Western for each CVP Power Contractor. Western will assess 50 percent of the annual PRPO to capacity and 50 percent to energy. Western will determine a capacity multiplier and an energy multiplier using projected Power sales based on CVP Power Contractors' forecasts and/or prior year's total capacity and energy amounts delivered or scheduled to all CVP Power Contractors. Prior to July 1, when Western receives Reclamation's letter for the annual PRPO, and beginning with the FY 2000 Assessment Year, Western will request each CVP Power Contractor to submit to Western its forecasted monthly capacity and energy purchases from Western. The CVP Power Contractor's forecast will be for June 1 through May 31 of the subject Assessment Year. If the CVP Power Contractor does not submit a forecast of monthly capacity and energy purchases, Western will use the CVP Power Contractor's prior year's (June 1 through May 31) actual capacity and energy amounts delivered or scheduled, with adjustments Western may deem

appropriate, as the projected Power sales used for the subject Assessment Year.

The annual PRPO for the subject Assessment Year to be prorated to capacity will be divided by Western's projected capacity sales to determine the capacity multiplier. The same process will be repeated using the annual PRPO prorated to energy divided by Western's projected energy sales to determine the energy multiplier. For the FY 1999 Assessment Year, Western will determine the capacity and energy multipliers based on actual capacity and energy amounts delivered or scheduled (with appropriate adjustments) to all CVP Power Contractors during the period from June 1, 1997, through May 31, 1998.

During each Assessment Month of the subject Assessment Year, these capacity and energy multipliers will be applied to each CVP Power Contractor's actual capacity and energy amounts delivered by or scheduled with Western to determine the CVP Power Contractor's Restoration Payment, unless the alternative method for assessing the PRPO is used. Each CVP Power Contractor will be billed monthly for its individual Restoration Payment.

D. Alternative Method for Assessing the PRPO

As an alternative method to the assessment method described above and if requested by the CVP Power Contractor, Western will determine the CVP Power Contractor's monthly Restoration Payments as equal monthly payment amounts, as adjusted, for the subject Assessment Year. The monthly Restoration Payment amounts will be based on the CVP Power Contractor's forecasted or prior year's actual capacity and energy amounts delivered by or scheduled with Western.

Under this alternative method, for each Assessment Year, Western will prorate

the annual PRPO based on the CVP Power Contractor's forecasted or prior year's monthly capacity and energy purchases from Western. Western will determine the CVP Power Contractor's monthly Restoration Payment amount by multiplying the CVP Power Contractor's total forecasted or prior year's capacity purchases by the capacity multiplier determined by Western, and repeating the calculation for energy using the energy multiplier. Western will sum the resulting capacity and energy calculations and then divide by 12 to determine the monthly Restoration Payment amount. The CVP Power Contractor will be billed monthly for its individual Restoration Payment.

CVP Power Contractors who prefer this alternative method for assessing the annual PRPO must notify Western in writing prior to August 31, 1998. Once the CVP Power Contractor elects this alternative method, the method will remain in effect unless otherwise mutually agreed by Western and the CVP Power Contractor.

E. Collection of CVP Power Contractors' Restoration Fund Bills

Each CVP Power Contractor will receive a Restoration Fund Bill on or about the twenty-fifth (25th), but no later than the last day of the month for each month designating the amount payable. The Restoration Fund billing cycle will begin in the month of September for each Assessment Year.

If the Restoration Fund billing is suspended for a time, Western's Sierra Nevada Customer Service Region will notify all CVP Power Contractors as soon as possible. Suspension of billing may occur to avoid overpayment on the annual PRPO.

F. Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable by CVP Power Contractors before the close of business on the twentieth (20th) calendar day

after the date of the issuance of each Restoration Fund Bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

G. Late Payment Charges Assessed to Delinquent Restoration Payments

Restoration Fund Bills not paid in full by the CVP Power Contractor(s) by the due date as specified above will be assessed a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Payments received will be first applied to the charges for the late payment assessed on the principal and then to the payment of the principal.

H. Deposit of CVP Power Contractors' Restoration Payments into the Restoration Fund

On or about the twenty-first (21st) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received from CVP Power Contractors, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each subject Assessment Year, is the last day Western is allowed to transfer Restoration Payments, including late payment charges, to Reclamation for deposit into the Restoration Fund.

I. Adjustment to the PRPO

There are two types of adjustments that can be made relative to each Assessment Year's annual PRPO, a Midyear Adjustment determined by Reclamation and Load Adjustments determined by Western. Reclamation will notify Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's written notification, Western will notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO and any adjustments to capacity and energy multipliers for the remaining months

of the subject Assessment Year.

The Midyear Adjustment is determined by Reclamation and occurs on or about April 1 of the subject Assessment Year, following Reclamation's annual determination of available CVP water supply for the year. This adjustment applies to the annual PRPO and is based on hydrological conditions and Reclamation's most recently available forecast of CVP water deliveries to the CVP water contractors applicable to the subject Assessment Year. Upon receiving Reclamation's notification, Western may adjust the capacity and energy multipliers as appropriate to coincide with the adjusted annual PRPO.

During the Midyear Adjustment period, Western will also review the Restoration Payments from the CVP Power Contractors received thus far for the subject Assessment Year. If the actual payment amounts are 15 percent greater or less than projected, Western may adjust the capacity and energy multipliers for the remaining Billing Months of the subject Assessment Year. Beginning with the Assessment Month of January and continuing throughout the remaining Billing Months of the subject Assessment Year, the adjusted multipliers will be applied to each CVP Power Contractor's actual capacity and energy amounts delivered by or scheduled with Western.

For the alternative method for assessing the PRPO, Load Adjustment(s), determined by Western, will be evaluated quarterly during the subject Assessment Year for each CVP Power Contractor. Western will compare the CVP Power Contractor's forecasted capacity and energy amounts to the actual capacity and energy amounts delivered by or scheduled with Western during the subject Assessment Year. If, in

Western's judgment, the difference would significantly impact other CVP Power Contractors, Western will adjust the CVP Power Contractor's forecasted capacity and energy amounts to align with actual load data. This adjustment will result in a change to the CVP Power Contractor's monthly Restoration Payment amount. Western will notify the CVP Power Contractor(s) of any Load Adjustment(s) and the resulting change(s) to the monthly Restoration Payment amount prior to any adjustments.

To the extent practicable, for those CVP Power Contractors choosing the alternative method for assessing the PRPO, Western will also make Load Adjustment(s) during the last quarter of the subject Assessment Year to ensure that the CVP Power Contractor's total annual Restoration Payment amount is equal to the amount the CVP Power Contractor would have paid if billing had been based on actual capacity and energy amounts delivered by or scheduled with Western. Any balances remaining on the CVP Power Contractor's Restoration Fund Bill(s) must be paid in full by the September due date for each Assessment Year.

All other deviations, in the amounts collected or assessed relative to the annual PRPO, will be rolled into the following Assessment Year. The rolled over amount will be added or subtracted from the PRPO amount to be assessed in that year to the CVP Power Contractor(s).

J. Review Process

Western will review the procedures for the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years, or if one of the following occurs: (1) if there is a significant change to or suspension of the legislation; (2) if a material issue arises; (3) if an apparent inequity in the procedures is discovered;

or (4) if any significant change occurs that affects the procedures.

Availability of Information

All studies, comments, letters, memoranda, or other documents made or kept by Western for developing the final procedures, are and will be made available for inspection and copying at Western's Sierra Nevada Customer Service Region, located at 114 Parkshore Drive, Folsom, California.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a Regulatory Flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.); the Council on Environmental Quality Regulations for

implementing NEPA (40 CFR parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement (10 CFR part 1021 Appendix A-5 and A-6).

Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.), Western has received approval from the Office of Management and Budget for the collection of information in this rule, under control number 1910-1200.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated:

Michael S. Hacskaylo
Administrator