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Friday
February 16, 1996

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

WASHINGTON, DC

WHEN: February 21, 1996 at 9:00 am

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

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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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 108

[Notice 1996–6]

Document Filing

AGENCY: Federal Election Commission.

ACTION: Final Rule; Technical Amendments.

SUMMARY: On February 1, 1996, several technical amendments were published in the Federal Register conforming the Commission's regulations to a recent amendment to the Federal Election Campaign Act of 1971, as amended (''FECA''). The Commission today is publishing technical amendments to conform two additional regulations to the recently amended statute.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The FECA governs, *inter alia*, the filing of campaign finance reports by candidates, and the authorized committees of candidates, to the House of Representatives (''House''). 2 U.S.C. 432(g). On December 28, 1995, Public Law No. 104–79, 109 Stat. 791 (1995) amended the FECA to require that these reports be filed with the Federal Election Commission rather than the Clerk of the House. *See* Section 3. As noted above, the Commission has published in the Federal Register a technical amendment to 11 CFR 105.1 to conform to the amended statute and conforming amendments to several provisions that refer to the regulation. 61 FR 3549.

The Commission today is publishing additional technical amendments to conform the following regulations to the amended statute: 11 CFR 100.19(a) and 108.8. As noted in the original rulemaking, these technical requirements are exempt from the notice and comment requirements of the Administrative Procedure Act. *See* U.S.C. 553 (b)(B). They are also exempt from the legislative review provisions of the FECA. *See* 2 U.S.C. 438(d). Therefore, these technical amendments are effective on February 16, 1996.

Certification of No Effect Pursuant to 5 U.S.C. 605(B) (Regulatory Flexibility Act)

I hereby certify that the attached technical amendments will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the technical amendments are necessary to conform to the FECA and that these change only the location of filing reports. Therefore, no significant economic impact is caused by the technical amendments.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 438(a)(8)

§ 100.19(a) [Amended]

2. Section 100.19(a) is amended by adding ''or'' before ''the Secretary'' and by removing ''; or the Clerk of the United States House of Representatives, House Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515''.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

3. The authority citation for Part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

§ 108.8 [Amended]

4. Section 108.8 is amended by removing ''Clerk,'' and by removing the comma after ''Secretary''.

Dated: February 13, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–3571 Filed 2–15–96; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AB63

Suspicious Activity Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation on the reporting of known or suspected criminal and suspicious activities by insured state nonmember banks. This final rule streamlines reporting requirements by providing that a state nonmember bank file a new Suspicious Activity Report (SAR) with the FDIC and the appropriate federal law enforcement agencies by sending a single copy of the SAR to the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) to report a known or suspected criminal offense or a transaction that it suspects involves money laundering or violates the Bank Secrecy Act.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Chief, Special Activities Section, (202) 898–6750, or Gregory Gore, Counsel, (202) 898–7109.

SUPPLEMENTARY INFORMATION:

Background

The FDIC, FRB, OCC, and OTS have issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities. The Department of the Treasury, through FinCEN, has issued for public comment a substantially similar proposal to require the reporting of suspicious transactions relating to money laundering activities.

The FDIC's proposed regulation (60 FR 47719, September 14, 1995) noted that the interagency Bank Fraud Working Group, consisting of representatives from the Agencies, law enforcement agencies, and FinCEN, has been working on the development of a single form, the SAR, for the reporting of known or suspected federal criminal law violations and suspicious activities. The FDIC's proposed regulation, as well as those proposed by the FRB, OCC, OTS, and FinCEN, would simplify and clarify the reporting requirements and reduce banks' reporting burdens by raising mandatory reporting thresholds for criminal offenses and by requiring the filing of only one report with FinCEN.

The final rule adopts the proposal with a few additional changes that generally have been made in response to the comments received. The changes will result in burden reductions even greater than those that were proposed.

Section-by-Section Analysis

The title of the regulation has been changed to conform to the name on the SAR.

Section 353.1 (Instruction No. 1 on the SAR) provides that a bank must file a SAR when it detects a known or suspected criminal violation of federal law or a suspicious activity pertinent to a money laundering offense.

Section 353.2 provides pertinent definitions.

Sections 353.3(a) (1), (2), and (3) (Instructions 1. a., b., and c. on the SAR) instruct a bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies and the Department of the Treasury if the bank detects any known or suspected federal criminal violation, or pattern of violations, committed or attempted against the bank, or involving one or more transactions conducted through the bank, and the bank believes it was an actual or potential victim of a crime, or was used to facilitate a crime. If the bank has a substantial basis for identifying one of its insiders or other institution-affiliated parties in connection with the known or suspected crime, reporting is required, regardless of the dollar amount involved. If the bank can identify a non-insider suspect, the applicable transaction threshold is $5,000. In cases in which no suspect can be identified, the applicable transaction threshold increases to $25,000. These sections were not changed from the proposed regulation published for public comment in September 1995.

Section 353.3(a)(4) (Instruction 1. d. on the SAR) instructs a bank to file a SAR for transactions involving $5,000 or more in funds or other assets when the bank knows, suspects or has reason to suspect that the transaction: (i) Involves money laundering, or (ii) is designed to evade any regulations promulgated under the Bank Secrecy Act, or (iii) has no business or apparent lawful purpose or is not the sort of transaction in which the particular customer normally engages, and, after examining the available facts, the bank knows of no reasonable explanation for the transaction. Section 353.3(a)(4) has been modified in the final rule to reflect comments received on the proposal. Most notably, the circumstances under which a transaction should be reported under this section were clarified, and a reporting threshold of $5,000 was added.

Section 353.3(a)(4) recognizes the emerging international consensus that the efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of suspicious transactions by financial institutions. The requirements of this section comply with the recommendations adopted by multi-country organizations in which the United States is an active participant, including the Financial Action Task Force of the G–7 nations and the Organization of American States and are consistent with the European Community's directive on preventing money laundering through financial institutions.

Section 353.3(b) (Instruction 2 on the SAR) provides that SARs must be filed within 30 calendar days of the initial detection of the criminal or suspicious activity. An additional 30 days is permitted in order to enable a bank to identify a suspect, but in no event may a SAR be filed later than 60 days after the initial detection of the reportable conduct. The FDIC and law enforcement must be notified in the case of a violation requiring immediate action, such as an on-going violation. These reporting requirements were not changed from the September 1995 proposal.

Section 353.3(c) encourages a bank to file a SAR with state and local law enforcement agencies. This section is unchanged from the September 1995 proposal.

Section 353.3(d) (Instruction 3 on the SAR) provides that a bank need not file a SAR for an attempted or committed burglary or robbery reported to the appropriate law enforcement agencies. In addition, a SAR need not be filed for missing or counterfeit securities that are the subject of a report pursuant to Rule 17f–1 under the Securities Exchange Act of 1934. The section of the final rule was modified to require reporting of larcenies to be consistent with the interagency SAR instructions.

Section 353.3(e) requires a bank to retain a copy of the SAR and the original or business record equivalent of supporting documentation for a period of five years. The section also requires that a bank identify and maintain supporting documentation in its files and that the bank make available such documentation to law enforcement agencies upon their request. The FDIC made three changes to this section from the version published for public comment in September 1995. First, the record retention period was shortened from ten years to five. Second, provision was made for the retention of business record equivalents of original documents, such as microfiche and computer imaged record systems, in recognition of modern record retention technology. The third change involves the clarification of a bank's obligation to provide supporting documentation upon request to law enforcement officials. Supporting documentation is deemed filed with a SAR in accordance with this section of the FDIC's final rule; as such, law enforcement authorities need not make their access requests through subpoena or other legal processes.

Section 353.3(f) requires the management of a bank to report the filing of all SARs to the board of directors of the bank, or a designated committee thereof. No change was made from the September 1995 proposal.

Section 353.3(g) provides that SARs are confidential. Requests for SARS or the information contained therein should be declined. The final rule also adds a requirement that a request for a SAR or the information contained therein should be reported to the FDIC. With the exception of the added requirement that requests for SARs be reported to the FDIC, no changes were made to this section from the September 1995 proposal.

Section 353.3(h) sets forth the safe harbor provisions of 31 U.S.C. 5318(g). This new section, which was added to the final rule as the result of many comments concerning this important statutory protection for banking organizations, states that the safe harbor provisions of the law are triggered by a report of known or suspected criminal violations or suspicious activities to law enforcement authorities, regardless of whether the report is made by the filing of a SAR in accordance with the FDIC's

regulation or by different means for other reasons.

Comments Received

The FDIC received letters from 14 public commenters. Comments were received from 4 community banks, 5 multinational or large regional banks, 2 trade and industry research groups, 2 regulatory bodies, and one consulting firm.

The large majority of commenters expressed general support for the FDIC's proposal. None of the commenters opposed the proposed new suspicious activity reporting rules. A number of suggestions and requests for clarification were received. They are as follows.

Criminal Versus Suspicious Activities

Almost one half of the commenters expressed confusion over the difference between the known or suspected criminal conduct that would be subject to the dollar reporting thresholds (provided such conduct does not involve an institution-affiliated party of the reporting entity) and the suspicious activities that would be reported regardless of dollar amount. Section 353.3(a)(4) has been revised to add a $5,000 reporting threshold and to clarify that the suspicious activity must relate to money laundering or Bank Secrecy Act violations. A threshold for the reporting of suspicious activities was added to reduce further the reporting burdens on banks.

Reporting of Crimes Under State Law

Two commenters requested clarification of whether activities constituting crimes under state law, but not under federal law, should be reported on the SAR. The FDIC continues to encourage banks to refer criminal and suspicious activities under both federal and state law by filing a Suspicious Activity Report. Under the new reporting system designed by the FDIC, the other Agencies, and FinCEN, state chartered, nonmember banks should be able to fulfill their state reporting obligations by filing a SAR with FinCEN.

Safe Harbor Protections; Potential Liability Under Federal and State Laws

Some commenters expressed the concern that banks and their institution-affiliated parties could be liable under federal and state laws, such as the Right to Financial Privacy Act, for filing SARs with respect to conduct that is later found not to have been criminal. Another concern was that the filing of SARs with state and local law enforcement agencies would subject filers to claims under state law. Both of these concerns are addressed by the scope of the safe harbor protection provided in 31 U.S.C. 5318(g).

The FDIC is of the opinion the safe harbor statute is broadly defined to include the reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, with state and local law enforcement authorities, as well as with the Agencies and FinCEN.

A few commenters requested that the FDIC make explicit the safe harbor protections of 31 U.S.C. 5318(g) (2) and (3) on the SAR. The safe harbor provisions are included in new § 353.3(h) of this regulation and on the form.

Record Retention

Half the commenters expressed the view that the proposed 10-year period for the retention of records in § 353.3(b) was excessive, especially in light of a five year record retention requirement contained in the Bank Secrecy Act. In recognition of the potential burden of document retention on financial institutions, the FDIC has limited the record retention period to five years.

Dollar Thresholds

A few comments encouraged the FDIC to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, or to establish a dollar threshold for insiders. The FDIC has considered these comments, but at this time, it believes the thresholds meet and properly balance the dual concerns of prosecuting criminal activity involving banks and minimizing the burden on banks. With respect to the suggestion the FDIC adopt a dollar threshold for insider violations, it is noted that insider abuse has long been a key concern and focus of enforcement efforts at the FDIC. With the development of a new sophisticated and automated database, the FDIC and law enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. The FDIC does not wish to limit the information it receives regarding insider wrongdoing. Some petty crimes, for example, repetitive thefts of small amounts of cash by an employee who frequently transfers between banking organizations, may warrant enforcement action or criminal prosecution.

One commenter suggested an indexed threshold, based on the regional differences in the various dollar thresholds below which the federal, state, and local prosecutors generally decline prosecution. While the FDIC recognizes there may be regional variations in the dollar amount of financial crimes generally prosecuted, the FDIC's concern is to place the relevant information in the hands of the investigating and prosecuting authorities. The prosecuting authorities then may consider whether to pursue a particular matter. In the FDIC's view, the dollar thresholds adopted in this final rule best balance the interests of law enforcement and banks. The FDIC also believes indexed thresholds could create more confusion than benefit to banks.

Commenters also suggested the creation of a dollar threshold for the reporting of suspicious activities relating to money laundering offenses. A $5,000 threshold has been established for reporting of such suspicious activities.

Questions were raised regarding the permissibility of filing SARs in situations in which the dollar thresholds for known or suspected criminal conduct or suspicious activity are not met and the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to such non-mandatory filings. It is the opinion of the FDIC that the safe harbor provisions of 31 U.S.C. 5318(g) cover all reports of suspected or known criminal violations and suspicious activities to law enforcement authorities, regardless of whether such reports are filed pursuant to the mandatory requirements of the FDIC's regulations or are voluntary.

Notification of On-Going Violations and of State and Local Law Enforcement Authorities.

Proposed § 353.3(b)(2) required a bank to notify the law enforcement authorities immediately in the event of an on-going violation. Section 353.3(c) encourages the filing of a copy of the SAR with state and local law enforcement agencies, in appropriate cases. This requirement and guidance were found by some commenters to be unclear as to when immediate notification or the filing of the SAR with state and local authorities would be required. The FDIC wishes to clarify that immediate notification is limited to situations involving on-going violations, for example, when a check kite or money laundering has been detected and may be continuing. It is impossible for the FDIC to contemplate all of the possible circumstances in which it might be appropriate for a bank to advise state and local law enforcement authorities. Banks should use their best judgment regarding when to alert the

authorities regarding on-going criminal offenses or suspicious activities.

Supporting Documentation

The proposed requirements that an institution maintain ''related'' documentation and make ''supporting'' documentation available to the law enforcement agencies upon request were criticized as inconsistent and vague. As no substantive difference is intended, the FDIC has referred to ''supporting'' documentation in the final rule in reference both to the maintenance and production requirements. The FDIC believes the use of the word ''supporting'' is more precise and limits the scope of the information which must be retained to that which would be useful in proving that the crime has been committed and by whom it has been committed. As to the criticism that the meaning of ''related'' or ''supporting'' documentation is vague, it is anticipated banks will use their judgment in determining the information to be retained. It is impossible for the FDIC to catalogue the precise types of information covered by this requirement, as it necessarily depends upon the facts of a particular case.

Scope of Confidentiality Requirement

Two commenters correctly noted the proposed regulation is unclear as to whether the confidentiality requirement applies only to the information contained on the SAR itself, or whether the requirement extends to the ''supporting'' documentation. The FDIC takes the position that only the existence of a SAR and its supporting documentation are subject to the confidentiality requirements of 31 U.S.C. 5318(g). The supporting documentation itself is not subject to the confidentiality provisions of 31 U.S.C. 5318(g). The safe harbor provisions of 31 U.S.C. 5318(g), however, apply to the SAR and supporting documentation, as set forth in Part 353.3(h).

Provisions of Supporting Documentation to Law Enforcement Authorities Upon Request

Many commenters noted the guidance provided in the FDIC's proposed regulation regarding the provision of supporting documentation to law enforcement agencies upon their request after the filing of an SAR was unclear or contrary to law. Some questioned whether law enforcement agencies would still need to subpoena relevant documents from a bank. The FDIC's regulation requires banks filing SARs to identify, maintain and treat the documentation supporting the report as if it were actually filed with the SAR. This means that subsequent requests from law enforcement authorities for the supporting documentation relating to a particular SAR do not require the service of a subpoena or other legal processes normally associated with providing information to law enforcement agencies.

Civil Litigation

The FDIC was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation, in order to avoid situations in which a bank could be ordered by a court to produce a SAR in civil litigation and could be confronted with the prospect of having to choose between being found in contempt or violating the FDIC's rules. In the opinion of the FDIC, 31 U.S.C. 5318(g) precludes the disclosure of SARs. The final rule requires a bank that receives a subpoena or other request for a SAR to notify the FDIC so that the FDIC may, if appropriate, intervene in litigation or seek the assistance of the U.S. Department of Justice.

Maintenance of Originals

Proposed § 353.3(e) required the maintenance of supporting documentation in its original form. A number of commenters noted electronic storage of documents is becoming the rule rather than the exception, and requiring the storage of paper originals would impose undue burdens on financial institutions. Moreover, some records are retained only in a computer database. The proposed regulation reflected the concerns of the law enforcement agencies that the best evidence be preserved. However, upon further consideration, the FDIC wishes to clarify that the electronic storage of original documentation related to the filing of a SAR is permissible. In addition, the FDIC recognizes a bank will not always have custody of the originals of documents, and some documents will not exist at the bank in paper form. In those cases, preservation of the best available evidentiary documents, for example, computer disks or photocopies, should be acceptable. This has been reflected in the final rule by changing the reference to original documents to original documents or ''business record equivalent''.

Investigation and Proof Burdens

Two commenters expressed the concern a bank would need to establish probable cause before reporting crimes for which an essential element of the proof of the crime was the intent of the actor. The FDIC does not intend that banks assume the burden of proving illegal conduct; rather, banks are required to report known or suspected crimes or suspicious activities in accordance with this final rule.

Supplementary or Corrective Information; Reporting of Multiple Crimes or Suspects

Material information that supplements or corrects an SAR should be filed with FinCEN by means of a subsequent SAR. The first page of the SAR provides boxes for the reporter to indicate whether the report is an initial, a corrected, or a supplemental report.

Two commenters requested guidance on the reporting of multiple crimes or related crimes committed by more than one individual. The instructions to the SAR contemplate that additional suspects may be reported by means of a supplemental page. Likewise, multiple crimes committed by a suspect may be reported by means of multiple check-offs on the SAR, or if needed, by a written addendum to the SAR. In the event related crimes have been committed by more than one person, a description of the related crimes may be made by addendum to the SAR. The FDIC encourages filers to make a complete report of all known or suspected criminal or suspicious activity. The SAR may be supplemented in order to facilitate a complete disclosure.

Calculation of Time Frame for Reporting

A few commenters requested the FDIC clarify the application of the deadline for filing SARs. The FDIC's proposed regulation used the broadest possible language to set the time frames for the reporting of known or suspected criminal offenses and suspicious activities in order to best guide reporting institutions. Absolute deadlines for the filing of SARs are important to the investigatory and prosecutorial efforts of law enforcement authorities. It is expected banks will meet the filing deadlines once conduct triggering the reporting requirements is identified. Further clarification of the time frames is not needed in the FDIC's view.

Board of Directors Notification Requirements

The commenters expressed general support for the modification of the reporting requirement which permits reporting of SARs to a committee of the board of directors. As a matter of clarification, notification of a committee of the bank's board relieves the bank of the obligation to disclose the SARs filed to the entire board. It would be

expected, however, that the designated committee, for example, the audit committee, would report to the full board of directors at regular meetings with respect to routine matters in the same manner and to the same extent as other committees report at regular board meetings. With respect to serious crimes or insider malfeasance, the appointed committee likely should consider it appropriate to make more immediate disclosure to the full board of directors. Some larger banking organizations expressed the view that prompt disclosure of SARs to the board of directors or a committee would impose a serious burden since larger organizations typically file a larger number of criminal referral forms (now, SARs). While the FDIC acknowledges that larger institutions may have more SARs to report to the board of directors or a committee, this does not alter the directors' fiduciary obligation to monitor the condition of the institution and to take action to prevent losses. The final regulation does not dictate the content of the board of directors or committee notification, and, in some cases, such as when relatively minor non-insider crimes are to be reported, it may be completely appropriate to provide only a summary listing of SARs filed. The FDIC expects the management of banks to provide a more detailed notification of SARs involving insiders or a potential material loss to the institution to the board of directors or committees.

Information Sharing

It was suggested the final regulations should somehow facilitate the sharing of information among banking organizations in order to better detect new fraudulent schemes. It is anticipated that the Treasury Department, through FinCEN, and the Agencies, will keep reporting entities apprised of recent developments and trends in banking-related crimes through periodic pronouncements, meetings, and seminars.

Single Filing Requirement; Acknowledgment of Filings

The FDIC wishes to clarify that the filing of the SAR with FinCEN is the only filing of the SAR that is required. Federal and state law enforcement and bank supervisory agencies will have access to the database created and maintained by FinCEN on behalf of the Agencies and the Department of Treasury; thus, a single filing with FinCEN is all that is required under the new reporting system.

Commenters also requested that the final rule permit the filing of SARs via telecopier. Such filings are not compatible with the system developed by the Agencies and FinCEN. Banks can file the SAR via magnetic media using the computer software to be made available to all banks by the FDIC and each of the other Agencies with respect to the institutions they supervise. Larger banking organizations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule primarily reorganizes the process for making criminal referrals and has no material impact on banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule revises a collection of information that is currently approved by the Office of Management and Budget (OMB) under control number 3064–0077. The revisions raise the reporting thresholds and permit reporting institutions to use a simplified, shorter form; to file one form only; and to eliminate the submission of supporting documentation with a report. These revisions have been reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The estimated average burden associated with the collection of information contained in a SAR is approximately .6 hours per respondent. The burden per respondent will vary depending on the nature of the suspicious activity being reported.

Estimated Number of Respondents: 6,500.

Estimated Total Annual Burden Hours: 3,900

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Regulatory Analysis), Room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0077), Washington, DC 20503.

List of Subjects in 12 CFR Part 353

Banks, Banking, Crime, Currency, Insider abuse, Money laundering, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR part 353 of the Code of Federal Regulations is revised to read as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

Sec.
353.1 Purpose and scope.
353.2 Definitions.
353.3 Reports and records.

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

§ 353.1 Purpose and scope.

The purpose of this part is to ensure that an insured state nonmember bank files a Suspicious Activity Report when it detects a known or suspected criminal violation of federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This part applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

§ 353.2 Definitions.

For the purposes of this part:

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

(b) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

§ 353.3 Reports and records.

(a) *Suspicious activity reports required.* A bank shall file a suspicious activity report with the appropriate federal law enforcement agencies and the Department of the Treasury, in accordance with the form's instructions, by sending a completed suspicious activity report to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of the bank's directors, officers, employees, agents, or other institution-affiliated parties as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;

(2) *Transactions aggregating $5,000 or more where a suspect can be identified.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, and involving or aggregating $5,000 or more in funds or other assets, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias'', then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as driver's license or social security numbers, addresses and telephone numbers, must be reported;

(3) *Transactions aggregating $25,000 or more regardless of potential suspects.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, involving or aggregating $25,000 or more in funds or other assets, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (a)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort of transaction in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Time for reporting.* (1) A bank shall file the suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a bank may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

(2) In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify, by telephone, an appropriate law enforcement authority and the appropriate FDIC regional office (Division of Supervision) in addition to filing a timely report.

(c) *Reports to state and local authorities.* A bank is encouraged to file a copy of the suspicious activity report with state and local law enforcement agencies where appropriate.

(d) *Exemptions.* (1) A bank need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) A bank need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(e) *Retention of records.* A bank shall maintain a copy of any suspicious activity report filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the suspicious activity report. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the suspicious activity report. A bank must make all supporting documentation available to appropriate law enforcement authorities upon request.

(f) *Notification to board of directors.* The management of a bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section. The term ''board of directors'' includes the managing official of an insured state-licensed branch of a foreign bank for purposes of this part.

(g) *Confidentiality of suspicious activity reports.* Suspicious activity reports are confidential. Any bank subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the suspicious activity report or to provide any information that would disclose that a suspicious activity report has been prepared or filed citing this part, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and notify the appropriate FDIC regional office (Division of Supervision).

(h) *Safe Harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, cover all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this part or are filed on a voluntary basis.

By Order of the Board of Directors.

Dated at Washington, D.C., this 6th day of February 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–3519 Filed 2–15–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 96–6]

RIN 1550–AA62

Operations—Suspicious Activity Reports and Other Reports and Statements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations that require savings associations and service corporations to file criminal referral and suspicious transaction reports. This final rule streamlines reporting requirements by providing that savings associations and service corporations file a new Suspicious Activity Report (SAR) with the OTS and the appropriate federal law enforcement agencies by sending SARs to the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) to report a known or suspected criminal offense or a transaction that an institution suspects involves money laundering or violates the Bank Secrecy Act (BSA).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Stearns, Deputy Chief Counsel, Enforcement Division, (202) 906–7966, or Gary Sutton, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–5761, Chief Counsel's Office; or Francis Raue, Policy Analyst, Supervision Policy, (202) 906–5750, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities by the institutions under their supervision.[1] The Department of the Treasury, through FinCEN, issued for public comment a substantially similar proposal to require the reporting of suspicious activities.[2]

The OTS's proposed regulation noted that the interagency Bank Fraud Working Group, consisting of representatives from the Agencies, law enforcement agencies, and FinCEN, has been working on the development of a single form, the SAR, for the reporting of known or suspected federal criminal law violations and transactions that an institution suspects involve money laundering or violate the BSA. The new SAR reporting system will: (1) Combine the current criminal referral rules of the Agencies with the Department of the Treasury's suspicious activity reporting requirements; (2) create a uniform reporting form, the new SAR, for use by financial institutions in reporting known or suspected criminal offenses and transactions that an institution suspects involve money laundering or violate the BSA; (3) provide a system whereby an institution need only refer to the SAR and its instructions in order to complete and file the form in conformance with the Agencies' and FinCEN's reporting regulations; (4) require the filing of only one form with FinCEN; (5) eliminate the need to file supporting documentation with a SAR; (6) enable a filer, through computer software that the OTS will provide to all savings associations, to prepare a SAR on a computer and file it by mailing a computer disc or tape; (7) establish a database that will be accessible to the Federal and state financial institutions regulators and law enforcement agencies; (8) raise the thresholds for mandatory reporting in two categories and create a threshold for the reporting of transactions that an institution suspects involve money laundering or violate the BSA in order to reduce the reporting burdens on banking organizations; and (9) emphasize recent changes in the law that provide a safe harbor from civil liability to financial institutions and their employees when they report known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, and that provide criminal sanctions for the disclosure of such a report to any party involved in the reported transaction.

Comments Received

The OTS received letters from eight commenters, including four savings associations, two holding companies, one trade association and one law firm. We have also considered comments received by the other Agencies. The large majority of commenters expressed general support for the proposal. None of the commenters opposed the proposed new suspicious activity reporting rules, although, as discussed below, a number of commenters made suggestions for improving the rule and requests for clarification.

Description of the Final Rule and Responses to Comments Received

After consideration of the public comments received, the Agencies are each promulgating a substantially identical final rule regarding the filing of SARs. Under the OTS's final rule, savings associations and service corporations need only follow the SAR instructions for completing and filing the SAR to be in compliance with the OTS's and FinCEN's reporting requirements.

This final rule adopts the proposal with a few additional changes made in response to the comments received. The final rule makes several changes that reduce unnecessary regulatory burden in addition to those that were proposed. In particular, the final rule further reduces burden by: (1) Adding a $5,000 threshold for reporting transactions that an institution suspects involve money laundering or violate the BSA; (2) eliminating the requirement that an institution report a transaction that is ''suspicious for any reason'' by modifying the description of the types of suspicious activity that must be reported; (3) reducing the record retention period from ten years to five; and (4) permitting an institution to maintain the business record equivalent of a document rather than requiring that it maintain the original.

Section-by-Section Discussion

Purpose and scope (§ 563.180(d)(1))

The proposal clarified the scope of the current rule. The OTS received no comments on this paragraph, which is adopted as proposed.

Definitions (§ 563.180(d)(2))

The proposal added definitions for several terms used in the operative provisions of the rule. The OTS received one comment on this provision. The commenter argued that the use of the term ''institution-affiliated party'' instead of ''affiliated person'' creates too broad a coverage for the rule, and will result in the requirement that SARs must be filed with respect to petty crimes by officers below the level of vice president and non-officer employees. The OTS has considered this comment and believes that the broader coverage is appropriate, given the possibility that even petty crimes, if repetitive, may require enforcement action. The definition of ''known or suspected violation'' in the proposal has been incorporated into each of the reporting requirement provisions in § 563.180(d)(3) to conform the rule to that of the other Agencies. This section is otherwise adopted as proposed, with minor technical changes.

SARs required (§ 563.180(d)(3))

The proposal clarified and revised the provision in the current rule that requires an institution to file reports, raised the dollar thresholds that trigger filing requirements, modified the scope of events that an institution must report,

[1] 60 FR 36366 (July 17, 1995) (OTS), 60 FR 34476 (July 3, 1995) (OCC), 60 FR 34481 (July 3, 1995) (FRB) and 60 FR 47719 (September 14, 1995)(FDIC).

[2] 60 FR 46556 (September 7, 1995).

and eliminated the requirement for multiple filings with several Federal agencies.

Most of the comments received by the Agencies addressed this provision. Many of the commenters encouraged the Agencies to change proposed § 563.180(d)(3)(iv)(C), which required institutions to report all financial transactions that are suspicious ''for any reason.'' The commenters stated that this language was too broad and made meaningless the $5,000 reporting threshold of § 563.180(d)(3)(ii) (requiring institutions to report suspected crimes committed by an identifiable suspect) and the $25,000 reporting threshold of § 563.180(d)(3)(iii) (requiring institutions to report suspected crimes for which no suspect is identified). They asserted that requiring institutions to report all financial transactions that are suspicious for any reason required them to report transactions that would otherwise fall under the appropriate threshold and therefore be exempt from the reporting requirement. Several commenters also encouraged the Agencies to adopt a threshold for reporting transactions that are suspicious.

The OTS and the other Agencies agree with the concerns expressed by these commenters. Section 563.180(d)(3)(iv) has been substantially revised to add a $5,000 reporting threshold for transactions that are suspicious and to clarify that this provision of the rule requires an institution to report only transactions that it suspects involve money laundering or violations of the BSA. Under the final rule, a savings association or service corporation must file a SAR for any transaction of $5,000 or more if it knows, suspects, or has reason to suspect that the transaction: (A) involves money laundering; (B) is designed to evade any regulations promulgated under the BSA; or (C) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction. For purposes of § 563.180(d)(3)(iv), the term ''transaction'' means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, or purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected. The text of this section recognizes that efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted when institutions report transactions that they suspect may involve money laundering or violate the BSA. The requirements of this section comply with the recommendations adopted by multi-country organizations in which the United States is an active participant, including the Financial Action Task Force of the G–7 nations and the Organization of American States, and are consistent with the European Community's directive on preventing money laundering through financial institutions.

A few commenters encouraged the Agencies to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, and several commenters urged the Agencies to establish a dollar threshold for insiders. The OTS has considered these comments, but has concluded that the thresholds, as proposed, properly balance the dual concerns of prosecuting criminal activity involving savings associations and service corporations and minimizing the burden on such institutions. With respect to the suggestion that the OTS adopt a dollar threshold for insider violations, the OTS notes that insider abuse has long been a key concern and focus of enforcement efforts. With the development of a new sophisticated and automated database, the OTS and law enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. When insiders are involved, even small-scale offenses—for example, repetitive thefts of small amounts of cash by an employee who frequently moves between banking organizations—may undermine the integrity of such organizations and warrant enforcement action or criminal prosecution. Therefore, the OTS does not wish to limit the information it receives regarding insider wrongdoing.

One commenter suggested an indexed threshold, based on the regional differences in the various dollar thresholds below which the Federal, state, and local prosecutors generally decline prosecution. Any regional variations in the dollar amount of financial crimes generally prosecuted involve issues pertaining to the exercise of prosecutorial discretion that are not within the OTS's province to resolve. The OTS's objective is to ensure that institutions place the relevant information in the hands of the investigating and prosecuting authorities. In the OTS's view, the dollar thresholds proposed and adopted in this final rule best balance the interests of law enforcement authorities and financial institutions. The OTS also believes that indexed thresholds could generate additional regulatory burden for institutions by creating a standard that is unclear and confusing.

One commenter noted that the OTS and OCC proposals keyed the reporting thresholds to the amount of loss or potential loss to the institution (which is the standard used in the OTS's current rule), while the FRB keyed its reporting thresholds to events that ''involve or aggregate'' more than the appropriate threshold. The commenter urged all Agencies to use the proposed OTS and OCC standard. Upon further consideration, the OTS believes that the standard used in the FRB's proposal provides greater predictability in determining when to file a SAR because the amount of loss or potential loss may differ from the actual sum involved in the event and may be difficult to calculate in many instances. The OTS believes that, were the Agencies to rely on the amount of loss or potential loss, an institution might consider the potential for recovery of funds to estimate loss. Instead, to avoid potential uncertainty, the final rule conforms to the FRB's proposal and requires an institution to file SARs whenever it detects a known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against it or involving a transaction conducted through it that involves or aggregates more than the appropriate threshold.

One commenter expressed the concern that a banking organization would need to establish probable cause before reporting crimes for which an essential element of the proof of the crime was the intent of the actor. This is not the case, however. Nothing in the rule requires that savings associations assume the burden of proving illegal conduct; rather, institutions are required only to report actual or suspected crimes or suspicious activities for possible action by the appropriate authorities.

One commenter requested clarification of whether the proposal required an institution to file multiple SARs for a crime committed by several individuals, multiple crimes by the same individual, or related crimes committed by more than one individual. Financial institutions should complete one SAR to describe a suspected or known criminal offense committed by several individuals. The instructions to the SAR permit institutions to report additional suspects by means of a supplemental page. An institution

should file a separate SAR whenever an individual commits a suspected or known crime. If the same individual commits multiple or related crimes within the same reporting period, the institution may consider reporting the crimes on one SAR if doing so will present clearly what has occurred.

Savings associations and service corporations are encouraged to file the SAR via magnetic media using the computer software to be provided to them by the OTS. Savings associations and service corporations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape. FinCEN has advised the Agencies that it will be unable to accept filings via telecopier.

Service corporations (§ 563.180(d)(4))

The proposal retained the current provision permitting a report required of a service corporation to be filed by the service corporation or by a savings association which wholly or partially owns it. No comments addressed this provision and it is unchanged in the final rule.

Time for reporting (§ 563.180(d)(5))

Proposed § 563.180(d)(5) substantially modified the current requirements with respect to the timing of the reporting of known or suspected criminal offenses and transactions that an institution suspects involve money laundering or violate the BSA. It required an institution to file a SAR within 30 calendar days after detecting the act triggering the reporting requirement, provided that if no suspect is identified at such time, the institution may delay filing for an additional 30 days after identification of a suspect, but filing may not be delayed for more than 60 days after initial detection.

Several commenters requested that the Agencies clarify the application of the filing deadline for SARs when no suspect is identified at the initial detection of the suspicious activity, the amount of the transaction is less than the applicable $25,000 mandatory reporting threshold, and the institution later identifies a suspect. For example, some commenters wondered if they would be in violation of the rule if a suspect were identified after 60 days had passed.

These comments reflect a misunderstanding of how the filing requirements operate. The time period for reporting commences only at the point in time when an institution identifies a potential violation that fits within the thresholds. Therefore, if an institution uncovers a transaction involving less than $25,000 (but more than $5,000), but does not identify a potential suspect until after the passage of 60 days, the 30-day period for filing a SAR would begin to run only when the suspect is identified. To make this point clear, the final rule inserts the word ''reportable'' and states that in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction, *i.e.*, a transaction that must be reported because the amount involved is greater than the appropriate reporting threshold. OTS has also reorganized this paragraph, to conform with the other Agencies' rules.

Section 563.180(d)(5) also requires an institution to notify law enforcement authorities immediately in the event of an on-going violation. The OTS wishes to clarify that immediate notification is limited to situations involving ongoing violations, for example, when a check kite or money laundering has been detected and may be continuing. It is not feasible, however, for the OTS to contemplate all of the possible circumstances in which it might be appropriate for a savings association or service corporation to immediately advise state and local law enforcement authorities. Savings associations and service corporations should use their best judgment regarding when to alert these authorities regarding on-going criminal offenses or suspicious activities that involve money laundering or violate the BSA.

Reports to state and local authorities (§ 563.180(d)(6))

The proposal encouraged savings associations and service corporations to file SARs with state and local law enforcement agencies when appropriate. Some commenters expressed the concerns that banking organizations and their institution-affiliated parties could be liable under Federal and state laws, such as the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*)(RFPA), for filing SARs with respect to conduct that is later found not to have been criminal, and that the filing of SARs with state and local law enforcement agencies would subject filers to claims under state law. Both of these concerns are addressed by the scope of the safe harbor protection provided in 31 U.S.C. 5318(g) and, as discussed below, stated in new § 563.180(d)(13).

Exception (§ 563.180(d)(7))

Proposed § 563.180(d)(8), which set forth one exception to the SAR filing requirement, did not substantively change its predecessor provision. The OTS received no comments on this section and adopts it as proposed. The final rule, however, reverses the order of proposed paragraphs (d)(7) and (d)(8) and changes the caption of proposed paragraph (d)(8) from ''exemption'' to ''exception'', to conform with the other Agencies' rules.

Retention of records (§ 563.180(d)(8))

The proposal required an institution to retain a copy of the SAR and the original of any underlying documentation relating to the SAR for ten years. Many commenters expressed the view that the 10-year period for the retention of records was excessive, especially in light of the BSA's five-year record retention requirement, and recommended that the Agencies reduce the period to five years. The 10-year period in the proposed regulation would have continued the OTS's existing record retention requirement for criminal referral forms. However, in recognition of the potential burden of document retention on financial institutions, the OTS has reduced the record retention period to five years.

Many commenters asserted that the provision that required institutions to disclose supporting documentation to law enforcement agencies upon their request was either unclear or posed potential RFPA liability. Some therefore questioned whether law enforcement agencies would still need to subpoena relevant documents from a savings association or service corporation. The final regulation requires organizations filing SARs to identify, maintain and treat the documentation supporting the report as if it were actually filed with the SAR. This means that subsequent requests from law enforcement authorities for the supporting documentation relating to a particular SAR do not require the service of a subpoena or other legal process normally associated with the provision of information to law enforcement agencies. This treatment of supporting documentation is not a substantive change from the current rule's requirement that supporting documentation be filed with each referral, since it only changes the timing of when an agency will have access to the supporting documentation, not the fact that the information is assembled and made available for law enforcement purposes. The Agencies therefore believe that the final rule's treatment does not give rise to RFPA liability.

Proposed § 563.180(d)(7) required the maintenance of supporting documentation in its original form. A number of comments noted that electronic storage of documents has become the rule rather than the exception, and that requiring the storage

of paper originals would impose undue burdens on financial institutions. Moreover, some records are retained only in a computer database. The proposed regulation reflected the concerns of the law enforcement agencies that the best evidence be preserved. However, this can include the electronic storage of original documentation related to the filing of a SAR. The OTS recognizes that a savings association or service corporation will not always have custody of the originals of documents and that some documents will not exist at the organization in paper form. In those cases, preservation of the best available evidentiary documents, for example, computer discs or photocopies, will be acceptable. This has been reflected in the final rule by allowing institutions to retain business record equivalents of supporting documentation.

Several commenters criticized as inconsistent and vague the proposed requirements that an institution maintain ''related'' documentation and make ''supporting'' documentation available to the law enforcement agencies upon request. One commenter questioned whether the OTS intended a substantive difference in meaning between these terms. As a substantive difference is not intended, the OTS has referred to ''supporting'' documentation in the final rule in stating both the maintenance and production requirements. The OTS believes that the use of the word ''supporting'' is more precise and limits the scope of the information which must be segregated and retained to information that would be relevant in proving the crime and identifying the individuals involved. The OTS expects that savings associations and service corporations will use their best judgment in determining the scope of the information to be retained. It is not feasible for the OTS to catalogue the precise types of information covered by this requirement, because the scope necessarily depends upon the facts of a particular case.

Notification to the board of directors (§ 563.180(d)(9))

The proposal reduced the burden on boards of directors to review criminal referrals by allowing the management of an institution to notify either the board of directors or a committee of directors or executive officers designated by the board to receive notice of the filing of a SAR. The proposal prohibited a savings association or service corporation from giving notice of a SAR filing to any director or officer who is a suspect with regard to such filing. The proposal also required management to notify all directors, except the suspect, when an executive officer or director is a suspect.

Most commenters supported this provision of the proposal. One commenter, however, questioned whether the provision that required prompt notification of the board of directors required notice prior to the next board meeting. This commenter said that a requirement to provide notice between board meetings would be more burdensome than the current rule, which requires notification not later than the next board meeting.

The OTS did not intend this change to be more burdensome than the current rule and does not construe the requirement for prompt notification to mean that notice must necessarily be provided before the next board meeting. The final rule is intended to be flexible. For example, the OTS expects that, with respect to serious crimes, the appointed committee may consider it appropriate to make more immediate disclosure to the full board. The final rule does not dictate the content of the board or committee notification, and, in some cases, such as when relatively minor non-insider crimes are to be reported, it may be completely appropriate to provide only a summary listing of SARs filed.

Compliance (§ 563.180(d)(10))

The proposal included a new provision stating that the failure to file a SAR in accordance with the regulation and instructions may result in supervisory actions, including enforcement actions. The OTS received no comments on this section and adopts it as proposed.

Obtaining SARs (§ 563.180(d)(11))

The proposal added § 563.180(d)(11), which provides savings associations and service corporations with information on how to obtain SARs. The OTS received no comments on this section and adopts it as proposed.

Confidentiality of SARs (§ 563.180(d)(12))

The proposal contained a new provision preserving the confidential nature of SARs and the information contained in SARs. One commenter correctly noted that the proposed regulation is unclear as to whether the confidential treatment applies only to the information contained on the SAR itself, or also extends to the ''supporting'' documentation. The OTS takes the position that only the SAR and the information on the SAR are confidential under 31 U.S.C. 5318(g). However, as stated below in the discussion of new § 563.180(d)(13), the safe harbor provisions of 31 U.S.C. 5318(g) for disclosure of information to law enforcement agencies apply to both SARs and the supporting documentation.

The OTS was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation, in order to avoid situations in which a savings association or service corporation could be ordered by a court to produce a SAR in civil litigation and could be confronted with the prospect of having to choose between being found in contempt or violating the OTS's rules. In the opinion of the OTS, 31 U.S.C. 5318(g) precludes the disclosure of SARs in discovery.[3] However, the final rule requires an institution that receives a subpoena or other request for a SAR to notify the OTS so that the OTS can take appropriate action. This notification requirement is consistent with 12 CFR 510.5.

Safe harbor (§ 563.180(d)(13))

Several commenters expressed concern that disclosure of SARs and supporting documentation to law enforcement agencies could give rise to potential RFPA liability. In particular, the commenters questioned the permissibility of filing SARs with state agencies or in situations in which the amount of a transaction falls below the appropriate minimum threshold for the known or suspected criminal conduct, or when a transaction involving money laundering or the BSA does not meet the requisite standards or thresholds. Commenters questioned the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to mandatory and voluntary filings alike.[4]

The Agencies are of the opinion that the broad safe harbor protections of 31 U.S.C. 5318(g)(3) include the reporting of known or suspected criminal offenses or suspicious activities with state and local law enforcement authorities, as well as with the Agencies and FinCEN, regardless of whether such reports are filed pursuant to the mandatory requirements of the OTS's regulations or are voluntary. The OTS takes the same position with regard to the disclosure of

[3] Section 5318(g)(2) prohibits financial institutions and directors, officers, employees, or agents of financial institutions from notifying any person involved in a suspicious transaction that the transaction has been reported.

[4] Section 5318(g)(3) states that a financial institution will not be held liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any state for making a disclosure of any possible violation of law or regulation.

supporting documentation. The final rule adds new § 563.180(d)(13), which states this position.

Comments on information sharing

Comments to other Agencies suggested that the final regulations should somehow facilitate the sharing of information among banking organizations in order to better detect new fraudulent schemes. It is anticipated that the Treasury Department, through FinCEN, and the Agencies, will keep reporting entities apprised of recent developments and trends in banking-related crimes through periodic pronouncements, meetings, and seminars.

Regulatory Flexibility Act

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

Executive Order 12866

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

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this final rule were submitted to the Office of Management and Budget for review at the proposed rule stage in accordance with the Paperwork Reduction Act of 1995 (PRA) and were approved. Comments on the collection of information should be sent to the Office of Management and Budget (OMB), Paperwork Reduction Project (1550–0003), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting and recordkeeping requirements in this final rule are found in 12 CFR 563.180(d). The collection of information is necessary for the proper performance of the OTS's functions and the information has practical utility. The information is needed to inform appropriate law enforcement agencies of known or suspected criminal or suspicious activities that take place at or were perpetrated against financial institutions.

The Unfunded Mandates Reform Act of 1995

The OTS has determined that this final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the Unfunded Mandates Reform Act does not apply.

List of Subjects in 12 CFR Part 563

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

Authority and Issuance

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

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

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

§ 563.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(d) *Suspicious Activity Reports*—(1) *Purpose and scope.* This paragraph (d) ensures that savings associations and service corporations file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.

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

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

(ii) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(9)).

(iii) *SAR* means a Suspicious Activity Report on the form prescribed by the OTS.

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

(i) *Insider abuse involving any amount.* Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that it was used to facilitate a criminal transaction, and it has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act, regardless of the amount involved in the violation.

(ii) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to facilitate a criminal transaction, and it has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an alias, then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' license or social security numbers, addresses and telephone numbers, must be reported.

(iii) *Violations aggregating $25,000 or more regardless of potential suspects.* Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $25,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to

facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(iv) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (d)(3)(iv) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, if the savings association or service corporation knows, suspects, or has reason to suspect that:

(A) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;

(B) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(C) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

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

(5) *Time for reporting.* A savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the savings association or service corporation shall immediately notify, by telephone, an appropriate law enforcement authority and the OTS in addition to filing a timely SAR.

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

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

(8) *Retention of records.* A savings association or service corporation shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the savings association or service corporation as such, and shall be deemed to have been filed with the SAR. A savings association or service corporation shall make all supporting documentation available to appropriate law enforcement agencies upon request.

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

(ii) *Suspect is a director or executive officer.* If the savings association or service corporation files a SAR pursuant to this paragraph (d) and the suspect is a director or executive officer, the savings association or service corporation may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects.

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

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

(12) *Confidentiality of SARs.* SARs are confidential. Any institution or person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (d), applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and shall notify the OTS.

(13) *Safe harbor.* The safe harbor provision of 31 U.S.C. 5318(g), which exempts any financial institution that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this paragraph (d), or are filed on a voluntary basis.

* * * * *

Dated: February 5, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–3110 Filed 2–15–96; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28461; Amdt. No. 1710]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

promote safe flight operations under instrument flight rules at the affected airports.

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 9, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective 25 April 1996*

St. Paul Island, AK, St. Paul Island, LOC/DME BC RWY 18, Amdt 1
Ash Flat, AR, Cherokee Village, NDB RWY 4, Amdt 1
Ash Flat, AR, Cherokee Village, GPS RWY 4, Orig
Fresno, CA, Fresno-Chandler Downtown, GPS RWY 30L, Orig
Greeley, CO, Greeley-Weld County, GPS RWY 9, Orig
Greeley, CO, Greeley-Weld County, GPS RWY 27, Orig
Lamar, CO, Lamar Muni, GPS RWY 36, Orig
Pueblo, CO, Pueblo Memorial, GPS RWY 17, Orig
Pueblo, CO, Pueblo Memorial, GPS RWY 35, Orig
Madison, GA, Madison Muni, GPS RWY 14, Orig
Chicago/Romeoville, IL, Lewis University, GPS RWY 27, Orig
Dodge City, KS, Dodge City Regional, GPS RWY 14, Orig
Homer, LA, Homer Municipal, GPS RWY 30, Orig

New Roads, LA, False River Air Park, GPS RWY 18, Orig
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 22L, Amdt 5
Marshfield, MA, Marshfield, GPS RWY 6, Orig
Glasgow, MT, Glasgow Intl, GPS RWY 12, Orig
Lincoln Park, NJ, Lincoln Park, GPS RWY 19, Orig
Gallup, NM, Gallup Municipal, GPS RWY 24, Orig
Charlotte, NC, Charlotte/Douglas Intl, RADAR–1, Amdt 19, CANCELLED
Port Clinton, OH, Carl R. Keller Field, GPS RWY 27, Orig
Casper, WY, Natrona County Intl, GPS RWY 26, Orig
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, ILS RWY 18, Amdt 10

* * * *Effective 28 March 1996*

Mount Carmel, IL, Mount Carmel Muni, VOR or GPS RWY 22, Amdt 8
Mount Carmel, IL, Mount Carmel Muni, NDB or GPS RWY 4, Amdt 4
Auburn, IN, De Kalb County, VOR or GPS–A, Amdt 9
Auburn, IN, De Kalb County, VOR or GPS RWY 9, Amdt 7
Gastonia, NC, Gastonia Muni, RADAR–1 Amdt 4, CANCELLED
Celina, OH, Lakefield, NDB or GPS RWY 8, Amdt 4
Celina, OH, Lakefield, VOR/DME RNAV or GPS RWY 26, Amdt 6
Cleveland, OH, Cuyahoga County, LOC BC RWY 5, Amdt 10
Cleveland, OH, Cuyahoga County, NDB or GPS RWY 23, Amdt 8
Cleveland, OH, Cuyahoga County, ILS RWY 23, Amdt 12
Pottstown, PA, Pottstown Limerick, RNAV RWY 28, Orig, CANCELLED
Racine, WI, John H. Batten Field, VOR RWY 22, Amdt 8, CANCELLED

* * * *Effective Upon Publication*

Burnet, TX, Burnet Muni Kate Craddock Field, NDB OR GPS RWY 1, Amdt 4
Burnet, TX, Burnet-Muni Kate Craddock Field, VOR/DME RNAV OR GPS RWY 19, Amdt 3

Note: The following procedure published in Transmittal Letter 94–06 dated 02/25/94 is hereby rescinded:

Chandler, AZ, Chandler Muni, NDB RWY 4R, Orig, PROPOSED EFF 28 APR 94

Note: The following procedure published in Transmittal Letter 93–23 dated 10/22/93 is hereby rescinded:

Payson, AZ, Payson, NDB–A, Orig, PROPOSED EFF 06 JAN 94

Note: The FAA published an Original Procedure in Docket No. 28426, Amdt. No. 1703 to Part 97 of the Federal Aviation Regulations (Vol. 61 FR, No. 20, Page 2907; dated Tuesday, January 30, 1996, which is hereby amended as follows:

Farmington, MO, Farmington Regional, GPS RWY 2, Orig, Effective 25 APR 96.

[FR Doc. 96–3604 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28462; Amdt. No. 1711]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20491;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected

airports. All SIAP amendments in the rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 9, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
01/30/96	WA	Spokane	Spokane Intl	FDC 6/0671	NDB RWY 21, AMDT 14A...
01/31/96	AK	Cold bay	Cold bay	FDC 5/6546	ILS RWY 14, AMDT 15... THIS CORRECTS NOTAM IN TL96–01.
01/31/96	IN	Indianapolis	Greenwood Muni	FDC 6/0695	NDB OR GPS RWY 1 AMDT 2...
01/31/96	TX	Mesquite	Phil L. Hudson Muni	FDC 6/0686	NDB OR GPS RWY 17, AMDT 4A...
01/31/96	TX	Mesquite	Phil L. Hudson Muni	FDC 6/0687	LOC BC RWY 35, AMDT 1A...
01/31/96	WV	Bluefield	Mercer County	FDC 6/0692	ILS RWY 23 AMDT 14...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0715	ILS RWY 18R, AMDT 4A...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0716	ILS RWY 18L, AMDT 15...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0718	Converging ILS RWY 18R, AMDT 2A...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0719	Converging ILS RWY 18L, AMDT 2...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6.0720	ILS RWY 35R, AMDT 5...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0721	NDB or GPS RWY 35R, AMDT 8...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0722	ILS RWY 36R, AMDT 1...
02/91/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0725	Converging ILS RWY 36L, AMDT 2...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0726	Converging ILS RWY 36R, ORIG...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0729	ILS RWY 17L, AMDT 5B...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0730	ILS RWY 17R, AMDT 17...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0731	Converging ILS RWY 35R, AMDT 3...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0738	ILS RWY 35L, ORIG...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0745	Converging ILS RWY 13R, AMDT 3...
02/01/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0746	ILS RWY 36L, AMDT 4...
02/01/96	WV	Huntington	Tri-State/Milton J. Ferguson Field	FDC 6/0734	ILS RWY 30 AMDT 4...
02/01/96	WV	Lewisburg	Greenbrier valley	FDC 6/0736	ILS RWY 4 AMDT 7A...
02/05/96	MS	Olive Branch	Olive Branch	FDC 6/0829	NDB or GPS RWY 18, AMDT 3...
02/05/96	MS	Olive Branch	Olive Branch	FDC 6/0830	NDB or GPS RWY 36, AMDT 4...
02/05/96	TN	Memphis	Memphis Intl	FDC 6/0835	ILS RWY 36L AMDT 11...
02/06/96	LA	Vivian	Vivian	FDC 6/0856	NDB or GPS RWY 9, AMDT 1...
02/06/96	TX	Arlington	Arlington Muni	FDC 6/0855	VOR/DME RWY 34, AMDT 5...
02/06/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0851	Effective...
02/06/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 6/0853	Effective...
02/06/96	WI	Oshkosh	Wittman Regional	FDC 6/0863	VOR RWY 9 AMDT 8...
02/08/96	IA	Fairfield	Fairfield Muni	FDC 6/0893	NDB RWY 36, AMDT 7B. S–36...

FDC Date	State	City	Airport	FDC No.	SIAP
02/08/96	IA	Fairfield	Fairfield Muni	FDC 6/0898	VOR/DME RNAV RWY 36, AMDT 1B...
02/09/96	IA	Fairfield	Fairfield Muni	FDC 6/0897	VOR/DME RNAV or GPS RWY 18, AMDT 1B...

[FR Doc. 96–3605 Filed 2–15–96; 8:45 am]
BILLING CODE 4910–13–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1303

Property Management

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: Tennessee Valley Authority is issuing regulations, as required by the ''Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act,'' to prohibit the vending machine sale of, or the free distribution of, tobacco products on TVA property.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Vada Ables, 423–751–2251.

SUPPLEMENTARY INFORMATION: The ''Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act,'' section 634 of Public Law 104–52, requires Federal agencies to promulgate regulations prohibiting the vending machine sale of, or the free distribution of, tobacco products in or around any Federal building. The TVA Board of Directors has delegated authority to implement this Act to TVA's Senior Manager, Facilities Services.

The Act authorizes agencies, as appropriate, to designate areas not subject to the Act if such areas also prohibit the presence of minors. Tobacco product vending machines already in place on TVA property as of November 15, 1995 (the date of the Act), may continue in operation for one year from the date of these regulations while TVA completes review of whether they meet this exemption standard and whether exemption is appropriate.

Matters of Regulatory Procedures

TVA has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules. Furthermore, this rulemaking is related to TVA organization, procedure, and practice.

TVA has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on a substantial number of small business entities, because they affect only TVA employees, visitors, and on-premise vendors. Similarly, it is not a significant regulatory action for purposes of Executive Order 12866.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 18 CFR Part 1303

Cigars and cigarettes, Government property, Tobacco.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended by adding part 1303 to read as follows:

PART 1303—PROPERTY MANAGEMENT

Subpart A—General Information

Sec.

1303.1 Applicability.

Subpart B—Tobacco Products

1303.2 Definition.
1303.3 Prohibitions on tobacco products.

Authority: 16 U.S.C. 831–831dd.

Subpart A—General Information

§ 1303.1 Applicability.

This part sets out certain regulations applicable to buildings, structures, and other property under TVA control.

Subpart B—Tobacco Products

§ 1303.2 Definition.

Tobacco project means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

§ 1303.3 Prohibition on tobacco products.

(a) Sale of tobacco products by vending machine on TVA property is prohibited. Tobacco product vending machines already in place on TVA property as of November 15, 1995, may continue in operation for one year from February 16, 1996 while TVA completes review of whether such machines should be exempted under paragraph (c) of this section.

(b) Distribution of free samples of tobacco products on TVA property is prohibited.

(c) TVA may, as appropriate, designate areas not subject to this section if individuals under the age of 18 are not allowed in such areas.

Dated: February 7, 1996.

David H. Gentry,

Senior Manager, Facilities Services.

[FR Doc. 96–3449 Filed 2–15–96; 8:45 am]
BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 113, 141, 144 and 181

[T.D. 96–14]

RIN 1515–AB87

North American Free Trade Agreement (NAFTA)—Implementation of Duty-Deferral Program Provisions

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes two corrections to the document published in the Federal Register which set forth interim regulations establishing procedural and other requirements that apply to the collection, waiver and reduction of duties under the duty-deferral program provisions of the North American Free Trade Agreement (NAFTA). The corrections involve the discussion of the Paperwork Reduction Act under the **SUPPLEMENTARY INFORMATION** portion of the document and a cross-reference citation within the interim regulatory texts.

EFFECTIVE DATE: These corrections are effective January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Angela Downey, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1996, Customs published in the Federal Register (61 FR 2908) as T.D. 96–14 a document setting forth interim regulations establishing procedural and other requirements that apply to the collection, waiver and reduction of

duties under the duty-deferral program provisions of the North American Free Trade Agreement (NAFTA). The document prescribed the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program either for exportation to another NAFTA country or for entry into a duty-deferral program of another NAFTA country, the procedures that must be followed in filing a claim for a waiver or reduction of duties collected on such merchandise, and the procedures for finalization of duty collections and duty waiver or reduction claims. The document prescribed a January 1, 1996, effective date for the interim regulatory amendments.

The discussion of the Paperwork Reduction Act within the **SUPPLEMENTARY INFORMATION** portion of the document included figures regarding the reporting and/or recordkeeping burden associated with the information collection requirements under the interim regulatory texts, as reported to the Office of Management and Budget (OMB); however, the document incorrectly stated the hours reported to OMB with regard to the estimated total annual reporting and/or recordkeeping burden which should have read ''213,960'' hours. In addition, within the text of interim § 181.53(b)(4) as set forth in the document, the reference in the introductory sentence to ''paragraph (e)(1) or (e)(2)'' should have read ''paragraph (b)(4)(i) or (b)(4)(ii)''. This document corrects these two errors.

Corrections of Publication

Accordingly, the document published in the Federal Register as T.D. 96–14 on January 30, 1996 (61 FR 2908) is corrected as set forth below.

Correction to the **SUPPLEMENTARY INFORMATION** *Section*

On page 2910, in the second column under the heading Paperwork Reduction Act, the figure ''405,070 hours'' after ''Estimated total annual reporting and/or recordkeeping burden:'' is corrected to read ''213,960 hours''.

Correction to the Interim Regulations

On page 2913, in the second column, in the introductory sentence of § 181.53(b)(4), the reference ''paragraph (e)(1) or (e)(2)'' is corrected to read ''paragraph (b)(4)(i) or (b)(4)(ii)''.

Dated: February 8, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–3591 Filed 2–15–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 2336]

Bureau of Consular Affairs; Visas: Documentation of Immigrants Under the Immigration and Nationality Act as Amended; Correction

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule published in the Federal Register on January 22, 1996 [61 FR 1523] which promulgates changes to the regulations implementing the Diversity Immigrant Program provided for in INA 201(a)(3), 201(e), 203(c), and 204(a)(1)(G), as amended. This document corrects the effective date of the final rule by amending it to read January 22, 1996.

EFFECTIVE DATE: The effective date published in the Department of State rule published at 61 FR 1523 was incorrectly printed as February 21, 1996. The correct effective date is January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, Department of State, (202) 663–1184.

SUPPLEMENTARY INFORMATION: The Department's Public Notice 2319 published at 61 FR 1523 incorrectly showed an effective date of February 21, 1996. The effective date of this rule should be January 22, 1996. This rule amends § 42.33 of 22 CFR Part 42. This rule modified the petitioning procedure by requiring aliens petitioning for selection to compete for visas, sign their petition and include a photograph. This rule also proves authority for collection of a processing fee in case it should be decided that a fee should be charged.

Dated: February 9, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–3414 Filed 2–15–96; 8:45 am]

BILLING CODE 4110–06–P

Bureau of Political Military Affairs

22 CFR Parts 123 and 126

[Public Notice 2294]

Amendment to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule would amend the International Traffic in Arms Regulations (ITAR) by establishing an exemption for the temporary export of cryptographic products for personal use. The effect of the change would be to ease the burden on U.S. citizens and lawful permanent residents who have the need to temporarily export cryptographic products when leaving the U.S. for brief periods of time.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director for Licensing, Office of Defense Trade Controls, Department of State, (703) 875–6643 or FAX (703) 875–6647.

SUPPLEMENTARY INFORMATION: The U.S. Government has since 1993, at the direction of the President, been reviewing the U.S. policy regarding the domestic use of, and export controls on, cryptographic technology. While U.S. national security and foreign policy compel maintaining appropriate export controls on cryptography, the Department of State has continued to reform the export control procedures applicable to those products incorporating cryptography which are controlled by the ITAR in Category XIII(b)(1). For example, on September 2, 1994, the Department published (at 59 FR 45621) a final rule change which created a new Section 124.15. The section provides for a new arrangement by which the Department of State may provide approval for category XIII(b)(1) cryptography products to be distributed by U.S. manufacturers directly to foreign end users without obtaining an individual license for each transaction.

After extensive review, the Department of State has decided to further amend the regulations to provide for an exemption for the temporary export of cryptographic products for personal use. The exemption does not apply to other circumstances, for example, those in which a person contemplates sales, marketing or demonstration. Nor does the exemption apply to exports to destinations listed in Section 126.1 of the ITAR which are prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a

license for the export) would be prohibited by a U.S. statute (e.g., by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e., Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

This rule amends Part 123 to add a new Section 123.27 to reduce the burden on individual users of cryptographic products by providing an exemption for the temporary export for personal use of products covered by Category XIII(b)(1) when the product remains in the possession of the exporter or the possession of another U.S. citizen or lawful permanent resident traveling with him/her. For purposes of this exemption, a product is considered to be in the possession of the exporter if the exporter takes normal precautions to ensure the security of the product by locking the product in a hotel room, safe, or other comparably secure location; and, while in transit, the exporter keeps the product in his/her carry-on luggage or locked in baggage accompanying the exporter which has been checked with the carrier.

This amendment involves a foreign affairs function of the United States and thus is excluded from the procedures of Executive Order 12866 (58 FR 51735) and 5 U.S.C. 553 and 554.

However, interested parties are invited to submit written comments to the Department of State, Director, Office of Defense Trade Controls, Attn: Regulatory Change, Personal Use Cryptographic Products, Room 200, SA–6, Washington, DC 20520–0602.

This rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq), and will serve to reduce the burden on exporters by adding an exemption which will remove the current requirement for a license.

Paperwork Reduction Act

The record-keeping requirement contained in section 123.27(b) has been approved by OMB and has a control number of 1405–0103. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

22 CFR Part 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M, of the Code of Federal Regulations, is amended as set forth below:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

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

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. 79; 22 U.S.C. 2658.

2. A new § 123.27 is added to read as follows:

§ 123.27 Temporary export for personal use of Category XIII(b)(1) cryptographic products.

(a) District Directors of Customs may permit a U.S. citizen or a U.S. person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) to temporarily export from the United States without a license not more than one each of any unclassified Category XIII(b)(1) cryptographic hardware product and not more than a single copy of each type of unclassified Category XIII(b)(1) cryptographic software product provided that:

(1) The software product(s) are to be used only on a simultaneously temporarily exported Category XIII(b)(1) hardware product or a simultaneously exported item on the Commerce Control List (CCL); and

(2) The cryptographic products covered by Category XIII(b)(1) are not destined for export to a destination listed in § 126.1 of the ITAR (22 CFR 126.1) which is prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g., by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism—currently Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria); and

(3)(i) The encryption products remain in the possession of the exporting person or the possession of another U.S. citizen or lawful permanent resident traveling with him/her, are for their exclusive use and not for copying, demonstration, marketing, sale, re-export or transfer of ownership or control. The export of cryptographic products identified in Category XIII(b)(1) in any other circumstances, for example, those in which a person contemplates sales, marketing, or demonstration must be licensed in accordance with policies and procedures established in this subchapter.

(ii) *Special definition.* For purposes of paragraph (a)(3)(i) of this section, a product is considered to be in the possession of the exporter if:

(A) The exporter takes normal precautions to ensure the security of the product by locking the product in a hotel room, safe, or other comparably secure location; and

(B) While in transit, the exporter keeps the product in his/her carry-on luggage or locked in baggage accompanying the exporter which has been checked with the carrier; and

(4) At the time of export from the U.S. and import into the U.S., the cryptographic products are with the individual's accompanying baggage or effects. They may not be exported or imported in unaccompanied baggage, mailed or transmitted by any other means (e.g., electronically); and, the cryptographic products must be returned to the U.S. at the completion of the stay abroad; and

(5) The exporter, upon request of a U.S. Customs officer, will submit the products to inspection at the time of export and/or import.

(b) Use of this exemption requires the exporter, in lieu of filing a Shippers' Export Declaration, to maintain, for a period of 5 years from the date of each temporary export, a record of that temporary export and the subsequent import. Included in this record must be a self certification that the individual complied with the conditions of paragraph (a) of this section and a self certification that he/she has no reason to believe that any of the temporarily exported cryptographic products were stolen, lost, copied, sold or otherwise compromised or transferred while abroad. The record should include the following information: A description of the unclassified cryptographic products; the countries entered, including the dates of entry and exit for each foreign country; and, the dates of temporary export from and subsequent import into the United States.

(c) In any instance where a product exported under this exemption is stolen, lost, copied, sold or otherwise compromised or transferred while abroad, the exporting person must, within 10 days of his/her return to the United States, report the incident to the Department of State, Office of Defense Trade Controls, Washington, D.C. 20520–0602. Also, any person who knows or has reason to know that cryptographic products exported under

this exemption are being transferred, exported, or used for any other activity which must be licensed or otherwise authorized in writing by the Department of State, should immediately inform the Department of State, Office of Defense Trade Controls, Washington D.C. 20520–0602.

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205.

2. Section 126.1(a) is amended by designating the three sentences of the undesignated paragraph as the third, fourth and fifth sentences of paragraph (a) and by adding a new sixth sentence at the end of paragraph (a) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) * * * With regard to § 123.27 the exemption does not apply with respect to articles originating in or for export to countries prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g., by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e., Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

* * * * *

Dated: November 17, 1995.

Lynn E. Davis,

Under Secretary for Arms Control and International Security Affairs.

[FR Doc. 96–3190 Filed 2–15–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 357 and 370

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills; Regulations Governing Payments by the Automated Clearing House Method

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the general regulations governing book-entry Treasury securities, which apply to investors in the TREASURY DIRECT system, to require the Bureau of the Public Debt to send prenotification messages when an investor has requested that payments on his account be made by the Automated Clearing House (ACH) method, and to modify the number of days required to wait after a prenotification message is sent before live dollar entries can be initiated. This amendment will bring the procedures for prenotification messages for TREASURY DIRECT ACH payments in conformity with the procedures for the National Automated Clearing House Association (NACHA). Part 370 governs payments by the ACH method when such payments are made by Treasury on account of United States securities, including ACH payments in the TREASURY DIRECT system. This rule affects only ACH payments in the TREASURY DIRECT system. Because the amended Part 357 will contain some prenotification procedures inconsistent with Part 370, Part 370 will indicate that it applies to ACH payments made by Treasury on account of United States securities, except as otherwise provided.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–7761 or Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192.

SUPPLEMENTARY INFORMATION: This final rule amends the general regulations governing book-entry Treasury securities to require that, when payments are made by the ACH method, prenotification messages be sent by the Bureau of the Public Debt to the financial institution to which such payments are to be directed, and to change the current waiting period after a prenotification message is sent before live dollar entries can be transmitted from 15 days to 10 days, to conform with the standard practice of NACHA. Prior to this amendment, the regulations provided for prenotification messages to be sent, but did not specifically require such messages. Accordingly, Part 357 is amended by changing § 357.26(b)(3) to provide that prenotification messages must be sent and to require a 10 day waiting period after the prenotification message is sent before a live money transfer can be made. Additionally, the provisions of 31 CFR 370.5 relating to the sending of prenotification messages, which were formerly incorporated by reference, are added to this regulation. Because the amended Part 357, governing the TREASURY DIRECT system, will contain some procedures inconsistent with Part 370, which applies to payments made by the Bureau of the Public Debt by the ACH method of payment, Part 370 is amended to indicate that it applies except as otherwise provided.

Procedural Requirements

It has been determined that this final rule does not meet the criteria for a ''significant regulatory action,'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This rule relates to matters of public contract and procedures for U.S. securities, as well as the borrowing power and fiscal authority of the United States. Accordingly, pursuant to 5 U.S.C. 553(a)(2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this Final Rule, and, therefore, the Paperwork Reduction Act (44 U.S.C. 3504(h)) does not apply.

List of Subjects in 31 CFR Parts 357 and 370

Banks, Banking, Bonds, Federal Reserve System, Government securities, Electronic funds transfer, Government securities, Securities.

Dated: January 11, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set out in the preamble, 31 CFR Parts 357 and 370 are amended as follows:

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Section 357.26(b)(3) is revised to read as follows:

§ 357.26 Payments.

* * * * *

(b) * * *

(3) *Prenotification.* A prenotification message must be sent to the financial

institution designated to receive ACH payments to confirm the accuracy of the account information furnished by an owner, or other person or entity entitled to make the designation, and to advise the financial institution that such account has been so designated. Prenotification messages may be sent at any time, but not less than 10 calendar days prior to the first ACH payment. A prenotification message may also be sent whenever there is a change in the payment instructions. The prenotification message shall contain the ABA routing/transit number of the financial institution to which payments with respect to a security are to be made, as well as a depositor name reference, deposit account number, and type or classification of account at the institution to which such payments are to be credited. Responses to a prenotification message will be received in accordance with the provisions in 31 CFR 370.5. Where the circumstances indicate that there is insufficient time to effect the change received in response to the prenotification message, payment will be made by check in accordance with paragraph (c) of this section.

* * * * *

PART 370—REGULATIONS GOVERNING PAYMENTS BY THE AUTOMATED CLEARING HOUSE METHOD ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for Part 370 continues to read as follows:

Authority: 31 U.S.C. Chapter 31.

2. Section 370.0 is revised to read as follows:

§ 370.0 Applicability.

The regulations in this part apply to the Automated Clearing House method of payment where employed by the Bureau of the Public Debt in connection with United States securities, except as otherwise provided.

[FR Doc. 96–3168 Filed 2–15–96; 8:45 am]

BILLING CODE 4810–39–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–28–1–7164a; FRL–5316–7]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Revisions to the South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the South Carolina State Implementation Plan (SIP) submitted on March 3, 1995, by the State of South Carolina, through the South Carolina Department of Environment, Health and Natural Resources. These revisions involve R.61–62.5 Standard Number 7. Prevention of Significant Deterioration. The intended effect of these revisions is to bring the South Carolina rules into compliance with the current EPA terminology.

DATES: This action is effective April 16, 1996 unless notice is received by March 18, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the SCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

South Carolina Department of Environment, Health and Natural Resources, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4212.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the State of South Carolina, through the South Carolina Department of Environment, Health and Natural Resources, submitted revisions to the South Carolina State Implementation Plan (SIP). These revisions involve R.61–62.5 Standard Number 7. Prevention of Significant Deterioration.

EPA is approving the following and revisions of existing rules in the South Carolina SIP. These new rules and revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

I.C(4)

This rule has been revised to add a reference to the definition of particulate matter (PM–10).

I.N(1)(c), I.O(2)(b), and I.O(3)

These rules have been revised to add references to the PM–10 increments in Parts N and O.

II.A

This section was revised to replace all references to total suspended particulate increments with references to PM–10 increments and to convert all limits to PM–10 standards.

II.D

This section which covered exclusions from increment consumption was removed and labeled ''reserved.''

III.D

This section was revised to replace ''allow able'' with ''allowable.''

III.H(1)

This rule was revised to delete a reference to total suspended particulate matter.

III.I(1) through III.I(2)(ii)

These rules were revised to ensure that Part I conforms to the federal rule governing the maximum allowable increase of PM–10. This was accomplished by requiring all owners or operators applying for a plant permit or modification of an existing permit after November 25, 1994, to meet the requirements of Federal PM–10 Regulations as in effect on the aforementioned date.

IV.D(1)&(2)

These rules were revised to ensure that Part D reflects the changes in requirements of Federal modeling due to the revision of the manual ''Guidelines to Air Quality Models.''

IV.H(4)

This rule was revised to correct the PM–10, 24-hour maximum standard from 10μg/m^3 to 30μg/m^3.

Final Action

In this notice, EPA is approving the revisions to the South Carolina Environmental Management regulations listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on April 16,

1996. However, if notice is received by March 18, 1996 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120, is amended by adding paragraph (c)(39) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(39) The PSD regulation revisions to the South Carolina State Implementation Plan which were submitted on March 3, 1995.

(i) Incorporation by reference.

(A) Regulations 61–62.5, Standard No. 7 Prevention of Significant Deterioration; I.C(4), I.N(1)(c), I.O(2)(b), I.O(3), II.A, II.D, III.D(10)(b), III.H(1), III.I(1) through III.I(2)ii, IV.D (1) & (2), and IV.H(4) effective on November 25, 1994.

(ii) Other material. none

* * * * *

[FR Doc. 96–2583 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5420–9]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion of Flowood Site from the National Priorities List (NPL).

SUMMARY: EPA, Region 4, announces the deletion of the Flowood Site from the National Priorities List (NPL). The NPL is 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 of 1980 (CERCLA). EPA and the State of Mississippi (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA

and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 16, 1996.

ADDRESSES: Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at the Region 4 office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone No. (404) 347–3555, extension 6217

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Pearl Public Library, 3470 Highway 80 East, Pearl, Mississippi 39208, Telephone No. (601) 932–2562.

FOR FURTHER INFORMATION CONTACT: Betty L. Winter, Community Involvement Specialist, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2643 ext. 6264.

SUPPLEMENTARY INFORMATION: EPA announces the deletion of the Flowood Site in Rankin County, Mississippi from the National Priorities List (NPL), which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). 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 Substances Superfund Response Trust Fund (Fund). Pursuant to 42 U.S.C. section 9605 (40 CFR 300.425(e)(3) of the NCP), any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

EPA published a Notice of Intent to Delete the Flowood Site from the NPL on June 15, 1995 in the Federal Register (60 FR 31440). EPA received no comments on the proposed deletion; and, therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion. Deletion of a site from the NPL does not affect the responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 12, 1996.

Phyllis P. Harris,

Acting Regional Administrator, EPA Region 4.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 191 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site ''Flowood Site, Flowood, Mississippi''.

[FR Doc. 96–3281 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA62

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Correction

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the Office of Federal Contract Compliance Programs (OFCCP) final regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), which were published January 5, 1995 (60 FR 1986). Those final regulations incorporated, among other things, statutory changes in the mandatory job listing obligations of Federal contractors and subcontractors. The statutory changes eliminated the $25,000 per year salary ceiling and otherwise broadened the scope of job openings that Federal contractors and subcontractors must list with the State employment service.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Joe N. Kennedy, Deputy Director, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 219–9475 (voice) and 1–800–326–2577 (TDD). Copies of this correction document are available in the following alternate formats at the above office: electronic file on computer disk, large print and audio tape.

SUPPLEMENTARY INFORMATION:

Background

Prior to amendment in 1994, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) (''VEVRAA'' or ''Section 4212''), required that Federal contractors and subcontractors covered by VEVRAA must list ''all * * * suitable employment openings'' with the appropriate local employment service office. VEVRAA required those offices, in turn, to give priority referrals to veterans for such openings. This obligation to list job openings with the local employment service office is often referred to as the ''mandatory listing'' requirement. Although Section 4212 did not define the term ''all * * * suitable employment openings,'' this term was defined in OFCCP implementing regulations at 41 CFR 60–250.4(h).

Section 702(a) of the Veterans' Benefits Improvements Act of 1994 (Pub. L. 103–446, 108 Stat. 4645, 4674 (1994)), expanded the scope of the employment openings to be listed with the State employment service office by dropping the word ''suitable'' from the statutory phrase ''all * * * suitable employment openings,'' broadly defining the term ''all * * * employment openings,'' and limiting the exceptions to the mandatory listing requirement.

The statutory amendment to the mandatory listing requirement does not list all of the exceptions to mandatory listing permitted previously by OFCCP regulations. The amendment eliminated the salary ceiling of $25,000 per year which was in the OFCCP regulations, and now requires the listing of all employment openings except executive and top management positions, positions that will be filled from within the contractor's organization, and positions lasting three days or less. The final regulation published on January 5, 1995, amended OFCCP's regulation at

41 CFR 60–250.4, which contains the affirmative action clause for disabled veterans and veterans of the Vietnam era. Specifically, OFCCP intended to amend the paragraphs prescribing the employment openings to be listed with the State employment service in order to make the VEVRAA affirmative action clause consistent with the 1994 statutory amendment.

Need for Correction

A few inadvertent errors were made in the January 5, 1995, rule amending the VEVRAA affirmative action clause. First, two sentences at the end of paragraph (b) relating to contractors' reporting obligations, which were not changed by the statutory amendment, were inadvertently left out of the published final rule. Second, part of paragraph (g) refers to an exemption no longer permitted under the statutory amendment, that is, openings to be filled pursuant to a ''customary and traditional employer-union hiring arrangement,'' and such reference should have been deleted. Third, minor errors of punctuation were made in the authority citation for 41 CFR Part 60–250. As described below, these errors were inadvertent, clerical mistakes that need correction.

The two sentences at the end of paragraph (b) that were inadvertently left out of the final rules read as follows:

> The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.
>
> State and local government agencies holding Federal contracts of $10,000 or more shall also list all their employment openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

These two sentences involve VEVRAA-related reporting responsibilities, and it must be highlighted that the 1994 statutory amendments did not amend the VEVRAA reporting requirements. OFCCP only intended to make regulatory revisions on January 5, 1995, that were nondiscretionary changes mandated by the 1994 statutory amendments. Indeed, the final rule evoked the good cause exemption under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), for dispensing with the issuance of a proposal and the provision of public notice and comment procedures because it was a ''nondiscretionary, ministerial action which merely incorporates, without change, two statutory amendments into pre-existing regulations.'' 60 FR 1986. Making substantive changes to the reporting requirements, including what amounts to eliminating an exemption from certain reporting for State and local government agencies holding covered Federal contracts, was beyond OFCCP's statutory authority without providing the public with notice and an opportunity to comment. The agency's intent to retain the reporting provisions in paragraph (b) is also evidenced by the fact that other reporting provisions were left in the affirmative action clause in paragraph (d), which explicitly reference the provisions in (b) that were mistakingly left out of the January 5 Federal Register publication.

Regarding paragraph (g), as noted above, the statutory amendments expressly limited the number of exemptions from the mandatory listing requirement and did not provide for the exemption in paragraph (g) for openings to be filled pursuant to a ''customary and traditional employer-union hiring arrangement.'' In accordance with the 1994 Congressional mandate, the January 5, 1995, final rule removed the reference to the employer-union exemption in paragraph (h)(1) and deleted the definition of the term that had appeared in paragraph (h)(4). The language in paragraph (g) referring to exemptions for openings which the contractor proposes ''to fill pursuant to a customary and traditional employer-union hiring arrangement'' is also contrary to the 1994 statutory amendments, and the agency intended to eliminate it. Accordingly, paragraph (g) is revised by deleting all references to exemptions for employer-union arrangements.

In addition, this publication makes minor technical corrections involving the punctuation of the authority citation for 41 CFR Part 60–250.

All of the above errors were inadvertent, clerical mistakes that are within OFCCP authority to correct.

Waiver of Proposed Rulemaking

These amendments correct inadvertent errors in the January 5, 1995, final regulations that were a nondiscretionary, ministerial action which merely sought to incorporate, without change, statutory amendments into pre-existing regulations. Publication of these technical corrections in proposed form serves no useful purpose, and therefore is unnecessary and contrary to the public interest within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Thus, good cause exists to dispense with notice of proposed rulemaking.

Effective Date

Pursuant to 5 U.S.C. 553(d) the undersigned have determined that good cause exists for making these correcting amendments effective upon publication. This determination is based upon the fact that these correcting amendments are nondiscretionary, ministerial actions which merely incorporate, without change, a statutory amendment into preexisting regulations. Moreover, the rules that are being corrected were made effective upon their publication on January 5, 1995. Accordingly, it is unnecessary and contrary to the public interest to delay the effective date of these corrections and, therefore, this regulation will be effective upon publication.

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil Rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Veterans.

Signed at Washington, D.C. this 9th day of February 1996.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

For the reasons set forth above, 41 CFR Part 60–250 is corrected by making the following correcting amendments:

1. The authority citation for Part 60–250 is revised to read as follows:

> Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (3 CFR 1971–1975 Comp. p. 841).

2. Section 60–250.4 is corrected by adding two sentences to the end of paragraph (b) and by revising paragraph (g) to read as follows:

§ 60–250.4 Affirmative action clause.

* * * * *

(b) * * * The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of $10,000 or more shall also list all their employment openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

* * * * *

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to

openings which the contractor proposes to fill from within his own organization. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside his own organization for that opening.

* * * * *

[FR Doc. 96–3425 Filed 2–15–96; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Parts 57 and 58

RIN: 0906–AA38

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans and Grants for Training of Public Health and Allied Health Personnel

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final regulation.

SUMMARY: This final rule revises existing regulations which govern various Public Health Service (PHS) health professions, nursing, and allied health training grant, scholarship, traineeship, and loan programs. The affected regulations are amended primarily by the Health Professions Extension Amendments of 1992 which: Renumbered the various PHS Act section numbers and their corresponding United States Code numbers; repealed the authority for the National Advisory Council on Health Professions Education; and repealed and eliminated various title VII and VIII health professions, nursing, and allied health training grant and traineeship programs. Some of the currently codified regulations no longer reflect the current provisions of the statute and are not modifiable as such and, therefore, are also being removed from the Code of Federal Regulations (CFR). The definition of ''State'' is being revised in each of the program regulations in accordance with the 1994 Compact of Free Association with [the Republic of] Palau. Other changes for consistency are made to the regulations and are technical or clarifying in nature.

EFFECTIVE DATE: These regulations are effective February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Betty B. Hambleton, Chief, Planning, Evaluation, and Legislation Branch, Office of Research and Planning, Bureau of Health Professions, Health Resources and Services Administration, room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–1590.

SUPPLEMENTARY INFORMATION: This final rule amends various Public Health Service (PHS) health professions, nursing, and allied health training grant, traineeship, scholarship, and student loan program regulations under title 42, parts 57 and 58 to bring these programs into conformity with statutory amendments made to the various sections of the PHS Act under titles VII and VIII. The following ministerial and technical changes are being made to the various titles VII and VIII programs:

(1) The Health Professions Extension Amendments of 1992, Pub. L. 102–408, reorganized and renumbered the sections in the Public Health Service (PHS) Act and their corresponding United States Code numbers. Technical changes affecting the various programs under titles VII and VIII are being made to revise the PHS section numbers in the regulations (see part 57, subparts C, H, I, L, Q, S, V, CC, DD, EE, FF; part 58, subparts C, and D);

(2) The reference to former sections 799A and 845 of the PHS Act (referenced in each of our regulatory sections entitled, ''*What additional Department regulations apply to grantees?*'') codified under 45 CFR part 83 is being revised to read ''section 794'' and ''section 855'' of the PHS Act. The footnote to the citation ''45 CFR part 83'' is being deleted (see part 57, subparts C, D, F, H, L, Q, R, S, V, Y, Y, Z, CC, DD, EE, FF, OO, and PP; and part 58, subparts C and D). Former section 799A, 42 U.S.C. 295h–9, ''Discrimination on Basis of Sex Prohibited'' was redesignated as section 704 by Pub. L. 94–484 and was renumbered as section 794 (42 U.S.C. 295m) by Pub. L. 102–408. Former section 845 was redesignated as section 855 (42 U.S.C. 298b-2), ''Prohibition Against Discrimination by Schools on the Basis of Sex'' by Pub. L. 94–63;

(3) Pub. L. 102–408 amended title VII programs by repealing the National Advisory Council on Health Professions Education effective October 1, 1992. Therefore, in accordance with the repealing of this National Advisory Council, as it affects the evaluation and recommendation process of awarding grant applications, the Department is removing the definition of ''Council'' and the reference to the National Advisory Council on Health Professions Education in the various programs to reflect current statutory language under section 798(a)(2)(A) of the PHS Act (see part 57, subparts H, L, Q, S, V, EE, and FF);

(4) Section 212 of Pub. L. 102–408 amended section 851 of the PHS Act by revising the title of the National Advisory Council on Nurse Training to read ''National Advisory Council on Nurse Education and Practice''. Therefore, the Department is revising the reference to the Advisory Council's name in the following nursing programs: part 57, subparts Y and Z;

(5) Pub. L. 101–219, the 1994 Compact of Free Association with [the Republic of] Palau, ended the United States' responsibility for Palau under the Trusteeship Agreement (the Trust Territories of the Pacific Islands). The reference to the ''Trust Territories of the Pacific Islands'' in the definition of ''State'' is removed (see part 57, subparts C, D, F, H, L, Q, R, S, V, Y, Z, CC, DD, EE, FF, OO, and PP; and part 58, subparts C, and D); the reference to ''Trust Territories of the Pacific Islands (TTPI)'' in the program regulations (regarding eligibility in relation to a resident, citizen, or national of the United States) is removed (see part 57, subparts C, D, F, S, CC, and DD; part 58, subpart D). The reference to Palau is now stated as ''the Republic of Palau''.

(6) The reference to former section 705 of the PHS Act (now renumbered as section 798(e)) concerning audit and inspection requirements is being removed. The reference to section 705 is redundant to the requirements that are already covered under 45 CFR part 74—Administration of Grants, which is referenced in each training grant regulatory section entitled, ''*What other audit and inspection requirements apply to grantees?*'' (see part 57, subparts H, L, Q, S, V, CC, DD, EE, FF, and OO; and part 58, subparts C & D);

(7) Additionally, the parenthetical phrase citing the OMB approval number ''0915–0060'' regarding information collection requirements at the end of each regulatory section entitled, ''*What other audit and inspection requirements apply to grantees?*'', is no longer necessary and is also being removed (see part 57, subparts H, L, Q, S, V, EE, and FF, and OO);

(8) The preamble also includes discussions on those subparts under parts 57 and 58 that are no longer viable programs (see part 57, subparts T, AA, HH, and NN; and part 58, subparts A, B, E, and F). Some of these regulations no longer reflect the current provisions of the statute and are not modifiable as such, or their legislative authorities have expired or were eliminated or repealed by Pub. L. 102–408. Therefore, the above subparts are being removed and placed in reserve status in the CFR.

Additional revisions to the following programs, implemented by the Health Resources and Services Administration, Bureau of Health Professions, codified

at 42 CFR parts 57 and 58, are discussed below according to the subparts, section numbers, and headings affected.

Subpart C—Health Professions Student Loans

This final rule amends Part 57, subpart C governing the Health Professions Student Loan program under sections 721–735 of the PHS Act to:

1. Revise § 57.202, entitled ''Definitions.'', by revising the definitions of ''Health professions school or school'' and ''State'' to reflect current Department policy language for consistency in title 42, part 57 and part 58 definitions.

2. Revise § 57.205, entitled ''Health professions student loan funds.'', by adding a parenthetical phrase at the end of the section citing the current OMB control number.

3. Revise § 57.206, entitled ''Eligibility and selection of health professions student loan applicants.'', by removing paragraph (a)(2) regarding the repayment of loans by service obligation in a health professions shortage area. (The provisions in former section 741(f) were eliminated by Pub. L. 102–408.) Paragraph (a)(3) is redesignated as (a)(2).

4. Revise § 57.210, entitled ''Repayment and collection of health professions student loans'', by revising the parenthetical phrase at the end of the section providing the current OMB control number; and by removing the phrase ''or cancellation or repayment under section 741(f) of the Act'' in paragraph (b)(2)(i), in accordance with Pub. L. 102–408 which eliminated the HPSL loan repayment by service obligation authority.

5. Remove and reserve in the CFR § 57.212, entitled ''Repayment or cancellation of loans for practice in a health professional shortage area.'', in accordance with Pub. L. 102–408 which eliminated the HPSL loan repayment by service obligation authority. Succeeding section numbers under this subpart (§§ 57.213—57.218) will *not* be redesignated but remain the same.

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

This final rule amends Part 57, subpart S governing the Educational Assistance to Individuals from Disadvantaged Backgrounds program under section 740 of the PHS Act to revise paragraph (b) in § 57.1804, entitled ''Who is eligible for educational assistance?''. Paragraph (b) indicates a requirement for eligibility that individuals must ''have completed at least the junior year of high school (or its equivalent)''. The Department is adding the words ''except in the case of Model Demonstration programs'' at the end of the sentence to provide flexibility for the Department to administer a limited number of awards to test the feasibility or viability of a Model Demonstration program permitting students prior to the junior year to receive assistance under these programs.

Subpart T—Nursing Special Project Grants

Section 820 of the PHS Act, 42 U.S.C. 296k, as it was in effect for Nursing Special Project Grants, was amended by Pub. L. 102–408, the Health Professions Extension Amendments of 1992, to substitute for the existing authority a new four-part authority and revised former project purposes, eligibility provisions, and other requirements. The Department is, therefore, removing from title 42, part 57 of the *Code of Federal Regulations* this program under subpart T, consisting of §§ 57.1901 through 57.1910, and placing it in reserve status.

Subpart Z—Grants for the Advanced Nurse Education Programs

This final rule amends Part 57, subpart Z governing the Grants for Advanced Nurse Education Programs under section 821 of the PHS Act to:

1. Revise § 57.2501, entitled ''Applicability.'', by revising the phrase ''expand'' in (b) to read ''significantly expand existing programs'' and removing the phrase ''maintain programs'' in (c) in accordance with the amendments in Pub. L. 102–408. This section is further revised to remove two types of nurse specialties that can obtain support under this authority in accordance with Pub. L. 102–408. The two types of specialties that are being removed are nurse administrators and nurse researchers.

2. Revise § 57.2503, entitled ''Eligibility.'', by revising paragraph (b)(2) to indicate that a grant would meet the cost for a project to ''significantly'' expand an advanced nurse education program through the indicated activities listed. Paragraph (b)(3), that indicates that a grant would meet the cost for a project to ''maintain'' an advanced nurse education program, is being removed in accordance with Pub. L. 102–408.

3. Revise § 57.2504, entitled ''Application.'', by revising paragraph (c)(1) to state the current statutory language for grants to contain a proposal for a project to: (i) Plan, develop, and operate new programs, or (ii) significantly expand an advanced nurse education program. Former paragraph (c)(1)(iii) is removed and paragraph (d) is revised to reflect the current statutory language.

4. Revise § 57.2506, entitled ''Evaluation and grant awards.'', by removing the reference to the funding priority for educational programs in geriatric and gerontological nursing. Pub. L. 102–408 repealed the funding priority.

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

Section 822(b) of the PHS Act, 42 U.S.C. 296m, as it was in effect for Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs for service-conditional nurse practitioner and nurse midwifery traineeships was eliminated by section 204 of Public Law 102–408, the Health Professions Extension Amendments of 1992 (106 Stat. 2072). The Department is, therefore, removing from title 42, part 57 of the Code of Federal Regulations this program under subpart AA, consisting of §§ 57.2601 through 57.2617, and placing it in reserve status.

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

This final rule amends Part 57, subpart DD governing the program for Financial Assistance for Disadvantaged Health Professions Students under section 740 of the PHS Act to:

1. Revise § 57.2904, entitled ''Eligibility and selection of aid recipients.'', by revising the parenthetical phrase at the end of the section providing the current OMB control number.

2. Revise § 57.2909, entitled ''What other records, audit, and inspection requirements apply to schools?'', by revising the parenthetical phrase at the end of the section providing the current OMB control number.

Subpart HH—Programs for the Training of Expanded Function Dental Auxiliaries

Section 2740(c)(1) of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 922, amended section 783(a) of the PHS Act to authorize provisions only for physician assistant training. Concurrently, section 2744 of Pub. L. 97–35 (95 Stat. 924) restructured the provisions in section 783(a)(2) for Grants for Programs for the Training of Expanded Functional Dental Auxiliaries and the provisions were subsumed under the authority of redesignated section 788(b), as it was in effect for Conversion and Curriculum Grants for Various Health Professions, 42 U.S.C. 295g–8. Subsequently, the provisions

under section 788(b) were amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, to provide for more broad provisions in health promotion and disease prevention, various curriculum development training, and health professions initiatives.

Pub. L. 102–408, the Health Professions Education Extension Amendments of 1992, repealed several existing definitions under former section 701 of the PHS Act (now renumbered as section 799), including the definition for ''program for the training of expanded function dental auxiliaries'', as being no longer needed for administration of title VII programs. The Department is, therefore, removing from title 42, part 57 of the Code of Federal Regulations this program under subpart HH, consisting of §§ 57.3301 through 57.3303, and placing it in reserve status.

Subpart NN—Various Health Professions Projects (Model Education)

Pub. L. 102–408 repealed section 788(b) of the PHS Act, the authority as it was in effect for grants or contracts for the development and implementation of model projects in areas such as faculty and curriculum development, and development of new clinical training sites. The Department is, therefore, removing from title 42, part 57 of the Code of Federal Regulations this program under subpart NN, consisting of §§ 57.3901 through 57.3910, and placing it in reserve status.

Part 58—Grants for Training of Public Health and Allied Health Personnel

Subpart A—Grants to Graduate Programs in Health Administration

Section 791 of the PHS Act, 42 U.S.C. 295h, as it was in effect for Grants to Graduate Programs in Health Administration for institutional grants to graduate programs in health administration was repealed by Pub. L. 102–408, the Health Professions Extension Amendments of 1992. The Department is, therefore, removing from title 42, part 58 of the Code of Federal Regulations this program under subpart A, consisting of §§ 58.1 through 58.11, and placing it in reserve status.

Subpart B—Special Project Grants for Graduate Programs in Public Health

Section 788(b) of the PHS Act, 42 U.S.C. 295g–8, as it was in effect for Special Project Grants for Graduate Programs in Public Health was repealed by section 2744 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 923). The Department is, therefore, removing from title 42, part 58 of the Code of Federal Regulations this program under subpart B, consisting of §§ 58.20 through 58.29, and placing it in reserve status.

Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs

This final rule amends Part 58, subpart C governing the Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs under section 761 of the PHS Act to:

1. Revise § 58.202, entitled ''Definitions.'', to amend the definitions of ''Educational entity'', ''Nonprofit'', and ''State'' to reflect current Department policy language for consistency in title 42, part 57 and part 58 definitions.

2. Revise § 58.205, entitled ''How is the amount of the award determined?'', to:

(a) Remove paragraph (a)(1) to reflect current Department policy language for consistency in title 42 CFR part 58 regulations; and

(b) Redesignate paragraph (a)(2) as paragraph (a) and revise the eligibility element in the formula for the distribution of funds as follows: The proportion of eligible full-time and full-time equivalent graduate students of each applicant enrolled in severe shortage occupations targeted for support (epidemiology, environmental health, biostatistics, toxicology, public health nutrition, and maternal and child health) to the total full-time and full-time equivalent enrollment of students in these fields of all applicants having approved applications. Modifications in the formula are the result of statutory changes in Pub. L. 102–408. The number of full-time equivalent students means the number of part-time students converted to full-time by dividing the total number of credit hours in which part-time students are enrolled by nine.

Subsequently, Pub. L. 103–43, the National Institutes of Health Revitalization Act of 1993, enacted June 10, 1993 (107 Stat. 217) added ''maternal and child health'' as a severe shortage health professions field eligible for support.

3. Revise § 58.208, entitled ''What are the requirements for traineeships and the appointment of trainees?'', to:

(a) Remove the words ''traineeships and the'' in the heading and remove paragraphs (a) through (e), in accordance with Pub. L. 102–408 which eliminated requirements for traineeships (paragraphs (f) through (i) are redesignated as paragraphs (a) through (d)); and

(b) Add the current OMB control number for information collections at the end of the section.

4. Revise in its entirety § 58.209, entitled ''Who is eligible for financial assistance as a trainee?'', to reflect the change in eligibility criteria in accordance with Pub. L. 102–408. The changes in criteria were announced in the Federal Register by proposed notice on April 13, 1993. A comment period of 30 days was established to allow public comment concerning the proposed review criteria. No comments were received. A final notice was published June 11, 1993. Further, Pub. L. 103–43, added the health professions field of ''maternal and child health'' to the list of fields in which there is a severe shortage of health professionals.

5. Revise § 58.213, entitled ''What additional Department regulations apply to grantees?'', to add a new CFR citation to bring this program into compliance with governmentwide requirements established for this Department under 45 CFR part 93, in accordance with Pub. L. 101–121, section 319, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, enacted on October 23, 1989, and an Interim-Final Rule, published in the Federal Register on February 26, 1990 (55 FR 6736). This CFR citation is cited in the amendatory language as ''45 CFR part 93—New restrictions on lobbying''.

Subpart D—Grants for Traineeships in Health Administration, Hospital Administration, or Health Policy Analysis and Planning at Public or Nonprofit Private Educational Institutions Other Than Schools of Public Health

This final rule amends Part 58, subpart D governing the Grants for Traineeships in Health Administration, Hospital Administration, or Health Policy Analysis and Planning at Public or Nonprofit Private Educational Institutions Other than Schools of Public Health under section 771 of the PHS Act to:

1. Revise the heading of Subpart D to read ''Grants for Health Administration Traineeships and Special Projects Program'', in accordance with Pub. L. 102–408.

2. Revise § 58.222, entitled ''Definitions.'', to amend the definitions of ''Nonprofit'' and ''State'' to reflect current Department policy language for consistency in title 42, part 57 and part 58 definitions.

3. Revise § 58.224, entitled ''How will applications be evaluated?'', to reflect current Department policy language for

consistency in 42 CFR part 57 and part 58 regulations and add the statutory criteria for the review of applications.

4. Remove § 58.228, entitled ''What are the requirements for traineeships and the appointment of trainees?'', in its entirety. Pub. L. 102–408 eliminated the traineeship requirements.

5. Redesignate § 58.229, entitled ''Who is eligible for financial assistance as a trainee?'', as § 58.228 and revise paragraph (a) concerning an eligible individual's citizenship status, the Immigration and Naturalization Service policy as it relates to the admission into the United States, its territories and possessions, to reflect current Department policy language for consistency in title 42, part 57 and part 58 regulations.

6. Redesignate § 58.230, entitled ''What financial support is available to trainees?'', as § 58.229.

7. Redesignate § 58.231, entitled ''Duration of traineeships.'' as § 58.230.

8. Redesignate § 58.232, entitled ''Termination of traineeships.'', as § 58.231.

9. Redesignate § 58.233, entitled ''What additional Department regulations apply to grantees?'' as § 58.232 and revise it to add a new CFR citation to bring this program into compliance with governmentwide requirements established for this Department under 45 CFR part 93, in accordance with Pub. L. 101–121, section 319, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, enacted on October 23, 1989, and an Interim-Final Rule, published in the Federal Register on February 26, 1990 (55 FR 6736). This CFR citation is cited in the amendatory language as ''45 CFR part 93—New restrictions on lobbying''.

10. Redesignate § 58.234, entitled ''What other audit and inspection requirements apply to grantees?'' as § 58.233, remove the legislative authority citations in parenthesis at the end of the section, and revise the section text to reflect Department policy concerning audit and inspection.

11. Redesignate § 58.235, entitled ''Additional conditions.'' as § 58.234.

Subpart E—Grants for Allied Health Projects

The authority for section 796(a) of the PHS Act, 42 U.S.C. 295h–5, as it was in effect for Grants for Allied Health Projects was not extended by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981 (special projects relating to the training of allied health personnel was modified under former section 788(b), subpart NN). Pub. L. 100–607, the Health Professions Reauthorization Act of 1988 reinstated a section 797 for Allied Health Projects, but under different provisions. Because the current regulatory provisions and authority under former section 796(a) is not modifiable to the current section 797 provisions, the Department is removing from title 42, part 58 of the Code of Federal Regulations this program under subpart E, consisting of §§ 58.401 through 58.414, and placing it in reserve status.

Subpart F—Grants for Traineeships for the Advanced Training of Allied Health Personnel

The authority for section 797 of the PHS Act, 42 U.S.C. 295h–6, as it was in effect for Grants for Traineeships for the Advanced Training of Allied Health Personnel was not extended by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. The provisions were modified under former section 788(b), subpart NN. Pub. L. 100–607, the Health Professions Reauthorization Act of 1988 reinstated a section 797 for Allied Health Traineeships, but under different provisions. Because the current regulatory provisions and authority under former section 797 is not modifiable to the current section 797 provisions, the Department is removing from title 42, part 58 of the Code of Federal Regulations this program under subpart F, consisting of §§ 58.501 through 58.515, and placing it in reserve status.

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are of a technical nature, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department believes that the resources required to implement the requirement in these regulations are minimal. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a ''significant'' rule under Executive Order 12866.

Paperwork Reduction Act of 1980

The following list of subparts in this final rule contains information collection language which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and have been assigned control numbers for each affected section as listed below under each subpart.

Section No.	OMB control No.
Part 57	
Subpart C—Health Professions Student Loan Program:	
§ 57.205	0915–0047
§ 57.206	0915–0047
§ 57.208	0915–0047
§ 57.210	0915–0047
§ 57.211	0915–0047
§ 57.215	0915–0047
§ 57.216a	0915–0047

Section No.	OMB control No.
Subpart D—Nursing Student Loan Program:	
§57.305	0915–0047
§57.306	0915–0047
§57.308	0915–0047
§57.310	0915–0047
§57.311	0915–0047
§57.312	0915–0047
§57.315	0915–0047
§57.316a	0915–0047
Subpart F—Grants for Nurse Anesthetist Traineeships:	
§57.509	0915–0060
§57.510	0915–0060
§57.512	0915–0060
Subpart H—Grants for Physician Assistant Training Programs:	
§57.704	0915–0060
§57.705	0915–0060
Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry:	
§57.1104	0915–0060
Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs:	
§57.2404	0915–0060
§57.2405	0915–0060
Subpart Z—Grants for Advanced Nurse Education Programs:	
§57.2504	0915–0060
Subpart CC—Scholarships for Students of Exceptional Financial Need (EFN):	
§57.2803	0915–0028
§57.2804	0915–0028
§57.2809	0915–0028
Subpart DD—Financial Assistance for Disadvantaged Health Professions Students (FADHPS):	
§57.2904	0915–0028
§57.2909	0915–0028
Subpart EE—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics:	
§57.3003	0915–0060
§57.3004	0915–0060
§57.3007	0915–0060
Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics:	
§57.3104	0915–0060
Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry:	
§57.4103	0915–0060
§57.4110	0915–0060

Part 58

Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs:	
§58.208	0915–0060
Subpart D—Grants for Health Administration Traineeships and Special Projects Program:	
§58.224	0915–0060

List of Subjects in 42 CFR Parts 57 and 58

Aged, Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs, Medical and dental schools, Student aid, Reporting and recordkeeping requirements, Scholarships and fellowships, Public health.

Dated: November 2, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

Approved: February 6, 1996.

Donna E. Shalala,

Secretary.

Accordingly, section 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216), 42 CFR parts 57 and 58 are amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for subpart C is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747 of the Public Health Service Act, 77 Stat. 170–173, as amended, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536, and 102 Stat. 3125 (42 U.S.C. 294m-q); renumbered as secs. 721–735, as amended by Pub. L. 102–408, 106 Stat. 2011–2022 (42 U.S.C. 292q—292y).

2. Section 57.202 is amended by revising section number ''741(b)'' in the definition of *Full-time student* to read ''722(b)''; and by revising the definitions of *Health professions school* or *school* and *State* to read as follows:

§ 57.202 Definitions.

* * * * *

Health professions school or *school*, for purposes of this subpart, means a public or private nonprofit school of medicine, school of dentistry, school of osteopathic medicine, school of pharmacy, school of podiatric medicine, school of optometry, or school of veterinary medicine as defined in section 799(1)(A) of the Act.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 57.203 [Amended]

3. Section 57.203 is amended by revising section number ''740'' in paragraph (c) to read ''721''.

4. Section 57.205 is amended by revising section number ''743'' in paragraph (a)(1)(ii) to read ''728''; and by adding the OMB information collections control number at the end of the section to read as follows:

§ 57.205 Health professions student loan funds.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

5. Section 57.206 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2); and by revising paragraph (a)(1)(i) to read as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(i) Residents of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia;

* * * * *

6. Section 57.210 is amended by revising section number ''741(c)'' in paragraph (b)(2)(ii) to read ''722(c)''; by revising the first sentence in paragraph (b)(2)(i); and by revising the parenthetical phrase at the end of the section to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b) * * *

(2) *Late change.* (i) For any health professions student loan made after June 30, 1969, but prior to October 22, 1985, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment under section 722(c) of the Act for any failure to file timely and satisfactory evidence of the entitlement.

* * *

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

§ 57.211 [Amended]

7. Section 57.211 is amended by revising section number ''741(d)'' in paragraph (a) and (b) to read ''722(d)''.

§ 57.212 [Removed and Reserved]

8. Section 57.212 is removed and reserved.

§ 57.213 [Amended]

9. Section 57.213a is amended by revising section number ''743'' in paragraph (a)(2) to read ''728''.

§ 57.214 [Amended]

10. Section 57.214 is amended by revising section number 74l(1)'' in the introductory text to read ''722(k)''.

§ 57.215 [Amended]

11. Section 57.215 is amended by revising section number ''705'' in paragraph (a)(3) to read ''798(e)''.

§ 57.216 [Amended]

12. Section 57.216 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart D—Nursing Student Loans

1. The authority citation for subpart D is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 835–842 of the Public Health Service Act, 77 Stat. 913–916, as amended by 99 Stat. 397–400, 536–537, and 102 Stat. 3160–3161 (42 U.S.C. 297 a–i).

2. Section 57.302 is amended by revising the definition of *State* to read as follows:

§ 57.302 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

3. Section 57.305 is amended by adding the OMB information collections control number at the end of the section to read:

§ 57.305 Nursing student loan funds.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

4. Section 57.306 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

(a) * * *

(1) * * *

(i) Residents of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia;

* * * * *

§ 57.310 [Amended]

5. Section 57.310 is amended by revising the Office of Management and Budget control number ''0915–0094'' in the parenthetical phrase at the end of the section to read ''0915–0047''.

§ 57.312 [Amended]

6. Section 57.312 is amended by revising section number ''836(h)(1)(A)'' in paragraph (a)(1) to read ''846(a)(1)''.

§ 57.313 [Amended]

7. Section 57.313 is amended by revising section number ''836(i)'' in paragraph (b) to read ''836(h)''.

§ 57.314 [Amended]

8. Section 57.314 is amended by revising section number ''836(j)'' in the introductory text to read ''836(i)''.

§ 57.316 [Amended]

9. Section 57.316 is amended by removing footnote three to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart F—Grants for Nurse Anesthetist Traineeships

1. The authority for subpart F is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 67 Stat. 631 (42 U.S.C. 216); sec. 831(a) of the Public Health Service Act, 93 Stat. 580, as amended by 96 Stat. 2061, and 99 Stat. 396–397 (42 U.S.C. 297–1).

2. Section 57.502 is amended by revising the definition of State to read as follows:

§ 57.502 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

3. Section 57.509 is amended by revising paragraph (a) to read as follows:

§ 57.509 Who is eligible for financial assistance as a trainee?

* * * * *

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia;

* * * * *

§ 57.513 [Amended]

4. Section 57.513 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart H—Grants for Physician Assistant Training Programs

1. The authority for subpart H is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1) of the Public Health Service Act, 90 Stat. 2314, and 99 Stat. 524 (42 U.S.C. 295g–3(a)(1)); redesignated as sec. 788(d) and amended by 102 Stat. 3135 (42 U.S.C. 295g–8(d)); renumbered as sec. 750, as amended by Pub. L. 102–408, 106 Stat. 2044 (42 U.S.C. 293n).

§ 57.701 [Amended]

2. Section 57.701 is amended by revising the citation ''788(d) of the Public Health Service Act (42 U.S.C. 295g–8(d))'' to read ''750 of the Public Health Service Act (42 U.S.C. 293n)''.

3. Section 57.702 is amended by removing the term *Council*; by revising section number ''701(5)'' in the definition of *School of medicine or school of osteopathic medicine* to read ''799(1)(E)''; and by revising the definition of *State* to read as follows:

§ 57.702 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

§ 57.704 [Amended]

4. Section 57.704 is amended by revising the citation ''788(d) of the Act'' in paragraph (c)(1) to read ''750 of the Act''.

5. Section 57.706 is amended by revising paragraph (a) introductory text and paragraph (a)(2) to read as follows:

§ 57.706 Evaluation of applications.

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will approve or disapprove all applications filed in accordance with § 57.704, taking into consideration:

* * * * *

(2) The potential effectiveness of the project in carrying out the purposes of section 750 of the Act and this subpart;

* * * * *

§ 57.707 [Amended]

6. Section 57.707 is amended by revising the citation ''788(d) of the Act'' in paragraph (a)(1) to read ''750 of the Act''.

§ 57.709 [Amended]

7. Section 57.709 is amended by revising the citation ''788(d) of the Act'' in paragraph (a) to read ''750 of the Act''.

§ 57.710 [Amended]

8. Section 57.710 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

9. Section 57.711 is revised to read as follows:

§ 57.711 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart I—Programs for the Training of Physician Assistants

1. The authority for subpart I is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 701(8)(B), 90 Stat. 2247, as amended by 95 Stat. 913 and 99 Stat. 525–526 (42 U.S.C. 292a(8)(B)); renumbered as sec. 750, as amended by Pub. L. 102–408, 106 Stat. 2044 (42 U.S.C. 293n).

§ 57.801 [Amended]

2. Section 57.801 is amended by revising the citation ''701(8)(B) of the Public Health Service Act (42 U.S.C. 292a(8)(B))'' in paragraph (a) to read ''750 of the Public Health Service Act (42 U.S.C. 293n)''.

Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry

1. The authority for subpart L is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 786(b) of the Public Health Service Act, 90 Stat. 2317, as amended by 99 Stat. 540–541 (42 U.S.C. 295g–6(b)); redesignated as sec. 785 and amended by 102 Stat. 3130–3131 (42 U.S.C. 295g–5); renumbered as sec. 749, as amended by Pub. L. 102–408, 106 Stat. 2043–2044 (42 U.S.C. 293m).

§ 57.1101 [Amended]

2. Section 57.1101 is amended by revising the citation ''785 of the Public Health Service Act (42 U.S.C. 295g–5)'' in the introductory text to read ''749 of the Public Health Service Act (42 U.S.C. 293m)''.

3. Section 57.1102 is amended by removing the phrase ''as defined in 42 CFR part 57, subpart HH'' at the end of the sentence in paragraph (4) of the definition of *Practice of general dentistry;* by revising section number ''701(5)'' in the definition of *School of dentistry* to read ''799(1)(E)''; and by revising the definition of *State* to read as follows:

§ 57.1102 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.1106 is amended by revising the introductory text to read as follows:

§ 57.1106 What are the criteria for deciding which applications are to be funded?

As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will approve or disapprove applications filed in accordance with § 57.1104, taking into consideration, among other pertinent factors:

* * * * *

§ 57.1107 [Amended]

5. Section 57.1107 is amended by revising the section number ''785'' in paragraph (a)(1) to read ''749''.

§ 57.1110 [Amended]

6. Section 57.1110 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

7. Section 57.1111 is revised to read as follows:

§ 57.1111 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

1. The authority for subpart Q is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 786(a) of the Public Health Service Act, 90 Stat. 2316, and as amended by 102 Stat. 3146 (42 U.S.C. 295g–6(a)); renumbered as sec. 747, as amended by Pub. L. 102–408, 106 Stat. 2042–2043 (42 U.S.C. 293k).

§ 57.1601 [Amended]

2. Section 57.1601 is amended by revising the citation ''786(a) of the Public Health Service Act (42 U.S.C. 295g–6(a))'' in the introductory text to read ''747 of the Public Health Service Act (42 U.S.C. 293k)''.

3. Section 57.1602 is amended by revising section number ''701(5)'' in the definition of *School of medicine or osteopathic medicine* to read ''799(1)(E)''; and by revising the definition of *State* to read as follows:

§ 57.1602 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

4. Section 57.1605 is amended by revising paragraph (a) introductory text to read as follows:

§ 57.1605 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will approve projects which best promote the purposes of section 747 of the Act and these regulations. The Secretary will consider, among other factors:

* * * * *

§ 57.1608 [Amended]

5. Section 57.1608 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

6. Section 57.1609 is revised to read as follows:

§ 57.1609 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart R—Grants for the Establishment of Departments of Family Medicine

1. The authority for subpart R continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 780, Public Health Service Act, 90 Stat. 2311, as amended by 95 Stat. 221 and 102 Stat. 3146 (42 U.S.C. 295g); renumbered as sec. 747, as amended by Pub. L. 102–408, 106 Stat. 2042–2043 (42 U.S.C. 293k).

2. Section 57.1702 is amended by revising the definition of *State* to read as follows:

§ 57.1702 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 57.1708 [Amended]

3. Section 57.1708 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

1. The authority for subpart S is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 787 of the Public Health Service Act, 90 Stat. 2317, as amended by 95 Stat. 923, 99 Stat. 541, and 102 Stat. 3131–3132 (42 U.S.C. 295g–7); renumbered as sec. 740, as amended by Pub. L. 102–408, 106 Stat. 2032–2033 (42 U.S.C. 293d).

§ 57.1801 [Amended]

2. Section 57.1801 is amended by revising the citation ''787 of the Public Health Service Act'' to read ''740 of the Public Health Service Act''; and by adding the United States Code ''(42 U.S.C. 293d)'' after the word ''Act.''

3. Section 57.1802 is amended by revising the section numbers ''701(4)'' and ''701(5)'' respectively, in the definition of *Health professions schools* to read ''799(1) (A), (B), (C), and (D)'' and ''799(1)(E)'' respectively; by revising the section number ''701(10)'' in the definition of *School of allied health* to read ''799(4)''; and by revising the definition of *State* to read as follows:

§ 57.1802 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau,

the Republic of the Marshall Islands and the Federated States of Micronesia.

4. Section 57.1804 is amended by revising paragraphs (a) and (b) to read as follows:

§ 57.1804 Who is eligible for educational assistance?

* * * * *

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia;

(b) Have completed at least the junior year of high school (or its equivalent), except in the case of Model Demonstration programs; and

* * * * *

5. Section 57.1806 is amended by revising paragraph (a) introductory text and the first and last sentence in paragraph (b) to read as follows:

§ 57.1806 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will decide which applications to approve by considering, among other factors:

* * * * *

(b) Within the limits of funds available, the Secretary will award grants to approved applicants with projects that will best promote the purposes of section 740 of the Act. * * * Section 740(a)(2)(G) authorizes the payment of such stipends as the Secretary may approve for participants in a project for any period of education at any school eligible for a grant under this subpart.

* * * * *

§ 57.1809 [Amended]

6. Section 57.1809 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

6. Section 57.1810 is revised to read as follows:

§ 57.1810 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart T (§§ 57.1901–57.1910)—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart T (consisting of §§ 57.1901 through 57.1910).

Subpart V—Grants for Centers of Excellence

1. The authority for subpart V is revised to read as follows:

Authority: Sec. 788A of the Public Health Service Act, Pub. L. 100–97, 101 Stat. 713–714 (42 U.S.C. 295g–8a), and redesignated as section 782, as amended by Pub. L. 100–607, 102 Stat. 3136 (42 U.S.C. 295g–2); renumbered as sec. 739, as amended by Pub. L. 102–408, 106 Stat. 2027–2031 (42 U.S.C. 293c).

§ 57.2101 [Amended]

2. Section 57.2101 is amended by revising the citation ''782 of the Public Health Service Act (42 U.S.C. 295g–2)'' to read ''739 of the Public Health Service Act (42 U.S.C. 293c)''.

3. Section 57.2102 is amended by revising the section numbers ''701(4)'' and ''701(5)'' respectively, in the definition of *Health professions school* to read ''799(1) (A), (B), (C), and (D)'' and ''799(1)(E)'' respectively; and by revising the definition of *State* to read as follows:

§ 57.1202 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 57.2103 [Amended]

4. Section 57.2103 is amended by revising the section number ''701(4)'' in the first sentence to read ''799(1) (A), (B), (C), and (D) of the Act''.

5. Section 57.2105 is amended by revising paragraph (a) introductory text to read as follows:

§ 57.2105 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will decide which applications to approve by considering, among other factors:

* * * * *

§ 57.2108 [Amended]

6. Section 57.2108 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

7. Section 57.2109 is revised to read as follows:

§ 57.2109 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

1. The authority for subpart Y continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 822(a) of the Public Health Service Act, 89 Stat. 361, as amended by 99 Stat. 394–395 and 548 (42 U.S.C. 296m).

2. Section 57.2402 is amended by revising paragraphs (c) and (k) to read as follows:

§ 57.2402 Definitions.

* * * * *

(c) *Council* means the National Advisory Council on Nursing Education and Practice (established by section 851 of the Act).

* * * * *

(k) *State* means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

§ 57.2409 [Amended]

3. Section 57.2409 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart Z—Grants for Advanced Nurse Education Programs

1. The authority for subpart Z is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, 99 Stat. 394 and 548, and Pub. L. 102–408, 106 Stat. 2072 (42 U.S.C. 296l).

2. Section 57.2501 is revised to read as follows:

§ 57.2501 Applicability.

The regulations of this subpart apply to the award of grants to public and private nonprofit collegiate schools of nursing under section 821 of the Public Health Service Act (42 U.S.C. 296l) to meet the costs of projects to:

(a) Plan, develop, and operate new programs; or

(b) Significantly expand existing programs leading to advanced degrees that prepare nurses to serve as nurse educators or public health nurses, or in other clinical nurse specialties determined by the Secretary to require advanced education.

3. Section 57.2502 is amended by revising the definitions of *Council* and *State* to read as follows:

§ 57.2502 Definitions.

* * * * *

Council means the National Advisory Council on Nurse Education and Practice established by section 851(a) of the Act.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.2503 is amended by removing paragraph (b)(3) and by revising the introductory text of (b)(2) to read as follows:

§ 57.2503 Eligibility.

* * * * *

(b) * * *

(2) A project to significantly expand an advanced nurse education program through one or more of the following activities:

* * * * *

5. Section 57.2504 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 57.2504 Application.

* * * * *

(c) * * *

(1) A proposal for a project to:

(i) Plan, develop, and operate; or

(ii) Significantly expand an advanced nurse education program;

* * * * *

(d) In the case of a project to significantly expand an advanced nurse education program, the application shall contain an assurance satisfactory to the Secretary that the applicant will expend, in carrying out the program for which a grant under this subpart is sought, an amount of non-Federal funds (excluding costs of construction) at least as great as the average amount of non-Federal funds (excluding expenditures of a nonrecurring nature, including costs of construction) expended for this purpose during the 3 fiscal years immediately preceding the fiscal year for which the grant is sought.

* * * * *

6. Section 57.2506 is amended by revising paragraph (b) to read as follows:

§ 57.2506 Evaluation and grant awards.

* * * * *

(b) *Funding preference.* In determining the funding of applications approved under paragraph (a) of this section, the Secretary may from time to time announce in the Federal Register special factors relating to national needs.

* * * * *

§ 57.2509 [Amended]

7. Section 57.2509 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

Subpart AA (§§ 57.2601–57.2617)—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart AA (consisting of §§ 57.2601 through 57.2617).

Subpart CC—Scholarships for Students of Exceptional Financial Need

1. The authority for subpart CC is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 758 of the Public Health Service Act, 90 Stat. 2289, as amended by 102 Stat. 3126–3127 (42 U.S.C. 294z); renumbered as sec. 736, as amended by Pub. L. 102–408, 106 Stat. 2022 (42 U.S.C. 293).

§ 57.2801 [Amended]

2. Section 57.2801 is amended by revising the citation ''758 of the Public Health Service Act (42 U.S.C. 294z)'' to read ''736 of the Public Health Service Act (42 U.S.C. 293)''.

3. Section 57.2802 is amended by revising the citation ''701(4) of the Act'' in the definition of Full-time student to read ''799(1)(A) of the Act''; by revising the citation ''701(4) of the Act'' and ''701(5) of the Act'' respectively, in the definition of *Health professions school or school* to read ''799(1)(A) of the Act'' and ''799(1)(E) of the Act'' respectively; and by revising the definition of *State* to read as follows:

§ 57.2802 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.2804 is amended by revising paragraph (a)(1) to read as follows:

§ 57.2804 Students eligible for scholarships.

(a) * * *

(1) Is a resident of the United States, and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia.

* * * * *

§ 57.2805 [Amended]

5. Section 57.2805 is amended by revising the citation ''751(g)(3) of the Act'' in paragraph (c) to read ''338A(g)(3) of the Act''.

§ 57.2808 [Amended]

6. Section 57.2808 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

7. Section 57.2809 is amended by revising paragraph (a) to read as follows:

§ 57.2809 What other records, audit, and inspection requirements apply to grantees?

(a) Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

* * * * *

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

1. The authority for subpart DD is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 787 of the Public Health Service Act, 90 Stat. 2309, as amended by 95 Stat. 923, 99 Stat. 541 (42 U.S.C. 295g–7); renumbered as sec. 740, as amended by Pub. L. 102–408, 106 Stat. 2032–2033 (42 U.S.C. 293d).

§ 57.2901 [Amended]

2. Section 57.2901 is amended by revising the section number ''787(a)(2)(F) and (b)'' to read ''740(a)(2)(F) and (d)''.

3. Section 57.2902 is amended by revising the citation ''701(4) of the Act'' in the definitions of *Full-time student and School* to read ''799(1)(A) of the Act''; and by revising the definition of *State* to read as follows:

§ 57.2902 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

5. Section 57.2904 is amended by revising the OMB control number ''0915–0110'' in the parenthetical phrase at the end of the section to read ''0915–0028''; and by revising paragraph (a)(1) to read as follows:

§ 57.2904 Eligibility and selection of aid recipients.

(a) * * *

(1) Is a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia.

* * * * *

§ 57.2908 [Amended]

6. Section 57.2908 is amended by revising the section number ''704'' in the heading of citation 45 CFR part 83 to read ''794''.

7. Section 57.2909 is amended by revising the OMB control number ''0915–0110'' in the parenthetical phrase at the end of the section to read ''0915–0028''; and by revising paragraph (a) to read as follows:

§ 57.2909 What other records, audit, and inspection requirements apply to schools?''

(a) Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

* * * * *

Subpart EE—Grants for Residency Training in Preventive Medicine

1. The authority for subpart EE is revised to read as follows:

Authority: Sec. 793 of the Public Health Service Act, 95 Stat. 928 (42 U.S.C. 295h–1c); redesignated as section 788(c) of the Public Health Service Act, 102 Stat. 3134–3135 (42 U.S.C. 295g–8(e)); renumbered as sec. 763, as amended by Pub. L. 102–408, 106 Stat. 2047 (42 U.S.C. 294b).

§ 57.3001 [Amended]

2. Section 57.3001 is amended by revising the citation ''788(c) of the Public Health Service Act (42 U.S.C. 295g–8(e))'' to read ''763 of the Public Health Service Act (42 U.S.C. 294b)''.

3. Section 57.3002 is amended by revising the definition of *State* to read as follows:

§ 57.3002 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

4. Section 57.3005 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 57.3005 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will decide which applications to approve by considering, among other factors:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 763 of the PHS Act;

* * * * *

§ 57.3009 [Amended]

5. Section 57.3009 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

6. Section 57.3010 is revised to read as follows:

§ 57.3010 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

1. The authority for subpart FF is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784 of the Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923 and 99 Stat. 540 (42 U.S.C. 295g–4); renumbered as sec. 748, as amended by Pub. L. 102–408, 106 Stat. 2043 (42 U.S.C. 293l).

§ 57.3101 [Amended]

2. Section 57.3101 is amended by revising the citation ''784 of the Public Health Service Act (42 U.S.C. 295g–4)'' in the introductory text to read ''748 of the Public Health Service Act (42 U.S.C. 293l)''.

3. Section 57.3102 is amended by revising section number ''701(5)'' in the definition of *School of medicine and osteopathic medicine* to read ''799(1)(E)''; by revising section number ''784'' in the definition of *Trainee* to read ''748''; and by revising the definition of *State* to read as follows:

§ 57.3102 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

4. Section 57.3106 is amended by revising paragraph (a) introductory text to read as follows:

§ 57.3106 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an

application unless a peer review group has recommended the application for approval. The Secretary will award grants to applicants whose projects best promote the purposes of section 748 of the Act. The Secretary will take into consideration, among other factors:

* * * * *

§ 57.3110 [Amended]

5. Section 57.3110 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

6. Section 57.3111 is revised to read as follows:

§ 57.3111 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart HH (§§ 57.3301–57.3303)—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart HH (consisting of §§ 57.3301 through 57.3303).

Subpart NN (§§ 57.3901–57.3910)—[Removed and Reserved]

1. Part 57 is amended by removing and reserving subpart NN (consisting of §§ 57.3901 through 57.3910).

Subpart OO—Grants for Geriatric Education Centers

1. The authority for subpart OO continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 788(d) of the Public Health Service Act, 99 Stat. 542 (42 U.S.C. 295g–8); redesignated as sec. 789(a), as amended by Pub. L. 100–607, 102 Stat. 3136–37 (42 U.S.C. 295g–9(a)); renumbered as sec. 777(a), as amended by Pub. L. 102–408, 106 Stat. 2052–54 (42 U.S.C. 294o).

2. Section 57.4002 is amended by revising the definition of *State* to read as follows:

§ 57.4002 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

§ 57.4008 [Amended]

3. Section 57.4008 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

4. Section 57.4009 is revised to read as follows:

§ 57.4009 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

1. The authority for subpart PP continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the PHS Act, as amended by Pub. L. 100–607, 102 Stat. 3136–3138 (42 U.S.C. 295g–9(b)); renumbered as sec. 777(b), as amended by Pub. L. 102–408, 106 Stat. 2052–54 (42 U.S.C. 294o).

2. Section 57.4102 is amended by revising the definition of *State* to read as follows:

§ 57.4102 Definitions.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

3. Section 57.4109 is amended by revising paragraph (a) to read as follows:

§ 57.4109 Who is eligible for financial assistance as a fellow?

* * * * *

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia;

* * * * *

§ 57.4113 [Amended]

4. Section 57.4113 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''.

PART 58—GRANTS FOR TRAINING OF PUBLIC HEALTH AND ALLIED HEALTH PERSONNEL

Subpart A (§§ 58.1–58.11)—[Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart A (consisting of §§ 58.1 through 58.11).

Subpart B (§§ 58.20–58.29)—[Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart B (consisting of §§ 58.20 through 58.29).

Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs

1. The authority for subpart C is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 748 of the Public Health Service Act, 90 Stat. 2279, as amended by 91 Stat. 1505; as amended and redesignated as sec. 792 of the Public Health Service Act by 95 Stat. 927 (42 U.S.C. 295h–1b); renumbered as sec. 761, as amended by Pub. L. 102–408, 106 Stat. 2045 (42 U.S.C. 294).

§ 58.201 [Amended]

2. Section 58.201 is amended by revising the citation ''792 of the Public Health Service Act (42 U.S.C. 295h–1b)'' to read ''761 of the Public Health Service Act (42 U.S.C. 294)''.

3. Section 58.202 is amended by revising the section number ''701(5)'' in the definition of *School of Public Health* to read ''799(1)(E)''; and by revising the definitions of *Educational entity*, *Nonprofit*, and *State* to read as follows:

§ 58.202 Definitions.

* * * * *

Educational entity means a school, college, or university which is accredited by a body or bodies recognized for this purpose by the Secretary of Education or an institution which provides specialized training in public health.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully insure, to the benefit of any private shareholder or individual.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the

Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

§ 58.203 [Amended]

4. Section 58.203 is amended by revising the section number ''791A'' in the footnote of paragraph (b) to read ''771''.

§ 58.204 [Amended]

5. Section 58.204 is amended by revising the section number ''792'' in the concluding text of paragraph (b) to read ''761''.

6. Section 58.205 is amended by revising paragraph (a) to read as follows:

§ 58.205 How is the amount of the award determined?

(a) *Grants to schools of public health.* The Secretary will use a formula to determine the amount of the grant to be awarded to each school of public health with an approved application.

This formula is

$$G = \frac{SS}{TS} \times AF$$

G is the amount of the grant award; SS is the number of eligible full-time and full-time equivalent students of each applicant enrolled in severe shortage occupations targeted for support (epidemiology, environmental health, biostatistics, toxicology, public health nutrition, and maternal and child health); TS is the total number of students enrolled in graduate and specialized training in all schools of public health with approved applications; and AF is the amount of traineeship funds under this program that the Secretary has designated for award to schools of public health for that fiscal year. The Secretary will determine the number of students enrolled in graduate and specialized training in public health at the school (SS) with the formula

$$SS = FTS + \frac{PTC}{9}$$

FTS is the number of full-time students, and PTC is the total number of credit hours in which part-time students are enrolled. If necessary, the figure for

$$\frac{PTC}{9}$$

will be rounded to the next highest number. Students will be counted as of October 15 of the fiscal year in which application is made. The amount of a grant will never exceed the amount requested by the applicant.

* * * * *

7. Section 58.208 is amended by removing paragraphs (a) through (e); by redesignating paragraphs (f) through (i) as paragraphs (a) through (d); by revising the heading of the section; and by adding the OMB information collections control number at the end of the section to read as follows:

§ 58.208 What are the requirements for appointment of trainees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060)

8. Section 58.209 is revised as follows:

§ 58.209 Who is eligible for financial assistance as a trainee?

(a) To be eligible for a traineeship, an individual must meet the following conditions:

(1) Trainees must be United States citizens, non-citizen nationals, or foreign nationals having in their possession a visa permitting permanent residence in the United States.

(2) New trainees must be pursuing a graduate degree in a health professions field in which there is a severe shortage of health professionals (including the fields of epidemiology, environmental health, biostatistics, toxicology, public health nutrition, and maternal and child health). Ongoing traineeship commitment will be continued.

(3) All trainees must meet the school's admission requirements specified in the approved grant application.

(b) Traineeship support may not be provided to:

(1) Individuals who do not meet the qualifications for admission as specified in the approved application;

(2) Full-time Federal employees unless they are on Leave Without Pay status;

(3) Students pursuing training at the undergraduate level;

(4) Students in programs designed to prepare them for careers in research;

(5) Preventive medicine and dental public health residents (section 763 of the Act may be used for these students); or

(6) Individuals on temporary or student visas.

9. Section 58.213 is amended by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''; and by adding the following CFR reference at the end of the section to read as follows:

§ 58.213 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 93—New restrictions on lobbying

10. Section 58.214 is revised as follows:

§ 58.214 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

Subpart D—Grants for Health Administration Traineeships and Special Projects Program

1. The authority for subpart D is revised to read as follows:

2. The heading for subpart D is revised as set forth above.

Authority: Sec. 215 of the Public Health Service Act. 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 749 of the Public Health Service Act, 90 Stat. 2280, Pub. L. 94–484 (42 U.S.C. 294s); redesignated as sec. 791A, amended by 95 Stat. 927, Pub. L. 97–35 and 96 Stat. 2061, Pub. L. 97–414 (42 U.S.C. 295h–1a); renumbered as sec. 771, amended by 106 Stat. 2049, Pub. L. 102–408 (42 U.S.C. 294i).

§ 58.221 [Amended]

3. Section 58.221 is amended by revising the citation ''791A of the Public Health Service Act'' to read ''771 of the Public Health Service Act (42 U.S.C. 294i)''.

4. Section 58.222 is amended by revising the citation ''701(5) of the Act'' in the definition of *School of public health* to read ''799(1)(E) of the Act''; and by revising the definitions of *Nonprofit* and *State* to read as follows:

§ 58.222 Definitions.

* * * * *

Nonprofit refers to the status of an entity which is a corporation or association, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

§ 58.223 [Amended]

4. Section 58.223 is amended by revising the citation 701(5) of the Act'' to read ''799(1)(E) of the Act.''

5. Section 58.224 is revised as follows:

§ 58.224 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant

under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(b) The following criteria will be used for review of applications:

(1) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner;

(2) The adequacy of the staff and faculty;

(3) The adequacy of institutional resources available to conduct graduate level education, to include the adequacy of teaching facilities;

(4) The adequacy of recruitment and placement assistance for students in accord with the legislative purpose and intent; and

(5) The extent to which the application justifies the purpose, scope, and need for traineeship and or special project grant.

(Approved by the Office of Management and Budget under control number 0915–0060)

§ 58.225 [Amended]

6. Section 58.225 is amended by revising the section number ''791A in the formula to read ''771''.

§ 58.228 [Removed]

7. Section 58.228 is removed.

§ 58.229 [Redesignated as § 58.228]

8. Section 58.229 is redesignated as § 58.228 and is amended by revising paragraph (a) to read as follows:

§ 58.228 Who is eligible for financial assistance as a trainee?

* * * * *

(a) The individual must be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands or a citizen of the Federated States of Micronesia.

* * * * *

§ 58.230 [Redesignated as § 58.229]

9. Section 58.230 is redesignated as § 58.229.

§ 58.231 [Redesignated as § 58.230]

10. Section 58.231 is redesignated as § 58.230.

§ 58.232 [Redesignated as § 58.231]

11. Section 58.232 is redesignated as § 58.231.

§ 58.233 [Redesignated as § 58.232]

12. Section 58.233 is redesignated as § 58.232 and is amended by removing the parenthetical phrase at the end of the section; by removing the footnote to the CFR citation ''45 CFR part 83'' and by revising the section numbers ''799A and 845'' in the citation's heading to read ''794 and 855''; and by adding the following CFR reference at the end of the section to read as follows:

§ 58.232 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 93—New restrictions on lobbying

§ 58.234 [Redesignated as § 58.233]

13. Section 58.234 is redesignated as § 58.233 and is revised to read as follows:

§ 58.233 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

§ 58.235 [Redesignated as § 58.234]

14. Section 58.235 is redesignated as § 58.234.

Subpart E (§§ 58.401–58.414)—[Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart E (consisting of §§ 58.401 through 58.414).

Subpart F (§§ 58.501–58.515)—[Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart F (consisting of §§ 58.501 through 58.515).

[FR Doc. 96–3054 Filed 2–15–96; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–260; FCC 95–503]

Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule; First Order on Reconsideration.

SUMMARY: The First Order on Reconsideration denies petitions for reconsideration of the Commission's cable home wiring rules, except to specify the procedure a cable operator must follow when a subscriber terminates cable service. This order will facilitate competition in the video marketplace by clarifying rules governing the disposition of wiring.

EFFECTIVE DATE: Upon approval by the Office of Management and Budget. At a later date, the Commission will publish a document reflecting the actual effective date.

FOR FURTHER INFORMATION CONTACT: Lynn Crakes or Rick Chessen, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained in this Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This First Order on Reconsideration contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Pub. L. No. 104–13. It has been submitted to the Office of Management and Budget (''OMB'') for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Title: 47 CFR 76.802 Disposition of Cable Home Wiring
Type of Review: New Collection
Respondents: Business of other for profit; individuals or households
Number of Respondents: 11,400 cable operators
Estimated Time Per Response: .083 hours (5 minutes)
Total Annual Burden: 18,039 hours

Needs and Uses: This information disclosure requirement ensures that consumers are informed of their cable home wiring purchase rights upon termination of cable service, including information regarding the purchase of their home wiring in a single contact, and the use of wiring to connect to an alternative video programming service. This rule promotes competition by clarifying the disposition of wiring upon termination of cable service. Cable operators' responsibilities are clearly defined and their property rights protected.

This is a synopsis of the Commission's First Order on Reconsideration in MM Docket No. 92–260, FCC No. 95–508, adopted December 15, 1995 and released January 26, 1996.

I. Introduction

1. In this First Order on Reconsideration, we grant in part and

deny in part petitions for reconsideration of the Commission's initial cable home wiring regulations implementing Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''). Generally, we: (1) deny the petitions for reconsideration of the Commission's cable home wiring rules, except (a) to specify the procedure a cable operator must follow when a subscriber voluntarily terminates cable service, if the operator wishes to remove the home wiring, and (b) to shorten from 30 days to seven business days the time period after termination of service within which the cable operator has the right to remove any home wiring it owns.

2. The Commission received three petitions for reconsideration of the Report and Order in MM Docket No. 92–260 (''Cable Wiring Order''), 58 FR 11970 (March 2, 1993)—all from potential or current competitors to cable operators—as well as replies to these petitions from cable operators. Petitioners' arguments include the following (a) that subscribers should be permitted to purchase or to control the cable home wiring upon installation rather than upon termination of service, (b) that cable operators should be prohibited from misrepresenting whether they intend to remove or abandon the home wiring following termination of service, (c) that the demarcation point for multiple dwelling units should be relocated, (d) that loop-through wiring configurations should be included within our rules under certain circumstances, and (e) that passive cable equipment should be included within the definition of cable home wiring.

II. Order on Reconsideration

A. Customer Access to Cable Home Wiring Prior to Termination of Service

1. Background

3. Section 16(d) of the 1992 Cable Act requires the Commission to ''prescribe rules concerning the disposition, after a subscriber terminates service, of any cable installed by the cable operator within the premises of such subscriber.'' The Commission's regulations implementing Section 16(d) provide that, when a customer voluntarily terminates service, the cable operator must give that subscriber the opportunity to acquire the wiring before the operator removes it. The subscriber may purchase the wiring inside his or her premises up to the demarcation point, which we defined as a point at or about twelve inches outside the subscriber's premises. The operator may not charge the subscriber any more than the replacement cost of the wire, priced on a per-foot basis. If the subscriber declines to purchase the wiring, the operator must remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.

4. In the 1993 Cable Wiring Order, we said that it was not ''necessary or appropriate under the statute'' to apply our cable home wiring rules prior to the time the customer terminates cable service. We noted that the plain language of Section 16(d) of the 1992 Cable Act refers only to the disposition of cable home wiring after termination of service, and that cable home wiring is different from telephone wiring in that, for example, cable operators have the responsibility to prevent signal leakage which can cause harmful interference to licensed radio spectrum users, a responsibility telephone companies do not have. We also cited the House Report on the 1992 Cable Act which stated that Section 16(d) itself ''does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service.'' At the same time, the Commission stated:

> [a]lthough we generally believe that broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings, because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this proceeding.

2. Petitions

5. Some petitioners urge the Commission to apply the cable home wiring rules prior to termination of service so that the subscriber may control cable home wiring immediately upon installation. NYNEX asserts, among other things, that consumers should be able to control the cable home wiring upon installation so that they can obtain additional services from other multichannel video programming service providers through simultaneous use of the wire's spare capacity. On the other hand, NCTA states that the Commission's current rules fully effectuate the statutory language and the underlying purposes of the 1992 Cable Act. NCTA and Time Warner claim that the Commission lacks the authority under the 1992 Cable Act to mandate that operators convey ownership to subscribers at the time of installation. Time Warner also asserts that the Commission's current rules violate the takings clause by providing that if a cable operator fails to remove its home wiring within 30 days following termination of service, the operator is prohibited from subsequently attempting to remove the wiring or restrict its use.

3. Discussion

6. The Commission's current cable home wiring rules implement the specific directive of Section 16(d) of the 1992 Cable Act, i.e., to establish rules governing the disposition of cable home wiring upon termination of cable service. Our current rules promote the goals of Section 16(d), which are to protect customers from unnecessary disruption and expense caused by the removal of home wiring and to allow subscribers to use the wiring for an alternative multichannel video programming delivery system. On reconsideration, we are not persuaded, based on the record in this proceeding at this time, to expand our cable home wiring rules under Section 16(d) of the 1992 Cable Act. At the same time, we recognize that new competitors, such as wireless cable, satellite master antenna television services (''SMATVs'') and telephone companies, and new technologies, such as video dialtone, are likely to change the video programming delivery marketplace. The Commission must therefore consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding in determining whether to expand the cable home wiring rules in ways that could have competitive implications for cable operators and other multichannel video programming providers, as well as other providers of telecommunications services. Given the potential for the convergence of telephone, data and video technologies, it may be appropriate to consider requiring cable operators to permit subscriber access to inside wiring prior to termination of service in order to promote consumer choice and competition. Parity with telephone inside wiring may also be desirable if a cable operator wants to provide telephone or other common carrier service over its coaxial cable, but the record in this proceeding does not provide us with sufficient information upon which to base such a determination. The Commission will therefore further explore this issue in the Notice of Proposed Rulemaking (''NPRM'') in CS Docket No. 95–184 being adopted concurrently herewith.

7. In addition, we determine that our current rules (as well as our revised rules described below) do not constitute an unconstitutional taking, because they implement a clear statutory directive and provide that, upon termination of service, the cable operator can receive just compensation for its home wiring or

remove the wiring. Nor do we believe that our rules are rendered unconstitutional by the fact that the cable operator is deemed to have waived the availability of compensation if it fails to remove its home wiring within a given time period following termination of service. Compensation is available, under reasonable terms and conditions, if the cable operator chooses to take that option. See United States v. Locke, 471 U.S. 84, 107 (1985), which rejects a Fifth Amendment taking claim where the plaintiff failed to comply with a statutory requirement for filing a mining claim that would have indicated its intent to retain its property right. Texaco, Inc. v. Short notes that the U.S. Supreme Court has never required giving compensation to a private property owner who fails to take reasonable actions imposed by law for the consequences of his own neglect, 454 U.S. 516, 530 (1982). We note that the prescribed time period (formerly 30 days and, as described below, now seven business days) within which a cable operator may remove the cable home wiring it owns provides the operator with a reasonable opportunity to remove the wire if it so wishes.

8. With regard to NYNEX's contention that consumer access to cable home wiring prior to termination of service would allow consumers to obtain broadband services from more than one multichannel video programming service provider simultaneously over one coaxial cable, it is our understanding that, while such simultaneous use may be possible in the laboratory, it is not technically or economically feasible in the marketplace at the present time. Apparently, for example, broadband networks are highly susceptible to signal impairments from outside sources, such as over-the-air broadcast signals, a danger that would be magnified significantly by the insertion of an additional broadband service within the wiring itself. Therefore, we deny NYNEX's petition as premature insofar as it seeks rules designed to allow simultaneous use by a broadband video competitor of excess capacity on cable home wiring. Furthermore, we note that the current cable wiring rules do not prohibit simultaneous use, regardless of whether the cable operator or the subscriber owns or controls the cable home wiring. Because we agree that simultaneous use of the same wire by competitors could promote competition and increase consumer choice, however, if simultaneous use of cable wiring becomes economically and technically feasible, the Commission may address any issues raised at that time.

B. Disposition of Cable Home Wiring Upon Termination of Service

1. Background

9. The Cable Wiring Order provides that when a subscriber calls to voluntarily terminate cable service, the operator is required, if it proposes to remove the wiring, to inform the subscriber (a) that he or she may purchase the wire, and (b) what the cost per-foot charge is. If the subscriber declines to purchase the home wiring, the operator must remove it within 30 days or lose the right to remove it or restrict its use.

2. Petitions

10. Some petitioners assert that cable operators may attempt to deter subscribers from switching to alternative multichannel video programming service providers by claiming that they intend to remove the cable wiring even if they intend to abandon it. They posit that the cable operator might falsely proclaim such an intent in order to prevent an alternative provider from using the wiring during the 30-day period afforded the operator to remove the wiring, and that since some subscribers might elect to remain with the incumbent cable operator rather than face such a choice, the current rules could defeat the purpose behind Section 16(d).

11. WCA proposes that the Commission: (a) decrease the period following termination during which cable operators must remove cable home wiring from 30 days to seven days; (b) prohibit cable operators from terminating service until either the cable is removed or the seven-day period expires; and (c) establish procedures for the filing of complaints against cable operators that demonstrate a pattern of misrepresenting their intentions to remove wiring. Finally, WCA suggests that the ''appointment window'' rules adopted in MM Docket No. 92–263 (Customer Service Standards) apply to appointments to remove wiring, and that a failure to comply would result in the automatic transfer of the wiring to the subscriber.

12. In response, some cable companies argue that WCA's claim that operators will falsely state their intention to remove the wiring is ''speculative,'' and, even if true, would not warrant action on reconsideration. They assert that WCA's concern that cable operators will discriminate against customers who choose an alternative service provider is unfounded because a cable operator cannot require any subscriber to purchase his home wiring. Moreover, NCTA argues that WCA's proposals are merely an attempt by alternative video programming service providers to gain a ''free ride'' off wiring installed by and belonging to the incumbent cable operator. As an alternative, NCTA states that alternative providers could offer to purchase the wiring from the incumbent operator, or at least offer to reimburse the subscriber if the subscriber chooses to purchase the wiring.

13. In reply, WCA asserts that none of the responses addresses the fundamental unfairness of permitting cable operators to discriminate against subscribers who terminate service in favor of an alternative service provider.

14. Ameritech proposes that ownership of cable home wiring should transfer to the subscriber upon termination. Ameritech proposes that, at a minimum, in cases of voluntary termination where a subscriber is notified of the right to purchase his or her home wiring and the subscriber exercises that right, constructive ownership should vest with the subscriber immediately and the subscriber should be free to authorize the connection of the wiring to a competing service provider.

3. Discussion

15. As we noted in the Cable Wiring Order, the purpose of Section 16(d) is to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination, and to subsequently utilize that wiring for an alternative video programming service. While we believe that our current rules advance these goals, we believe that they do not address certain issues—such as when actual control of the home wiring transfers to the subscriber—that could cause needless consumer confusion and marketplace uncertainty. We therefore believe that the goals of Section 16(d) would be better served if our rules set forth a simple, clear process by which: (a) consumers can obtain, in a single contact, the information they need to decide whether they wish to purchase their home wiring upon termination; (b) consumers can thereafter quickly and easily use the wiring to connect to an alternative video programming service provider; and (c) cable operators' legitimate property rights are protected. Thus, we hereby amend our rules regarding the disposition of home wiring upon the voluntary termination of service as follows.

16. During the initial telephone call in which a subscriber advises the cable operator that he or she is voluntarily terminating service, the operator—if it owns and intends to remove the home wiring—must inform the subscriber of four things:

(a) that the cable operator owns the home wiring—as discussed in the Cable Wiring Order, the record reveals that, in many circumstances, the subscriber already owns the home wiring at termination (e.g., where the operator has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture); it is the operator's responsibility to maintain adequate records to document its ownership;

(b) that the cable operator intends to remove the home wiring;

(c) that the subscriber has a right to purchase the home wiring; and

(d) what the per-foot replacement cost and total charge for the wiring would be, including the replacement cost for any passive splitters attached to the wiring on the subscriber's side of the demarcation point—our current rules state that the operator must inform the subscriber of the per-foot replacement cost, and that its charge for the wiring may be based on ''a reasonable approximation'' of the length of cabling in the subscriber's premises. In the Cable Wiring Order (at n. 39), we stated that we expected the per foot charge to be based on the replacement cost of coaxial cable in the community; for instance, we noted that the record indicated that new coaxial cable was being sold for six cents per foot by District Cablevision in Washington, D.C. An operator has two options for making a ''reasonable approximation'' of the total charge during the contact terminating service. First, the operator can develop schedules to make such approximations based on readily available information, such as whether the subscriber lives in a single family dwelling or an apartment, the number of outlets installed, or the number of television sets in use. If the operator chooses to develop such schedules, it must place them in a public file and make them available for public inspection during regular business hours. In the alternative, the operator may maintain records reflecting the actual amount of home wiring installed on subscribers' premises, but this information must be available for calculating the total charge for the wiring during the initial phone call.

Where an operator fails to adhere to the above procedures, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use. By referring to ''subscriber'' herein, we do not intend to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf.

17. If a subscriber voluntarily terminates cable service in person (i.e., at the cable operator's offices), the same procedures apply. If a subscriber requests termination in writing, it is the operator's responsibility—if it intends to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and provide the subscriber with the information set forth above.

18. If the cable operator informs the subscriber as described above, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring. Of course, the alternative video programming service provider is free to reimburse the subscriber for the cost of the home wiring. We believe that such a transfer of control presents no Fifth Amendment difficulties, since the operator will ultimately be compensated for its wiring (at which point actual ownership of the wiring will transfer to the subscriber). We are, however, cognizant of the potential for harmful signal leakage if this change-over is mishandled. Thus, where the incumbent cable operator has not yet terminated service and ''capped off'' its line, the alternative video programming service provider will be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. ''Capping off'' is a procedure whereby a terminating ''cap'' is placed over a wire to prevent potentially harmful signal leakage. If there is no alternative provider—i.e., if the subscriber is terminating service but will not be using the home wiring to receive another multichannel video service—the cable operator will remain responsible for properly capping off its own line. We require incumbent cable operators to take reasonable steps within their control to ensure that the alternative service provider has access to the home wiring at the demarcation point (e.g., by providing prompt access to the cable operator's lockbox where the placement of the lockbox impedes access to the demarcation point), and for incumbents and alternative multichannel video programming delivery service providers to minimize the potential for signal leakage, theft of service and unnecessary disruption of the consumer's premises.

19. If, on the other hand, the subscriber declines to purchase the home wiring, the operator will have seven business days, rather than the current 30 days, to remove the wiring. If the operator does not remove the home wiring within this seven business day period, the operator may make no subsequent attempt to remove it or restrict its use. We believe that requiring subscribers to wait 30 days before learning whether the cable operator would remove its wiring causes needless uncertainty for the consumer and the possibility of a lengthy disruption in service. We also believe that, under normal operating conditions, it is not unreasonable to require cable operators to remove their wiring within seven business days. However, we decline at this time to apply the Commission's ''appointment window'' rules to appointments to remove wiring; we believe that WCA has not submitted sufficient evidence to demonstrate that such a change is necessary at this time. Given the uniform federal and industry standard on installations, we reject Time Warner's contention that a seven-day removal period is a forced, rather than a voluntary, abandonment of property. It is the operator's failure to act within a reasonable time after the subscriber requests that its wiring be removed—not the Commission's rule—that extinguishes the cable operator's rights. We also reject NCTA's assertion that a 30-day removal period is required to ensure that consumers have adequate time to decide whether or not to purchase the wiring. If the subscriber asks for more time to make a decision on whether to purchase the home wiring, the seven business-day period will not begin running until the subscriber declines to purchase the wiring. Until the subscriber contacts the operator with a decision, he or she may not use the wiring to connect to an alternative service provider.

20. We believe that the above procedures may not be necessary in most circumstances. We understand that cable operators typically abandon cable home wiring because the cost and effort required to remove it generally outweigh its value. Accordingly, in most cases, the cable operator may simply remain silent on the subject of home wiring when the subscriber requests termination of service. If, for whatever reason, the cable operator does not

discuss the disposition of the home wiring with the subscriber in accordance with the above procedures, the operator will be deemed to have relinquished immediately any and all ownership interests in the home wiring. Thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use.

21. While we acknowledge WCA's concerns that cable operators could misrepresent their intention to remove the wiring, or that operators may discriminate against subscribers who terminate service in favor of an alternative provider, there is no evidence in the record for us to conclude that these are significant problems. Moreover, we believe we have alleviated WCA's concern regarding subscribers being without service for up to 30 days by requiring cable operators to remove the home wiring within seven business days.

C. Demarcation Point for Multiple Dwelling Units With Non-Loop-Through Wiring

1. Background

22. Section 16(d) of the 1992 Cable Act states that the Commission shall prescribe rules concerning cable wire ''within the premises of [the] subscriber.'' Section 76.5(ll) of the Commission's rules defines cable home wiring as the ''internal wiring contained within the premises of a subscriber which begins at the demarcation point.'' Under the current rules, the demarcation point is the point from which the customer has the right to purchase cable home wiring upon voluntary termination of service, the location from which the subscriber may control the internal home wiring if he or she owns it, and the point where a potential alternative multichannel video programming service provider can attach its wiring to the subscriber's wiring in order to provide service.

23. The wiring in multiple dwelling unit buildings is generally in either a non-loop-through or loop-through configuration. In a non-loop-through configuration, each subscriber has a dedicated line extending from a trunk or feeder line to the individual's premises. The point at which the drop meets the feeder line in multiple dwelling unit buildings is usually in a security box or utility closet. A loop-through configuration is one in which a single cable provides service to a group of subscribers by being strung from one subscriber's unit to the next subscriber's unit in the same building.

2. Petitions

24. Some commenters ask that the Commission reconsider its decision to locate the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable enters a subscriber's individual dwelling unit. NYNEX states that the Commission's current rules are anti-competitive because they require an alternative cable service provider to install duplicate wire up to the twelve-inch point outside of where the wire enters the subscriber's premises, which would either be prohibitively expensive or impossible due to space limitations or the location of the wiring inside a wall in a building. Liberty asks that the demarcation point for multiple dwelling units be at the point outside a subscriber's premises and within the common areas of the multiple dwelling unit building where the individual subscriber's wires can be detached from the cable operator's common wires without harming the multiple dwelling unit and without interfering with the cable operator's provision of service to other residents in the building. Liberty contends that this would enhance competition by making it easier for the subscriber to switch from one alternative multichannel video programming service provider to another.

25. On the other hand, cable companies oppose proposals to change the demarcation point for multiple dwelling units, arguing that the proposals do not definitively measure the exact point of demarcation and are contrary to the plain language of the statute. NCTA states that allowing a new service provider to go much beyond twelve inches invades the common wiring, which is the cable operator's property. Time Warner recommends that the most practical demarcation point in multiple dwelling units is the wall plate in each individual unit, not beyond twelve inches from where the wiring enters the individual dwelling unit.

3. Discussion

26. We deny reconsideration of our rule setting the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable wire enters the subscriber's dwelling unit. While the record in this proceeding does indicate that the Commission's current rules with regard to location of the demarcation point in multiple dwelling units may impede competition in the multichannel video programming delivery marketplace, the record is insufficient at this time to indicate whether a different demarcation point might better promote competition and consumer choice in the multichannel video programming delivery marketplace without an undue impact on competition in the market for other telecommunications services. We are concerned with more than simple competition in the broadband multichannel video programming market. We want to promote competition and consumer choice in all types of telecommunications markets through multiple technologies and services. The Commission therefore must consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding before modifying the cable home wiring rules in ways that could have competitive implications for cable operators and other telecommunications service providers. Accordingly, while we deny reconsideration of our current definition of the cable demarcation point for multiple dwelling unit buildings, we believe that it would be appropriate to revisit this issue in a broader competitive context. We are, therefore, requesting comment on this demarcation point issue in our NPRM in CS Docket No. 95–184 being adopted concurrently herewith. We expect to act quickly in the NPRM proceeding to resolve the demarcation point issue.

D. Multiple Dwelling Unit Buildings With Loop-Through Wiring

1. Background

27. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire multiple dwelling unit building. Every subscriber on the loop is limited to receiving video services from the same provider; there is no capacity for individual choice. In the Cable Wiring Order, the Commission excluded multiple dwelling unit loop-through wiring from the cable home wiring rules, reasoning that applying our rules to loop-through wiring would give the building manager or the initial subscriber control over cable service for all subscribers in the loop.

2. Petitions

28. Telephone companies ask that loop-through cable be included in the home wiring rules and controlled by the multiple dwelling unit building owner, and propose that the Commission require that loop-through and other configurations based on common use of unpowered coaxial cable be eliminated in all future multiple dwelling unit installations of cable home wiring. In

addition, Bell Atlantic urges the Commission to bar exclusive contracts between cable operators and the owners or managers of multiple dwelling unit buildings, because such contracts allegedly circumvent the Commission's cable home wiring rules and deny residents the ability to choose between competing services. While the current record does not contain sufficient evidence to bear out Bell Atlantic's assertions—and thus we do not address them further here—the parties are free to raise this issue in the context of the NPRM in CS Docket No. 95–184, adopted concurrently herewith.

29. On the other hand, cable companies agree with the Commission's exclusion of multiple dwelling unit building loop-through configurations from the home wiring rules. Time Warner argues that the frequent turnover of multiple dwelling unit residents makes inclusion of loop-through multiple dwelling units impractical.

3. Discussion

30. On reconsideration, we continue to exclude loop-through wiring from our cable home wiring rules. Inclusion of loop-through systems within these rules would be impractical, in part because establishing a separate demarcation point for each subscriber on a loop-through system and deciding how much wiring each subscriber should have the option to buy are not feasible. Furthermore, loop-through configurations, by their nature, preclude individual subscriber control, an essential element of the Commission's cable home wiring rules. Therefore, cable operators are not required to offer to sell loop-through wiring to subscribers upon termination of service, and no loop-through subscriber has the right to purchase loop-through home wiring. We will, however, consider and request comment in our Further Notice of Proposed Rulemaking (''FNPRM'') published simultaneously in this issue regarding Liberty's proposal that we allow the building owner to purchase the home wiring when all of the subscribers on a loop simultaneously decide to switch to an alternative video programming service provider. We will also request comment on NYNEX's and USTA's proposal that we prohibit future loop-through wiring installations and our authority, if any, to do so.

E. Inclusion of Passive Splitters Within Cable Home Wiring

1. Background and Petitions

31. Section 76.5(ll) of the Commission's rules defines cable home wiring as the internal wiring contained within the subscriber's premises which begins at the demarcation point. The rule specifically excludes from cable home wiring any active elements such as amplifiers, converter or decoder boxes, or remote control units. In its petition for reconsideration, Liberty asks the Commission to ''clarify that cable home wiring includes passive ancillary equipment such as splitters and conduits or molding in which the cable is installed.'' Liberty asserts that including such passive equipment within the definition of cable home wiring will allow Liberty and other cable competitors to avoid problems that arise when space constraints prohibit the installation of multiple splitters or conduits to access an individual subscriber's wires. Cable companies oppose this request, contending that it was the specific intent of Congress to exclude any cable equipment other than actual wiring. Time Warner further contends that conduit and molding should be excluded from the Commission's definition of cable home wiring because they are not cable equipment, but rather the property of the premises owner. Time Warner states that, at a minimum, splitters, which are passive cable equipment, should only be considered part of the home wiring if located within, or up to twelve inches outside the subscriber's premises.

2. Discussion

32. We grant Liberty's request that we include passive splitters within the definition of cable home wiring. Because passive splitters are a physically integral part of the home wiring, we believe that their exclusion could frustrate the purposes behind Section 16(d) of the 1992 Cable Act—i.e., to permit subscribers to avoid the disruption of having their home wiring removed, and to subsequently utilize the home wiring for an alternative video programming service. Therefore, operators will be required to offer to sell to a terminating subscriber any passive splitters attached to the home wiring on the subscriber's side of the demarcation point, at no more than the replacement cost of the splitters.

33. However, we deny Liberty's request that other passive equipment be included within the cable home wiring definition. We believe that molding and conduit are not necessarily cable equipment and are often the property of the premises owner. In addition, we believe that, considering the wide variety of passive equipment and related property, it would be too burdensome to require cable operators to be prepared to quote the replacement cost of such equipment and property upon the subscriber's termination of service. Nevertheless, we understand Liberty's concern that cable operators not be permitted to use their ownership of other property relating to the cable home wiring to frustrate the purposes of our cable home wiring rules and Section 16(d) of the 1992 Cable Act. We will therefore prohibit cable operators from using any ownership interests they have in property located on the subscriber's side of the demarcation point, for example, cable molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service.

III. Regulatory Flexibility Analysis

34. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the First Order on Reconsideration is as follows:

35. Need and Purpose of this Action. The Commission amends its rules pertaining to cable home wiring to better effectuate the purposes of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 544(i) (1992).

36. Summary of Issues Raised by the Public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

37. Significant Alternatives Considered and Rejected. Petitioners representing cable interests and competitive video providers did not submit comments regarding the administrative burden of the home wiring rules.

IV. Procedural Provisions

38. Initial Paperwork Reduction Act of 1995 Analysis. This First Order on Reconsideration contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this Order as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the FNPRM; OMB comments are due 60 days from the date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

39. Ex parte Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

40. Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

V. Ordering Clauses

41. Accordingly, it is ordered that the Petitions for Reconsideration in MM Docket No. 92–260 are granted in part and denied in part, as provided above herein.

42. It is further ordered that Part 76 of the Commission's rules is hereby amended as shown below, effective upon approval by the Office of Management and Budget. The portions of the First Order on Reconsideration imposing information collections will not go into effect until approved by the Office of Management and Budget.

43. It is further ordered that the Secretary shall send a copy of this First Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*. (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Revised Rules

Part 76 of Title 47 of the Code of Federal Regulation is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1084, 1085, 1101; 47 U.S.C. § 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 632, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 543, 552.

2. Section 76.5 is amended by revising paragraph (ll) to read as follows:

§ 76.5 Definitions.

* * * * *

(ll) Cable home wiring. The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

* * * * *

3. Section 76.802 is revised to read as follows:

§ 76.802 Disposition of cable home wiring.

(a) Upon voluntary termination of cable service by a subscriber, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the cable home wiring multiplied by the length in feet of the cable home wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point. If the subscriber declines to acquire the cable home wiring, the cable system operator must then remove it within seven (7) business days, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(b) During the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator—if it owns and intends to remove the home wiring—must inform the subscriber:

(1) That the cable operator owns the home wiring;

(2) That the cable operator intends to remove the home wiring;

(3) That the subscriber has the right to purchase the home wiring; and

(4) What the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

(c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in paragraph (b) of this section apply.

(d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility—if it wishes to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in paragraph (b) of this section.

(e) If the cable operator fails to adhere to the procedures described in paragraph (b) of this section, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and shall make no subsequent attempt to remove it or restrict its use.

(f) If the cable operator adheres to the procedures described in paragraph (b) of this section, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring.

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) business day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

(h) If an alternative video programming service provider connects its wiring to the home wiring before the incumbent cable operator has terminated service and has capped off its line to prevent signal leakage, the

alternative video programming service provider shall be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(i) Where the subscriber terminates cable service but will not be using the home wiring to receive another alternative video programming service, the cable operator shall properly cap off its own line in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(j) Cable operators are prohibited from using any ownership interests they may have in property located on the subscriber's side of the demarcation point, such as molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service. In addition, incumbent cable operators must take reasonable steps within their control to ensure that an alternative service provider has access to the home wiring at the demarcation point. Cable operators and alternative multichannel video programming delivery service providers are required to minimize the potential for signal leakage in accordance with the guidelines set forth in 47 CFR 76.605(a)(13) and 76.610 through 76.617, theft of service and unnecessary disruption of the consumer's premises.

(k) Definitions—Normal operating conditions—The term ''normal operating conditions'' shall have the same meaning as at 47 CFR 76.309(c)(4)(ii).

[FR Doc. 96–3128 Filed 2–15–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 90

[PR Docket No. 93–144; PP Docket No. 93–253; FCC 95–501]

The Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *First Report* and Order in PR Docket No. 93–144, and *Eighth Report* and Order in PP Docket No. 93–253, the Commission adopts final service and competitive bidding rules for the ''upper 10 MHz block'' of 800 MHz Specialized Mobile Radio (SMR) spectrum and adopts rules which streamline the licensing process for SMR services in the 800 MHz band.

In this *First Report and Order* (''*First R&O*''), the Commission designates a portion of 800 MHz SMR spectrum for wide-area licensing using license areas defined by the Economic Areas (EAs) established by the U.S. Department of Commerce Bureau of Economic Analysis. Under this wide-area licensing plan the Commission has allocated three channel blocks, one 120-channel block, one 60-channel block, and one 20-channel block.

In this *Eighth Report and Order* (''*Eighth R&O*''), the Commission reiterated that competitive bidding is an appropriate licensing tool for the 800 MHz SMR service. The Commission also adopts specific auction rules for the upper 10 MHz block, including rules pertaining to competitive bidding design, license grouping, bidding procedures, and treatment of ''designated entities'' (that is, small businesses, businesses owned by minorities and/or women, and rural telephone companies). The intended effect of this action is to facilitate future deployment of SMR systems in the 800 MHz band through licensing procedures and the use of competitive bidding.

EFFECTIVE DATE: March 18, 1996.

FOR FURTHER INFORMATION CONTACT: David Furth or Lisa Warner at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *First Report and Order* in PR Docket No. 93–144, and this *Eighth Report and Order* in PP Docket No. 93–253, adopted December 15, 1995, and released December 15, 1995, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 140, Washington, D.C. 20037 (telephone (202) 857–3800).

Synopsis of *First Report and Order* and *Eighth Report and Order:*

I. Background

1. The Commission's current rules for the 800 MHz Specialized Mobile Radio (SMR) service were designed primarily to license dispatch radio systems on a transmitter-by-transmitter basis in local markets. In recent years, however, some SMR licenses have been authorized through waivers and extended implementation rules to expand the geographic scope of their services and aggregate large numbers of channels to provide service more directly comparable to that provided by cellular operators and that envisioned for Personal Communications Services (PCS). While the 800 MHz SMR rules have proven sufficiently flexible to permit such expansion, the licensing process remains cumbersome because of the need to license each SMR transmitter site individually. In May 1993, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket No. 93–144, 58 FR 33062 (June 15, 1993) (''*Notice*''), proposing wide-area licensing of the 800 MHz SMR service. In August of 1993, Congress amended the Communications Act of 1934 to modify the regulatory treatment of mobile services. In the *Second Report and Order* in GN Docket No. 93–252, 59 FR 18493 (April 19, 1994) (''*CMRS Second R&O*''), the Commission reclassified all mobile services into two statutorily-defined categories: commercial mobile radio services (CMRS) and private mobile radio services (PMRS). The Commission concluded that all SMR systems providing or authorized to provide interconnected service would be reclassified as CMRS.

2. In the *Third Report and Order* in GN Docket No. 93–252, 59 FR 59945 (November 21, 1994) (''*CMRS Third R&O*''), the Commission concluded that 800 MHz SMR licensees either compete or have the potential to compete with other CMRS providers. As a result, the Commission determined that the technical and operational requirements for the 800 MHz SMR service should be made comparable, to the extent feasible, to those applicable to other CMRS providers. In this connection, the Commission concluded that: (1) wide-area licensing should be implemented in the 800 MHz SMR service; and (2) licensing of the 800 MHz SMR spectrum should be accomplished through competitive bidding procedures.

3. On October 20, 1994, the Commission adopted a *Further Notice of Proposed Rule Making* in PR Docket No. 93–144, 59 FR 60111 (November 22, 1994) (''*Further Notice*''), proposing a new framework for licensing of 800 MHz SMR systems. Specifically, the Commission proposed to assign 10 MHz of SMR spectrum (consisting of 200 contiguous channels) in defined market-based service areas to facilitate the development of wide-area, multi-channel SMR systems, while the remaining 4 MHz of spectrum (consisting of 80 non-contiguous

channels) would be designated for continued licensing on a local basis to accommodate the needs of smaller SMR systems primarily seeking to provide local, more dispatch-oriented service.

II. First Report and Order

A. Wide-Area SMR Licensing in the 800 MHz Band

1. Spectrum Designated for Wide-Area Licensing

4. In the *CMRS Third R&O,* the Commission determined that assigning contiguous spectrum, where feasible, is likely to enhance the competitive potential of wide-area SMR providers. The Commission indicated its belief that contiguous spectrum is essential to the competitive viability of a wide-area SMR system, because it permits use of spread spectrum and other broadband technologies that are available to other CMRS providers but unavailable to systems operating on non-contiguous spectrum. In the *Further Notice*, the Commission proposed to designate the upper 10 MHz block of 800 MHz SMR spectrum for wide-area SMR licensing.

5. In the *First R&O,* the Commission concludes that the 800 MHz SMR spectrum most suitable to be designated primarily for wide-area use is the upper 10 MHz block, as it is the only contiguous SMR spectrum in the 800 MHz band. The Commission further concludes that the entire 10 MHz block should be used, rather than a portion thereof, because it is equivalent in size to the smallest amount of spectrum presently authorized for broadband PCS.

2. Service Areas

6. In the *CMRS Third R&O,* the Commission concluded that the use of service areas based on Rand McNally Major Trading Areas (MTAs), identical to those adopted for broadband PCS, would be preferable for wide-area licensing of the 800 MHz SMR service. The Commission noted that allowing licensees to operate over MTAs as opposed to smaller areas, such as Rand McNally Basic Trading Areas (BTAs), would enhance their ability to invest in technology and to re-use channels more effectively.

7. In this *First R&O,* the Commission determines that, despite its previous conclusion in the CMRS proceeding that MTAs appear to be the most suitable building blocks for 800 MHz SMR licensees seeking to construct wide-area systems, a broad range of commenters expressed support for Economic Areas (EAs) established by the U.S. Department of Commerce Bureau of Economic Analysis rather than MTAs. The Commission agrees with the majority of commenters that EAs reflect the actual coverage provided by 800 MHz SMR systems and concludes that use of EAs will further the public interest because it will result in the dissemination of licenses among a variety of applicants as anticipated by Section 309(j) of the Communications Act. The Commission further concludes that use of these smaller geographic areas ultimately will result in a more diverse group of prospective bidders, because small and medium-sized operatives will have incentives to seek EA licenses.

8. Thus, 800 MHz SMR wide-area licenses in the upper 10 MHz block will be based on the 172 EAs covering the continental United States and Alaska, and three additional licensing regions covering the five U.S. possessions, Guam, Northern Marina Islands, Puerto Rico, U.S. Virgin Islands, and American Samoa.

3. EA Spectrum Blocks

9. In the *CMRS Third R&O,* the Commission observed that most commenters agreed that wide-area SMR systems must have the ability to use (and reuse) a large number of channels, preferably on contiguous frequencies, to compete successfully with cellular and broadband PCS. Based on the record established earlier in the 800 MHz SMR proceeding and the comments submitted in the CMRS proceeding, the *Further Notice* proposed to divide the upper 10 MHz block of 800 MHz SMR spectrum into four blocks of 2.5 MHz, corresponding to 50 channels per block, under the Commission's existing frequency allocation rules. In addition, the Commission chose not to propose to issue a single license covering the entire 10 MHz upper block of 800 MHz SMR spectrum because it determined that a single 10 MHz license would preclude licensing of multiple wide-area licensees in each market.

10. In this *First R&O,* the Commission concludes that dividing the upper 10 MHz block into multiple spectrum blocks is both feasible and desirable. The Commission concludes that allocating varying size blocks will accomplish its goal of creating opportunities for wide-area SMR providers with differing spectrum needs. Thus, the Commission adopts a licensing plan which allocates one 120-channel block, one 60-channel block, and one 20-channel block for each EA. The Commission believes that these channel block sizes will provide opportunities for a variety of licensees of different sizes to participate in the provision of wide-area service.

4. 800 MHz SMR Spectrum Aggregation Limit

11. In the *CMRS Third R&O,* the Commission concluded that a 45 MHz limit on aggregation of broadband PCS, cellular, and SMR spectrum, combined with existing service-specific caps for cellular and PCS, was sufficient to maintain a competitive CMRS market. In light of this conclusion, in the *Further Notice,* the Commission concluded that an additional aggregation limit within the 800 MHz SMR service was unnecessary.

12. The Commission concludes in this *First R&O* that allowing unrestricted aggregation of 800 MHz SMR spectrum would not impede CMRS competition. The Commission expresses concern that limiting aggregation of 800 MHz SMR spectrum may result in a competitive disadvantage to SMR licensees as potential competitors to broadband PCS and cellular providers. Thus, the Commission further concludes that SMR licensees will be permitted to seek and (if they are the high bidders for all EA licenses) obtain all three of the EA licenses in a particular license area. The Commission reiterates, however, that even though it has declined to adopt a spectrum aggregation limit specific to the 800 MHz SMR service, such licensees remain subject to the 45 MHz CMRS spectrum aggregation limit and to the competitive component of the public interest standard.

5. Licensing in Mexican and Canadian Border Areas

13. In the *Further Notice,* the Commission tentatively concluded that attempting to create different allocations in border areas would be administratively unworkable, and, thus, proposed to license wide-area spectrum blocks on a uniform basis without distinguishing border from non-border areas. The Commission further proposed to license the channels in border areas not contained in the wide-area spectrum block on a channel-by-channel basis under the same rules it ultimately adopts for the lower 80 channels in non-border areas.

14. The Commission concludes that EA spectrum blocks should be licensed on a uniform basis, without distinguishing border from non-border areas. EA licenses will be entitled to use any available border area channels within their spectrum blocks, subject to international assignment and coordination of such channels. The Commission also concludes that the limited channel availability and other operating restrictions in the border areas are matters to be assessed by EA

applicants in their valuation of EA spectrum blocks for competitive bidding purposes. The Commission, however, defers a decision regarding treatment of 800 MHz SMR channels licensed in border areas, but not included within the EA spectrum blocks, until the resolution of the *Second Further Notice of Proposed Rule Making* in PR Docket No. 93–144.

B. Rights and Obligations of EA Licensees

1. Operational Flexibility

15. In the *Further Notice,* the Commission tentatively concluded that wide-area SMR licensees in the 800 MHz band should be authorized to construct stations at any available site and on any available channel within their respective spectrum blocks. In addition, the Commission proposed to allow wide-area licensees to ''self-coordinate'' system modifications within their service areas—that is, to add, subtract, move, and otherwise modify their base station facilities without prior Commission consent, provided they notify the Commission of the coordinates and certify compliance with its co-channel interference protection and emission requirements.

16. The Commission concludes that grant of EA licenses will provide licensees with: (1) the right to construct at any available site within the EA, and to add, subtract, or move site locations within the EA during the license term, on a ''self-coordinated'' basis; and (2) the right to use any available spectrum within the EA licensee's designated spectrum block on a self-coordinated basis, including full discretion over channelization of available spectrum within the block (provided that emission mask requirements are met, and co-channel interference protection is afforded to incumbent licensees and co-channel EA licensees in neighboring EAs). The Commission further concludes that simplified initial licensing and subsequent system modification substantially will reduce the existing administrative burden on both SMR licensees and the Commission, and will establish greater consistency with its cellular and PCS licensing rules.

2. Spectrum Management Rights—Acquisition and Recovery of Channels Within Spectrum Blocks

17. In the *Further Notice,* the Commission recognized that the operational flexibility afforded to wide-area 800 MHz SMR licensees would be limited by the large number of systems already authorized and operating in the band, particularly in major markets. The Commission noted that even if wide-area licensees do not immediately obtain clear spectrum comparable to its allocations for cellular or broadband PCS, wide-area licensing should confer other valuable rights that would enhance a licensee's ability to establish wide-area service. Thus, the Commission proposed to assist wide-area licensees in consolidating spectrum within their respective blocks by providing that (1) if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, the spectrum covered by the incumbent's authorization automatically reverts to the wide-area licensee; and (2) if a wide-area licensee negotiates to acquire an incumbent system by assignment or transfer, the assignment or transfer presumptively will be considered in the public interest.

18. In this *First R&O,* the Commission concludes that an EA licensee has the right to use any spectrum within the EA block that is recovered by the Commission. In addition, the Commission determines that assignments from incumbents operating in an EA spectrum block to the respective EA licensee generally will be presumed to be in the public interest. The Commission concludes that granting these rights to EA licensees will give them greater flexibility in managing their spectrum, establish greater consistency with its cellular and PCS rules, and reduce regulatory burdens on both licensees and the Commission with respect to future management of the spectrum within the wide-area blocks. The Commission also eliminates all waiting lists for SMR Category channels within the upper 10 MHz block, and dismisses all applications on such waiting lists. The Commission determines that continuing such lists would be inconsistent with the wide-area licensing scheme it has adopted.

19. With respect to the impact of these rights on the finders' preference program, the Commission concludes that successful applicants for a finders' preference program will be considered an ''incumbent'' within the meaning of the rules adopted in the *First R&O.* In addition, the Commission no longer will accept finders' preference requests following the adoption of this *First R&O.* As a result, the EA licensee will have the exclusive right to recover unconstructed or non-operational channels on blocks for which it is licensed.

3. License Term and Renewal Expectancy

20. In the *CMRS Third R&O,* the Commission determined that every Part 90 licensee that is reclassified and treated as a CMRS licensee when its current license term expires thereafter shall have a ten-year license term and be afforded a renewal expectancy, provided it is able to demonstrate that it: (1) has provided ''substantial'' service during the license term; and (2) has complied with applicable Commission rules and policies, and the Communications Act. Furthermore, the Commission determined that ''grandfathered'' Part 90 licensees, because they retain their ''private'' status until August 10, 1996, would not be afforded either the ten-year license term or the renewal expectancy during the statutory transition period.

21. In this *First R&O,* the Commission determines that EA licenses should be granted for a ten-year license term. In addition, EA licensees generally will be afforded a renewal expectancy as determined in the *CMRS Third R&O.*

C. Treatment of Incumbent Systems

1. Mandatory Relocation

22. In the *Further Notice,* the Commission tentatively concluded that incumbent SMR systems should not be subject to mandatory relocation to new frequencies pursuant to Nextel's band-clearing proposal. The Commission also expressed concern that mandatory relocation could impose significant costs and disruption on incumbent licensees.

23. The Commission concludes in this *First R&O* that, based on the record in this proceeding, a smooth and expedient transition to the new licensing framework for 800 MHz SMR service cannot be accomplished without some form of mandatory relocation. Thus, the Commission has created a two-phase mandatory relocation mechanism under which there is a fixed one-year period for voluntary negotiations between EA licensees and incumbents and a two-year period for mandatory negotiations. Under this mechanism, if an EA licensee and an incumbent licensee fail to reach an agreement by the conclusion of the mandatory negotiation period, then the EA licensee may request involuntary relocation of the incumbent's system provided that it: (1) guarantees payment of all costs of relocating the incumbent to a comparable facility; (2) completes all activities necessary for placing the new facilities into operation, including engineering and frequency coordination, if necessary; and (3) builds and tests the

new system. Specifically, any relocation of an incumbent must be conducted in such a fashion that there is a ''seamless'' transition from the incumbent's ''old'' frequency to its ''relocated'' frequency (that is, there is no significant disruption in the incumbent's operations). In connection with this mandatory relocation mechanism, EA licensees will be required to notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice commencing the voluntary negotiation period. If an applicant does not receive timely notification of relocation, the EA licensee loses the right to require that incumbent to relocate.

24. The Commission also initiates a partial lifting of the freeze on acceptance of new applications for SMR and General Category channels to permit those assignments and transfers of control that involve modifications to licensed facilities, provided such assignments and transfers are designed to accommodate market-driven, voluntary relocation arrangements between incumbents and potential EA applicants, and do not change the 22dBu service contour of the facilities to be relocated. This option is not available for purposes of relocating incumbents from one part of the upper 10 MHz block to another. Moreover, potential EA applicants and relocating incumbents utilizing this option must be completely unaffiliated. Processing of these assignments and transfers will continue until the date the Commission releases the Public Notice announcing the upper 10 MHz auction.

2. Incumbent Operation Flexibility

25. In the *Further Notice*, the Commission tentatively concluded that in those situations in which incumbents are allowed to continue operating on already-licensed facilities, incumbent systems should not be allowed to expand beyond their existing service areas on those channels designated for wide-area licensing, without the consent of the wide-area licensee.

26. The Commission concludes that allowing non-EA licensees to expand their systems at will after wide-area licensing has occurred would diminish substantially the value of the EA license and would create continuing uncertainty for EA applicants and licensees alike. The Commission recognizes, however, that there may be circumstances in which an EA licensee should be required to permit incumbents to make minor alterations to their service areas to preserve the viability of their systems. Thus, the Commission granted operational flexibility to incumbent SMR licensees to add, subtract, or move site locations within their current 22 dBu contours, on a ''self-coordinated'' basis. The incumbent must, however, still comply with the short-spacing criteria in Section 90.621(b) of the Commission's rules, even if its modifications do not extend its 22 dBu interference contour. Incumbent licensees will be required to notify the Commission of any changes in technical parameters or additional stations constructed, including agreements with an EA licensee to expand beyond their signal strength contour, through a minor modification of their license.

D. Co-channel Interference Protection

1. Incumbent SMR Systems

27. In the *CMRS Third R&O*, the Commission concluded that, as a general matter, it would retain its existing co-channel protection rules for CMRS licensees. Under the current rules, a wide-area licensee would be required to afford protection to incumbents, either by locating its stations at least 113 km (70 mi) from the facilities of any incumbent, or by complying with the co-channel separation standards set forth in its ''short-spacing'' rule if it seeks to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities.

28. In this *First R&O*, the Commission determines to require EA licensees to afford interference protection to incumbent SMR systems, as provided in Section 90.621 of the Commission's rules. As a result, an EA licensee will be able to satisfy its co-channel protection obligations with respect to incumbents in one of three ways: (1) by locating its stations at least 113 km (70 miles) from any incumbent's facilities; (2) by complying with the short-spacing rule if it seeks to operate stations less than 113 km from an incumbent's facilities; or, (3) by negotiating an even shorter distance with the incumbent licensee. The Commission concludes that these requirements will ensure adequate protection of incumbent operations, without hampering the ability of EA licensees to construct stations throughout their authorized service areas. The Commission believes that this rule will afford maximum flexibility to EA licensees, allow incumbents to fill in ''dead spots,'' and protect incumbent licensees from actual interference.

2. Adjacent EA Licensees

29. In the *CMRS Third R&O*, the Commission concluded that the co-channel interference protection obligations of geographic-area licensees with respect to other geographic-area licensees would be similar to those imposed in the cellular and PCS services. In the *Further Notice*, the Commission tentatively concluded, therefore, that wide-area SMR licensees in the 800 MHz band should not be allowed to exceed a signal level of 22 dBuV/m at their service area boundaries (unless they negotiate a different signal strength limit with all potentially affected adjacent licensees).

30. In this *First R&O*, the Commission prohibits EA licensees from exceeding a signal level of 40 dBuV/m at their service area boundaries, unless all bordering EA licensees agree to a higher field strength. The Commission requires coordination of frequency use between co-channel adjacent EA licensees and all other affected parties. This approach provides EA licensees with a signal strength level sufficient to operate their systems up to the borders of their EAs, while also providing protection to adjacent operations. As an exception to this requirement, when a single entity obtains licenses for adjacent EAs on the same spectrum block, it will not be required to coordinate its operations in this manner.

3. Emission Masks

31. To protect against adjacent channel interference, the Commission has emission mask rules in most mobile radio services to restrict transmitter emissions on the spectrum adjacent to the licensee's assigned channel. In the *CMRS Third R&O*, the Commission affirmed its out-of-band emission rules for CMRS services and determined that out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations. With respect to licensees that have exclusive use of a block of contiguous channels, the Commission concluded that out-of-band emission rules would be applied only to the extent necessary to protect operations outside of the licensee's authorized spectrum.

32. The Commission concludes that out-of-band emission rules should apply only to the ''outer'' channels included in an EA license and to spectrum adjacent to interior channels used by incumbents. The Commission believes that these channels alone have the potential to affect operations outside of the EA licensee's authorized bandwidth. The Commission also believes that this requirement will facilitate dual mode

SMR/cellular operation, similar to that in the PCS/cellular context, which ultimately will add capacity to the systems operated by the EA licensees.

E. Construction Requirements

1. EA Licensees

33. In the *CMRS Third R&O,* the Commission determined that the record in the CMRS proceeding generally supported use of longer construction periods, combined with interim coverage requirements, to ensure that wide-area CMRS licensees provide service to portions of their service area before the construction period expires. In the *Further Notice,* the Commission noted that such an approach has been used for cellular service and recently was adopted for both broadband and narrowband PCS. In the *Further Notice,* the Commission tentatively concluded that wide-area SMR licensees should have five years to construct their systems.

34. In this *First R&O,* the Commission concludes that EA licensees should have a five-year construction period. While this construction period is shorter than that imposed for PCS systems, we agree with the majority of commenters that it is the most appropriate time period for the 800 MHz SMR service. In addition, given the substantial construction of 800 MHz SMR systems (including wide-area systems) to date, the ten-year construction period applicable to PCS appears excessive for the service. Although a five-year construction period may give some EA licensees more time to construct certain facilities than otherwise might have been allowed, the Commission believes that EA licensees should have this flexibility. Furthermore, the Commission believes that use of competitive bidding to select geographic-area licensees provides ample incentives for rapid system construction, since this permits license winners to recover their bidding expenses.

2. Extended Implementation Authority

35. The Commission noted in the *Further Notice* that some existing SMR licensees have been granted extended implementation periods of up to five years to construct their systems, pursuant to either a waiver of its construction and loading rules or Section 90.629 of its Rules. The Commission's rules require SMR licensees with extended implementation authority to submit annual certifications of compliance with their yearly station construction commitments. Moreover, if the Commission concludes, at any time, that the licensee has failed to meet such construction commitments, it may terminate extended implementation authority and give the licensee six months from the termination date to complete construction of the system.

36. Following the Commission's adoption of the *Further Notice,* some SMR licensees filed requests for extended implementation authority, which remain pending. With respect to two such requests filed by Chadmoore and PCC Management Corp., the Wireless Telecommunications Bureau (''Bureau'') released a Public Notice seeking comment on whether the requests should be granted. In its extended implementation authority request, Chadmoore sought three years to construct a non-contiguous ''wide-area'' SMR system that will extend from the southeastern United States through the upper Midwest and use new technology. Chadmoore argued that grant of its extended implementation request was warranted on four grounds: (a) Chadmoore's principals have demonstrated expertise in SMR sales and service; (b) Chadmoore previously has demonstrated its ability to acquire and construct those licenses granted to SMR ''investors;'' (c) Chadmoore's proposal would assist those licensees ''who have, as yet, not constructed'' their stations, and who are in danger of losing their investment once their already extended deadline has expired; and, (d) grant of Chadmoore's proposal would promote competition in the SMR equipment manufacturing market. Similarly, PCC sought a period of three years to construct a regional, and ultimately nationwide, network of SMR systems. PCC's proposed system would include 2,181 channels, 849 conventional channels and 269 trunked channels, encompassing 1,118 licenses. PCC argued that grant of its extended implementation request was warranted for the following reasons: (a) climatic conditions for the region(s) in which the SMR systems are located preclude construction during certain seasons of the year; (b) grant of PCC's proposal would assist licensees who have not yet constructed their authorized facilities; (c) PCC's implementation plan would result in a more cost-effective build-out for the stations included in its proposal; and (d) grant of PCC's proposal would facilitate the implementation of an integrated nationwide network.

37. The Commission initially established extended implementation authority for SMRs to facilitate construction of wide-area systems. In the *First R&O,* the Commission concludes that the availability of extended implementation authority in the 800 MHz SMR service is no longer necessary. In fact, the Commission is concerned that both existing and future grants of extended implementation authority would be contrary to the underlying goals of this proceeding. Specifically, the Commission believes that allowing licensees to retain extended implementation authority of up to five years after adoption of the wide-area licensing approach detailed in this *First R&O* would impinge upon the construction requirements imposed on EA licensees. Thus, the Commission believes that it is necessary not only to cease acceptance of requests for extended implementation authority but also to accelerate the termination date of existing implementation periods so that EA licensees will not be unnecessarily hampered in their efforts to comply with the construction requirements associated with their authorizations.

38. In addition, several licensees and commenters contend that such extended implementation grants have resulted in spectrum warehousing. To address these spectrum warehousing concerns, the Commission will require all incumbent 800 MHz SMR licensees who have received extended implementation authority to demonstrate that allowing them extended time to construct their facilities is warranted and furthers the public interest. Specifically, a licensee seeking to retain extended implementation authority must: (a) indicate the duration of its extended implementation period (including commencement and termination date); (b) provide a copy of its implementation plan, as originally submitted and approved by the Commission, and any Commission-approved modifications thereto; (c) demonstrate its compliance with Section 90.629 of its rules if authority was granted pursuant to that provision, including confirmation that it has filed annual certifications regarding fulfillment of its implementation plan; and (d) certify that all facilities covered by the extended implementation authority proposed to be constructed as of the adoption date of this *First R&O* are fully constructed and that service to subscribers has commenced as defined in the *CMRS Third R&O*. These showings must be submitted within 90 days from the effective date of this *First R&O*. The Commission notes that all of the information to be included in the showing presently is required by Section 90.629 of its Rules. The Commission delegated to the Bureau the authority to review and take appropriate action upon such showings.

39. If a licensee's extended implementation authority showing is approved by the Bureau, such licensee

will be afforded a construction period of two years or the remainder of its current extended implementation period, whichever is shorter. The Commission recognizes that some licensees were initially granted extended implementation periods which exceed this two-year period. In those instances where a licensee demonstrates that it has fully complied with the requirements of Section 90.629 of the Commission's rules and that its system cannot reasonably be completed within the two-year period, the Commission will entertain requests for the minimum period of time necessary to complete implementation of the licensee's proposal provided that the licensee explains why the two-year period is an insufficient amount of time. The Commission anticipates that such explanation would entail the same type of public interest showing associated with a request for waiver of the Commission's rules under Section 1.3 of the rules.

40. Upon the termination of this two-year period, authorizations for facilities that remain unconstructed will cancel automatically. If a licensee either fails to submit the showing described above within the designated time frame or submits an insufficient or incomplete showing, such licensee will have six months from the last day on which it could timely file such a showing or six months from the denial of its request to construct the remaining facilities covered under its implementation plan. After this six-month period, authorizations for facilities still unconstructed will cancel automatically.

41. With respect to pending requests for extended implementation authority, the Commission determines that grant of these requests would conflict with its goal of uniformly implementing wide-area licensing. It also reiterates that parties that remain interested in obtaining extended implementation authority are free to apply for an EA license under the Commission's new rules.

3. Interim Coverage Requirements

42. In the *CMRS Third R&O*, the Commission concluded that 800 MHz wide-area SMR licensees should be subject to interim coverage requirements that are similar to those in the cellular and PCS rules. In the *Further Notice*, the Commission proposed that geographic-area licensees be required to provide coverage to one-third of the population within their license area within three years of initial license grant, and to two-thirds of the population by the end of their five-year construction period.

43. In the *CMRS Third R&O*, the Commission noted that any interim coverage requirements for wide-area SMR systems must account for the fact that geographic-area licensees may be required to provide co-channel protection to incumbent systems within their service area. In the *Further Notice*, the Commission indicated its belief that when a licensee acquires a wide-area license, it assumes the responsibility of obtaining the right to use sufficient spectrum to provide coverage if such spectrum is not already available. The Commission further indicated its expectation that coverage be achieved directly by constructing facilities on available spectrum authorized to the wide-area licensee or acquiring such spectrum through buy-outs of incumbent licensees within its authorized spectrum block. To the extent that the *Further Notice* could be read to propose that coverage could be met through use of resale or similar agreements, the Commission clarifies its intention that the wide-area licensee is free to engage in resale activities, but must satisfy its construction requirements through use of its facilities and not capacity acquired from others through resale.

44. The Commission will require EA licensees to provide coverage to one-third of the population of their respective EAs within three years of initial license grant and to two-thirds by the end of their five-year construction period. This requirement is consistent with the Commission's 900 MHz SMR rules. Unlike its approach in the 900 MHz SMR context, the Commission is not adopting a ''substantial service'' benchmark for the upper 10 MHz block as an alternative to the population coverage criteria. Given the already extensive licensing in the upper 10 MHz block, the Commission believes it is unlikely that an EA licensee could provide substantial service without buying incumbent systems or relocating incumbents. Similarly, the Commission did not adopt a ''substantial service'' standard in the Multipoint Distribution Service (MDS) because of extensive incumbent presence in that spectrum.

4. Channel Use Requirement

45. Given the extensive licensing of the upper 10 MHz block, the Commission shares the concern of several commenters that interim coverage requirements alone may not ensure efficient spectrum use unless a channel use requirement is added. Specifically, the Commission is concerned that an EA licensee potentially could satisfy the interim coverage requirements by constructing only one channel in its spectrum block. This would result in inefficient use of 800 MHz SMR spectrum, for which there is great demand. In addition, unlike the 900 MHz SMR service and other lightly encumbered auctionable services, the substantial incumbent presence in the 800 MHz SMR service presents the potential for a bidder who is incapable of building out a wide-area system to participate in the auction solely to restrict a competing incumbent licensee's ability to expand. Accordingly, the Commission will require EA licensees to construct 50 percent of the total channels included in their spectrum blocks in at least one location in their respective EAs within three years of initial license grant. Although the Commission does not impose an additional channel use requirement at the fifth year, EA licensees nonetheless are required to maintain their compliance with the initial channel usage requirement for the remainder of their construction period.

5. Non-compliance With Interim Coverage Requirements

46. The Commission concluded that an EA licensee's failure to meet either the three-year or five-year coverage requirements or the channel usage requirement will result in forfeiture of the entire EA license. Forfeiture of the EA license, however, will not result in the loss of any constructed facilities authorized to the licensee prior to the auction.

F. EA License Application Issues

1. Initial Eligibility

47. In the *CMRS Third R&O* and the *Further Notice*, the Commission tentatively concluded that the initial application process for wide-area SMR licenses should be open to any qualified applicant. The Commission also sought comment on whether it was necessary to restrict eligibility for EA licenses to incumbent licensees (or to restrict eligibility based on other criteria) if competitive bidding procedures are used in the upper 10 MHz block.

48. In this *First R&O*, the Commission concludes that restrictions on eligibility for EA licenses are not warranted, except that EA applicants will be presumptively classified as CMRS, and therefore will be required to comply with the alien ownership requirements specified in Section 310 of the Act. The Commission has adopted specific provisions in the service rules for the upper 10 MHz block to address these concerns, *e.g.*, imposition of construction periods combined with

interim coverage and channel use requirements. Moreover, the Commission believes that the competitive bidding process itself will deter speculation by those not genuinely interested in providing service to the public. In addition, the Commission believes that open eligibility for the EA licensees will be pro-competitive and potentially will result in a diverse group of entities providing wide-area SMR service in the upper 10 MHz block.

49. With respect to foreign ownership, all applicants will be subject to Section 310(b) of the Communications Act, except to the extent they have received waiver of preexisting ownership interests. In the CMRS docket, the Commission established specific procedures for private mobile services licensees reclassified as CMRS to file waiver petitions to retain existing foreign ownership interests. Thus, any reclassified private mobile services licensees that have levels of alien ownership or control that would be prohibited when these licensees assume CMRS status must already have filed a petition seeking to have such interests grandfathered.

2. Regulatory Classification of EA Licensees

50. In the *CMRS Second R&O*, the Commission determined that SMR licensees would be classified as CMRS if they offered interconnected service and as PMRS if they did not offer such service. In the *Further Notice*, the Commission indicated its view that most, if not all, EA licensees will be classified as CMRS, because they are likely to provide interconnected service as part of their service offering. As a result, the Commission proposed to classify all EA licensees presumptively as CMRS providers. The Commission also proposed that EA applicants or licensees who do not intend to provide CMRS service would be able to overcome this presumption by demonstrating that their service does not fall within the CMRS definition. The Commission further proposed that the statutory grandfathering period also would apply with respect to the operation of this presumption. As a result, entities licensed in the SMR service as of August 10, 1993, would not be subject to CMRS regulation, other than foreign ownership restrictions, until August 10, 1996.

51. The Commission reiterates its conclusion that EA licensees will be classified presumptively as CMRS providers. The Commission also concluded that EA applicants and licensees, like other CMRS providers (such as broadband PCS applicants and licensees), will be able to overcome this presumption if they demonstrate that their service does not fall within the CMRS definition provided in Section 332(d)(1) of the Communications Act.

G. Redesignation of Other 800 MHz Spectrum—General Category Channels and Inter-Category Sharing

52. Currently, 800 MHz SMR systems may be licensed on the General Category channels or licensed under its inter-category sharing rules on 100 channels in the Industrial/Land Transportation and Business Categories (collectively, ''Pool Channels''). In the *Further Notice*, the Commission indicated that although it believes that SMR licensees with existing operations on the General Category or Pool Channels should be allowed to operate on such channels, the Commission also believes that some restriction on future SMR applications for General Category or Pool Channels might be appropriate.

1. General Category Channels

53. In the *Further Notice*, the Commission asked commenters to address whether the entire General Category or some portion thereof should be designated for future licensing exclusively to SMR applicants. The Commission's licensing records indicate that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. As a result, the Commission concludes that the demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMR services. In addition, given the already extensive licensing on the upper 10 MHz block and the mandatory relocation established in this *First R&O*, as part of its wide-area licensing for the 800 MHz SMR service, the Commission expects that demand for additional SMR spectrum will increase, as EA licensees seek frequencies for relocation of incumbents. The Commission believes that by prohibiting SMR eligibility on the Pool Channels it will relieve much of the pressure on such frequencies. The Commission concludes that the most efficient use of the General Category channels is to redesignate them exclusively for SMR use.

2. Inter-Category Sharing

54. In the *Further Notice*, the Commission noted that the Pool Channels are intended for non-commercial internal use by Business and Industrial/Land Transportation licensees, and their availability for SMR licensees was to be on a limited basis only. After the release of the *Further Notice*, the Bureau placed a freeze on inter-category sharing.

55. The Commission is concerned that continuing to allow SMR applications for the Pool Channels could cause a scarcity of frequencies for PMRS uses. Specifically, if these channels remain available to SMR licensees, but are not subject to auctions, demand for the channels by SMR applicants seeking to avoid auctions may render them unavailable to other eligible Part 90 services. Thus, the Commission revises current eligibility rules for inter-category sharing of the Pool Channels to eliminate the risk of SMR encroachment on spectrum allocated for PMRS purposes. SMR licensees no longer will be eligible to apply for Pool Channels on an inter-category sharing basis.

56. In light of its elimination of SMR eligibility for the Pool Channels, the Commission concludes that non-SMR licensees no longer will be eligible for SMR channels, including the General Category channels. With respect to the upper 10 MHz block, the Commission concludes that non-SMR incumbent licensees, like SMR incumbent licensees, will receive the operational rights extended to incumbents and will be subject to the mandatory relocation mechanism.

III. Eighth Report and Order

A. Auctionability of the Upper 10 MHz Block of 800 MHz SMR Spectrum

57. Section 309(j) of the Communications Act, permits auctions only where: (1) mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission; (2) the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals; and, (3) the objectives set forth in Section 309(j)(3) would be promoted.

58. In the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (May 4, 1994) *(Competitive Bidding Second R&O)*, the Commission concluded that SMR as a class of service, including 800 MHz SMR, would satisfy the Section 309(j) criteria for auctionability. The Commission noted that its rules explicitly contemplate and expect that SMR licensees will provide service to eligible subscribers for compensation. The Commission concluded that the use of competitive bidding will speed the development and rapid deployment of SMR service, including service in rural areas, with minimal administrative or judicial

delays, as required by Section 309(j)(3)(A). The Commission also determined that competitive bidding would promote the objectives of Section 309(j)(3)(C) in the SMR service by recovering for the public a portion of the value of SMR spectrum made available for commercial use, and avoiding unjust enrichment.

59. In the *CMRS Third R&O*, the Commission concluded that it generally should use competitive bidding procedures to select among mutually exclusive CMRS applications where it has the authority to do so and where the Commission find such processing to be in the public interest. The Commission specifically concluded that competitive bidding procedures should be used to select between mutually exclusive initial applications in the 800 MHz SMR service. The Commission also concluded that, because the number of mutually exclusive applications in future licensing in the 800 MHz SMR service may be considerable, the use of competitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum will prevail in the selection process.

60. The Commission reiterates its conclusion that competitive bidding is an appropriate licensing tool for the 800 MHz SMR service. The Commission emphasizes that the use of auctions will apply only to issuance of initial licenses in the upper 10 MHz block, the EA licenses. These EA licenses previously have not been issued by the Commission, and include certain rights and obligations that previously were not granted to or required of licensees. Significantly, its granting of these EA licenses does not affect rights afforded to licensees under existing authorizations, because incumbent licensees will be able to continue to operate their systems. Even though incumbents will be subject to mandatory relocation under certain circumstances, their existing operations will be protected. Furthermore, auctions will be used only in the event that there are competing applications for the same EA license.

61. The Commission concludes that use of competitive bidding in the upper 10 MHz block is authorized by Section 309(j) of the Communications Act. The Commission affirmed its previous conclusion that 800 MHz SMR, as a service, satisfies the criteria set forth by Congress for determining when competitive bidding should be used. SMR licenses are used to provide service to subscribers for compensation, so a precondition to competitive bidding under Section 309(j)(2)(A) is met. Moreover, competitive bidding will further the public interest requirements of Section 309(j)(3), by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. Where competitive bidding is utilized, a diverse group of entities, including incumbent licensees and potential new entrants, will be able to participate in the auction process, because the Commission has decided not to restrict eligibility for these EA licenses, an outcome which furthers the goals of Section 309(j)(3)(B) of the Communications Act.

62. Additionally, the Commission believes that competitive bidding procedures will minimize administrative or judicial delays in licensing, particularly when compared to other licensing alternatives—comparative hearings, lotteries (which specifically are prohibited since the 800 MHz SMR service is auctionable), or first-come, first-served procedures. The Commission employed first-come, first-served procedures in the 800 MHz SMR service prior to its implementation of the Budget Act. The Commission's experience is that such procedures have resulted in processing delays. By contrast, the Commission expects that use of competitive bidding will allow interested parties to obtain expeditious access to 800 MHz SMR spectrum and to use such spectrum efficiently. The Commission concludes that this result furthers both Section 309(j)(3)(A) and Section 309(j)(3)(D) of the Communications Act.

63. The Commission disagrees with those commenters who argue that the Commission's competitive bidding authority does not extend to existing services. Section 309(j) of the Communications Act does not distinguish between new services (such as PCS) and existing services in terms of whether initial licenses in a given service should be subject to competitive bidding. Accordingly, the Commission concludes that its determination that the 800 MHz SMR service is auctionable is fully consistent with Section 309(j) of the Communications Act.

B. Competitive Bidding Methodology for Upper 10 MHz Block

1. Competitive Bidding Design

64. *Simultaneous Multiple Round Auctions.* Based on the record in this proceeding and the Commission's successful experience conducting simultaneous multiple round auctions for other CMRS services (*e.g.,* narrowband and broadband PCS), the Commission believes a simultaneous multiple round auction is the most appropriate competitive bidding design for the 10 MHz upper block of 800 MHz SMR spectrum. The Commission has developed and successfully conducted auctions with software capable of handling numerous licenses in a simultaneous multiple round auction. Thus, this methodology will afford the Commission administrative convenience and enable it to hold an auction quickly and efficiently. For certain bidders, the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions. Given this high degree of interdependency among licenses, the Commission rejects SBA's suggestion that single round sealed bidding is a more appropriate competitive bidding design for licensing the upper 10 MHz SMR spectrum blocks. The Commission believes that simultaneous multiple round bidding will generate more information about license values during the course of the auction and provide bidders with more flexibility to pursue back-up strategies, than if the licenses were auctioned separately or through sealed bidding. As the Commission decided in the 900 MHz SMR service, the Bidder Information Package for the 10 MHz upper block licenses will provide all the information about incumbent licensees that is available in its licensing records as of 60 days prior to the filing deadline for participation in the auction. In this connection, upon release of the Public Notice announcing the date of the auction for the upper 10 MHz block of 800 MHz SMR spectrum, all pending applications for frequencies within this spectrum will be returned without prejudice to the applicants. These applicants then will be able to seek licenses for these frequencies through the competitive bidding process. In addition, the Commission encourages all potential bidders to examine these records carefully and do their own independent investigation regarding existing licensees' operations in each EA in which they intend to bid in order to maximize their success in the auction. The Commission will hold a seminar for prospective bidders to acquaint them with this competitive bidding design. The Commission will announce the date and location for such seminar by Public Notice. The Commission concludes, therefore, that simultaneous multiple round bidding is most likely to award licenses to the bidders who value them the most highly and to provide bidders with the greatest likelihood of obtaining the license

combinations that best satisfy their service needs.

65. *Stopping Rules.* The Commission will adopt a simultaneous stopping rule for the upper 10 MHz block 800 MHz SMR auction. The simultaneous stopping rule is designed to allow bidders to decide how long the auction will run, based on bidding strategy and demand for each license. Under a simultaneous stopping rule, bidding will remain open on all licenses in an auction until bidding stops on every license. In this *Eighth R&O,* the Commission concludes that the substitutability between licenses within the same EA and the ability to pursue back-up strategies support the use of a simultaneous stopping rule.

66. As a result, the upper 10 MHz block 800 MHz SMR auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission retains the discretion to keep the auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. In the event that the Commission exercise this discretion, the effect will be the same as if a bidder has submitted a proactive waiver. The Commission also retains the discretion to announce market-by-market closings.

67. The Commission further retains the discretion to declare after 40 rounds that the auction will end after some specified number of additional rounds. Bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It also will enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed the likely benefits of continuing to allow bidding. The Commission will announce by Public Notice the number of remaining rounds and other final bidding procedures. In this *Eighth R&O,* the Commission delegates authority to the Bureau to issue such Public Notices.

68. *Activity Rules.* In the *Further Notice,* the Commission proposed that if simultaneous multiple round auctions are used for the upper 10 MHz block, the Commission would use activity rules the same as or similar to those used in simultaneous multiple round bidding for MTA-based PCS licenses. The Commission has used the Milgrom-Wilson activity rule to award broadband and narrowband PCS licenses. In the *Competitive Bidding Fifth R&O,* the Commission permitted broadband PCS bidders one ''automatic'' waiver from the activity rule during each stage of an auction. An automatic waiver is exercised by the Commission if a bidder fails to bid and fails to submit a ''proactive'' waiver, unless the bidder chooses to override the automatic waiver process to intentionally decrease eligibility: a ''proactive'' waiver is one which can be submitted by the bidder when it chooses not to bid in a round and wishes to maintain its current eligibility level. With respect to broadband PCS auctions, the Commission initially determined that only proactive waivers, and not automatic waivers, would keep an auction open. In that context, however, the Commission later modified the rule by retaining the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. The Commission will employ the Milgrom-Wilson activity rule in conjunction with the simultaneous stopping rule. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the bidder's eligibility in the current round, increases during the course of the auction. The three-stage Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level.

69. Absent waivers, a bidder's eligibility (in terms of activity units) in the current round is determined by the bidder's activity level and eligibility in the previous round. In the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by $0.02 per activity unit.

70. In each round of Stage I, a bidder who wishes to maintain its current eligibility must be active on licenses encompassing at least one-half (50 percent) of the activity units for which it currently is eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of activity units upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver is used). During Stage I, if bidding activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two. Eligibility for each applicant in the first round of the auction is determined by the amount of the upfront payment received and the licenses identified in its auction application. In each round of Stage II, a bidder who wishes to maintain its current eligibility in the next round is required to be active on at least 75 percent of the activity units for which it is eligible in the current round. During Stage II, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by four-thirds (4⁄3). In each round of Stage III, a bidder who wishes to maintain its current eligibility must be active on licenses encompassing at least 95 percent of the activity units for which it is eligible in the current round. In Stage III, if activity in the current round is below 95 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty nineteenths (20⁄19). The Commission reserve the discretion to set and, by announcement before or during the auction, vary the requisite minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time.

71. As in prior auctions, the Commission will determine the transition from one stage to the next in the 800 MHz SMR auction by the aggregate level of bidding activity, subject to its discretion. The transition rule also may be defined in terms of the ''auction activity level''—the sum of activity units of those licenses whose high bid increased in the current round, as a percentage of the total activity units of all licenses in that auction. The auction will start in Stage I and move to Stage II when the auction activity level is below ten percent for three consecutive rounds in Stage I. The auction will move from Stage II to Stage III when the auction activity level is below five percent for three consecutive rounds in Stage II. In no case can the auction revert to an earlier stage. The Commission retains the discretion, however, to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. These determinations will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level defined above, the percentage of licenses (measured in terms of activity units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

72. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission on a particular day, the Commission will provide bidders with five activity rule waivers that may be used in any round during the course of the auction.

If a bidder's activity level is below the required activity level a waiver automatically will be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any ''standing'' high bids (*i.e.,* high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver automatically will be applied. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the bid amount. An activity rule waiver applies to an entire round of bidding and not to a particular EA service area.

73. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility permanently will be reduced, and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction open. Bidders will have the option to enter a ''proactive'' waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

74. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. The Commission also retains the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction. In this *Eighth Report and Order,* the Commission delegated to the Bureau the discretion to issue additional waivers or restrict the use of such waivers.

2. License Grouping

75. In the *Further Notice,* the Commission tentatively concluded that if simultaneous multiple round auctions were used for the 800 MHz SMR wide-area spectrum blocks, the wide-area licenses covering these spectrum blocks should be auctioned simultaneously, because of the relatively high value and significant interdependence of the licenses.

76. The Commission believes that the licenses for the upper 10 MHz band are significantly interdependent. The Commission believes that grouping interdependent licenses and putting them up for bid at the same time will facilitate awarding licenses to bidders who value them most highly by providing bidders with information about the prices of complementary and substitutable licenses during the course of an auction. Because potential bidders may be interested in aggregating spectrum across geographic areas as well as across spectrum blocks, the Commission disagrees with Cellcall's suggestion to auction each geographic area individually. As a result, the Commission concludes that all EA licenses for the upper 10 MHz block should be auctioned simultaneously. The Commission further concludes that holding a single auction for all 176 EAs in the 800 MHz SMR band will be the fairest, fastest, and most efficient means of distributing these licenses.

3. Bidding Issues for Upper 10 MHz Block of 800 MHz SMR Spectrum

77. *Bidding Procedures.* In the *Further Notice,* the Commission proposed that if simultaneous multiple round auctions are used for wide-area SMR licenses, the Commission would use the same or similar bidding procedures to those used in simultaneous multiple round bidding for broadband PCS licenses. The Commission adopts the same bidding procedures used for MTA-based PCS licenses. Under these procedures, bidders will be able to submit bids via remote bidding, using special bidding software, or via telephone. The Commission has established a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for Bidder Information Packages. In addition, bidders will be permitted to bid electronically only if they have filed a short-form application electronically. Bidders who file their short-form manually may bid only telephonically. When submitting bids telephonically, bidders may utilize the Internet to learn the round-by-round results of the auction. Online services such as CompuServe, Prodigy, and America Online provide Internet access at a reasonable cost. Bidders also may, at negligible cost, use a computerized bulletin board service, accessible by telephone lines, from which auction results can be downloaded to a personal computer. The Commission intends to hold a seminar for prospective bidders to acquaint them with these bidding procedures.

78. *Bid Increments.* In the *Further Notice,* the Commission proposed that if simultaneous multiple round auctions are used for the upper 10 MHz block, the Commission would use the same or similar procedures for bid increments as those used in simultaneous multiple round bidding for MTA-based PCS licenses.

79. The Commission will announce, by Public Notice prior to the auction, the general guidelines for bid increments. The Commission retains the discretion to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of the auction.

80. *Duration of Bidding Rounds.* In simultaneous multiple round auctions, the Commission recognize that bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans. The Commission delegated to the Bureau the discretion to vary the duration of the bidding rounds or the interval at which bids are accepted (*e.g.,* to run more than one round per day) in order to move the auction to closure more quickly. The Bureau will announce any changes to the duration of and intervals between bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

4. Procedural and Payment Issues

81. *Pre-Auction Application Procedures.* In the *Competitive Bidding Second R&O,* the Commission determined that it should require only a short-form application (FCC Form 175) prior to auction, and that only winning bidders should be required to submit a long-form license application (FCC Form 600) after the auction. In this connection, the Commission determined that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest. In the *Further Notice,* the Commission proposed to treat all wide-area applicants as initial applicants for public notice, application processing, and competitive bidding purposes, regardless of whether they already are incumbent licensees in the 800 MHz band. In addition in the *Further Notice,* the Commission proposed to require applicants for wide-area SMR licenses to file an initial ''short-form'' application in order to qualify for competitive bidding.

82. The Commission will extend the pre-auction application procedures established in the *Competitive Bidding Second R&O* to the competitive bidding process for the upper 10 MHz block. With respect to the definition of ''initial'' application in the upper 10 MHz block of 800 MHz SMR spectrum, the Commission believes that the most appropriate basis for this determination is an evaluation of the nature of the EA license. As EA licensees will gain use of

a large geographic area and the freedom to locate base stations anywhere within that larger geographic region, they differ from the existing 800 MHz SMR licensees that essentially are confined to smaller geographic areas, are site-specific, and do not encompass a large number of frequencies. Accordingly, the Commission will treat all EA applicants as initial applicants for public notice, application processing, and auction purposes, regardless of whether they already are incumbent operators.

83. Prior to the start of the 800 MHz SMR auction, the Commission will release an initial Public Notice announcing the auction. The initial Public Notice will specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice will specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, the deadline by which short-form applications must be filed, and the amounts and deadlines for submitting upfront payments. The Commission will not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice will be returned as premature. Likewise, applications submitted after the deadline specified by the Public Notice will be dismissed, with prejudice, as untimely.

84. Soon after the release of the initial Public Notice, a Bidder Information Package will be made available to prospective bidders. The Bidder Information Package for the 800 MHz SMR service will contain information on the incumbents occupying blocks on which bidding will be available.

85. Section 309(j)(5) provides that no party may participate in an auction ''unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing.'' Moreover, ''[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to Section 309(a), Section 308(b), and Section 310'' of the Communications Act. As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of the Commission's rules, and the Commission will dismiss applications not meeting those requirements prior to the auction.

86. Thus, all bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants are encouraged to file FCC Form 175 electronically. Detailed instructions regarding electronic filing will be contained in the Bidder Information Package. Those applicants filing manually will be required to submit one paper original and one diskette original of their application, as well as two diskette copies. In addition, applicants filing manually will not be permitted to bid electronically. The short-form applications will require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant will be required to specify on its FCC Form 175 application certain identifying information, including its status as a designated entity, its classification (*i.e.*, individual, corporation, partnership, trust, or other), the EAs and spectrum blocks for which it is applying, and, assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. The Commission requests applicants indicate their designated entity status in order to assist us in analyzing the applicant pool and the auction results to determine whether the Commission has accomplished substantial participation by minorities, women, small businesses, and rural telephone companies. In this connection, the Commission notes that Section 309(j) of the Communications Act requires us to prepare a report on the participation of designated entities in the auction and in the provision of spectrum-based services.

87. As the Commission indicated in the *Competitive Bidding Second R&O,* if it receives only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, the Commission will issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny. If no petitions to deny are filed, the application will be grantable after 30 days. By ensuring that bidders and license winners are serious, qualified applicants, these rules will minimize the need to re-auction licenses and will prevent delays in the provision of 800 MHz SMR service to the public. In response to those commenters concerned about the ability of unsuccessful bidders to participate in geographic-area licensing, the Commission reiterated its decision in the *First R&O* that incumbents, post-auction, will be able to trade-in their multiple licenses for a single authorization in a particular area, provided certain conditions are satisfied.

88. *Amendments and Modifications.* The Commission will adopt the following procedures for amendments to and modifications of short-form applications in the 800 MHz SMR service. Upon reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications, and applicants with minor defects will be given an opportunity to cure them and resubmit a corrected version. By the resubmission date, all applicants will be required to submit an upfront payment to the Commission, as discussed below, to the Commission's lock-box by the date specified in the Public Notice, which should be no later than 14 days before the scheduled auction. After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a second Public Notice announcing the names of all applicants that have been determined to be qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned will not be identified on this Public Notice as a qualified bidder. Each applicant listed on this Public Notice will be issued a bidder identification number and further information and instructions regarding auction procedures.

89. On the date set for submission of corrected applications, applicants that on their own have discovered minor errors in their applications (*e.g.*, typographical errors, incorrect license designations, *etc.*) will be permitted to file corrected applications. The Commission also will waive the *ex parte* rules as they apply to the submission of amended short-form applications for the 800 MHz SMR auctions, to maximize applicants' opportunities to seek Commission staff advice on making such amendments. Applicants will not be permitted to make any major modifications to their applications, including, but not limited to, changes in license areas and changes in control of the applicant, or additions of other bidders into the bidding consortia, until after the auction. Applicants also may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes will not result in a change in *de jure* or *de facto* control of the applicant,

and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas, *i.e.*, EAs. In addition, applications that are not signed will be dismissed as unacceptable for filing, as will applications in which no market designations are made.

90. In addition, a single member of a bidding consortium may withdraw from a consortium only in a particular EA(s), but otherwise remain in the consortium for purposes of bidding on all other markets specified on the short-form application. However, such arrangements to assign the member's interests in particular licenses to other consortium members after the auction must be disclosed on an original or amended short-form application, and a request to transfer or assign the license also must be filed in conjunction with the long-form application.

5. Upfront Payments

91. In the *Competitive Bidding Second R&O*, the Commission established a minimum upfront payment of $2,500 and stated that this amount could be modified on a service-specific basis. In the *Further Notice*, the Commission proposed to require 800 MHz SMR auction participants to tender in advance to the Commission a substantial upfront payment, $0.02 per activity unit for the largest combination of activity units on which a bidder anticipates bidding in any round, as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions, and to ensure payment of the monetary assessment in the event of bid withdrawal or default. The Commission also sought comment on the upfront payment formula and minimum upfront payment most appropriate for the 800 MHz SMR service.

92. The Commission adopts the standard $0.02 per activity unit formula to calculate the upfront payment. The Commission also adopts a minimum upfront payment of $2,500 for the 800 MHz SMR service. In the initial Public Notice issued prior to the auction, the Commission will announce population information corresponding to each license and the upfront payment amount for each EA license. In general, population coverage for each channel block in each EA will be based on a formula that takes into account the presence of incumbent licensees.

93. Upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before a scheduled auction. Each qualified bidder will be issued a bidder identification number and further information and instructions regarding the auction procedures. During the auction, bidders will be required to provide their bidding identification numbers when submitting bids.

6. Down Payments and Full Payments

94. *Down Payments.* In the *Competitive Bidding Second R&O*, the Commission generally required successful bidders to tender a 20 percent down payment on their bids to discourage default between the auction and licensing, and to ensure payment of the monetary assessment if such default occurs. In the *Further Notice*, the Commission proposed to require the winning bidders for 800 MHz SMR licenses to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).

95. The Commission concludes that winning bidders must supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted, but the amount of the payment cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the payment, any excess deposit will be refunded. Upfront payments will be applied to such deposits, and to bid withdrawal and default assessments due, before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

96. The Commission also will require winning bidders to submit the required down payment by cashier's check or wire transfer to its lock-box bank by a date and time to be specified by Public Notice, generally within five business days following the close of bidding. The Commission will hold the down payment until the high bidder is awarded the license and has paid the remaining balance due on such license, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable monetary assessments. All auction winners generally will be required to make full payment of the balance of their winning bids within five business days following Public Notice that the Commission is prepared to award the license. The Commission generally will grant uncontested licenses within ten business days after receiving full payment. During the period that deposits are held pending the ultimate award of the license, the interest that accrues, if any, will be retained by the U.S. Treasury.

97. *Long-Form Applications.* The Commission will follow these procedures if the winning bidder makes the down payment in a timely manner: A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. After the Commission receives the winning bidder's down payment and long-form application, the Commission will review the long-form application to determine if it is acceptable for filing. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and otherwise is satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

98. *Petitions to Deny and Limitations on Settlements.* A party filing a petition to deny against an 800 MHz SMR application will be required to demonstrate standing and meet all other applicable filing requirements. The restrictions in Section 90.162 were established to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from 800 MHz SMR applicants. Thus, the Commission will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

99. With respect to petitions to deny, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination. In the event the Commission identifies substantial and material issues of fact, Section 309(i)(2) of the Communications Act permits the submission of all or part of evidence in written form in any hearing and allows employees other than administrative law judges to preside over the taking of written evidence.

100. *Bid Withdrawal, Default, and Disqualification.* In the *Further Notice,* the Commission proposed to adopt bid withdrawal, default, and disqualification rules for the 800 MHz SMR service, based on the procedures established in its general competitive bidding rules.

101. The Commission believes that forfeiture of the entire upfront payment is too extreme for the bidder who withdraws only one bid. Since commenters have not stated why the 800 MHz SMR service differs in this respect from the narrowband and broadband PCS services, there is no justification for departing from the already tested narrowband and broadband PCS withdrawal, default, and disqualification assessments. Therefore, the Commission believes applying Section 1.2104(g)(1) of its Rules to the 800 MHz SMR auction is more equitable and is consistent with its practice in prior auctions. Section 1.2104(g)(1) provides that any bidder that withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.

102. If a license is re-offered by auction, the ''winning bid'' refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an assessment equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but instead is offered to the highest losing bidders in the initial auction, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. Losing bidders will not be required to accept the offer, *i.e.,* they may decline without penalty. The Commission wish to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore the Commission will not hold them to their losing bids on a license for which a bidder has withdrawn a bid or on which a bidder has defaulted.

103. After bidding closes, the Commission will apply Section 1.2104(g)(2) of its Rules to assess a defaulting auction winner an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. The Commission will hold deposits made by defaulting or disqualified auction winners until full payment is made. In the unlikely event that there is more than one bid withdrawal on the same license, the Commission will hold each withdrawing bidder responsible for the difference between its withdrawn bid and the amount of the winning bid the next time the licenses are offered for auction by the Commission.

104. These payment requirements will discourage default and ensure that bidders meet all eligibility and qualification requirements. If a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

105. If the EA license winner defaults, is otherwise disqualified after having made the required down payment, or the license is terminated or revoked, then the Commission will re-auction the license. If the default occurs within five business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels. If only a short time has passed since the initial auction, the Commission may choose to offer the license to the highest losing bidders if the cost of running another auction exceeds the benefits.

7. Regulatory Safeguards

106. *Rules Prohibiting Collusion.* The Commission's rules prevent parties from agreeing in advance to bidding strategies that divide the market according to their strategic interests and/or disadvantage other bidders. Bidders will be required to (i) disclose all parties with whom they have entered into any agreement that relates to the competitive bidding process, and (ii) certify they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies, particular properties on which they will or will not bid or any similar agreement.

107. The Commission will subject 800 MHz SMR licensees to the reporting requirements and rules prohibiting collusion embodied in Sections 1.2105 and 1.2107 of the Commission's rules. Bidders will be required by Section 1.2105(a)(2) to identify on their FCC Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. If parties agree in principle on all material terms, those parties must be identified on the short-form application, even if the agreement has not been reduced to writing. Only at such level of agreement can it be fairly stated that the parties have entered into a bidding consortium or other joint bidding arrangement. If the parties have not agreed in principle by the short-form filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with those parties. Bidders will be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In this connection, any communications between EA bidders and incumbent licensees should take place prior to the deadline for filing FCC Form 175 applications.

108. After the FCC Form 175 filing deadline, applicants may not discuss the substance of their bids or bidding strategies with bidders, other than those identified on their FCC Form 175 application, that are bidding in the same license areas, *i.e.,* EAs. This prohibition on discussions extends to providing indirect information that affects bids or bidding strategy. For example two applicants not listed on each other's FCC Form 175 applications for the 800 MHz SMR auctions may not discuss bids or bidding strategies with each other if they are bidding for licenses in any of the same EAs, even if they are not bidding for the same spectrum blocks.

109. Section 1.2105(c) of the Commission's rules, however, provides certain exceptions to the rule prohibiting discussions with other applicants after the filing of the short-form application. First, applicants may make agreements to bid jointly for licenses, so long as the applicants have not applied for licenses in any of the same license areas. Second, an applicant

may modify its short-form application to reflect formation of bidding agreements or changes in ownership at any time before or during the auction, as long as the changes do not result in change of *de jure* or *de facto* control of the applicant, and the parties forming the bidding agreement have not applied for licenses in any of the same license areas. Finally, a holder of a non-controlling attributable interest in an applicant may acquire an ownership interest in, or enter into a bidding agreement with other applicants in the same license area, if (1) the owner of the attributable interest certifies that it has not communicated and will not communicate bids or bidding strategies of more than one of the applicants in which it holds an attributable interest or with which it has a bidding agreement; and (2) the arrangements do not result in any change of control of the applicant. However, once the short-form application has been filed, a party with an attributable interest in once bidder may not acquire a controlling interest in another bidder bidding for licenses in any of the same license areas.

110. Where the applicant does not meet one of these exceptions, it may not discuss matters relating to bidding with other applicants. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on authorizations in the license areas from which the first applicant withdrew.

111. If an applicant has the high bid for a license, Section 1.2107(d) of the Commission's rules requires the applicant to include with its long-form application a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Under the Commission's rules prohibiting collusion, the term ''applicant'' includes the entity submitting the application, owners of 5 percent or more of the entity, and all officers and directors of such entity.

112. The Commission noted that even where the applicant discloses parties with whom it has reached on agreement on the short-form application, thereby permitting discussions with those parties, the applicant nevertheless is subject to existing antitrust laws. As discussed in the *Competitive Bidding Fourth Memorandum Opinion & Order* in PP Docket No. 93–253, 59 FR 53364 (October 24, 1994) (''*Competitive Bidding MO&O*''), under the antitrust laws, the parties to an agreement may not discuss bid prices if they have applied for licenses in the same license area. In addition, agreements between actual or potential competitors to submit collusive, non-competitive or rigged bids are *per se* violations of Section One of the Sherman Antitrust Act. Further, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a license area in which they both do business, or whether they merely reserve one license area for one and another for the other.

113. The Commission noted that where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws, in addition to any penalties they incur under the antitrust laws, or who are found to have violated the Commission's rules in connection with their participation in the auction process may be subject to a variety of sanctions, including forfeiture of their down payment or their full bid amount, revocation of their license(s), and may be prohibited from participating in future auctions.

114. *Transfer Disclosure Requirements.* In Section 309(j)(4)(E) of the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' In the *Competitive Bidding Second R&O*, the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied. The Commission decided that it was important to monitor transfers of licenses awarded by competitive bidding to accumulate the necessary data to evaluate its auction designs and to judge whether ''licenses [have been] issued for bids that fall short of the true market value of the license.'' Therefore, the Commission imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether such licenses were held by a designated entity or not. The Commission proposed in the *Further Notice* to adopt the transfer disclosure requirements of Section 1.2111(a) of its Rules to all 800 MHz SMR licenses obtained through the competitive bidding process.

115. The Commission believes that a three-year holding period is unnecessary. In other auctionable services, the Commission has required holding periods only in limited circumstances. For example, the Commission's broadband PCS rules require those successful bidders benefitting from special provisions for designated entities to hold their licenses for a certain period of time and restrict the type of transfers and assignments of such licenses during that time. The Commission is not adopting special provisions for designated entities on the upper 10 MHz block of 800 MHz SMR spectrum. When the Commission has not established special provisions for designated entities in other auctionable services, the Commission generally has required only disclosure of certain information regarding transfers or assignments within the first three years after initial license grant. The Commission concludes that this is the most appropriate course of action here. Thus, the Commission will apply Section 1.2111(a) to all 800 MHz SMR licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of their licenses. The Commission will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, so that the Commission may determine if any unforeseen problems relating to unjust enrichment have arisen.

116. *Performance Requirements.* The Communications Act requires the Commission to ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' In the *Competitive Bidding Second R&O*, the Commission decided it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. In the *Further Notice*, the Commission did not propose

to adopt any additional performance requirements for competitive bidding purposes.

117. The service rules for the upper 10 MHz block contain specific performance requirements, such as the requirement to construct within a specific period of time, channel construction requirements, and interim coverage requirements. Because the failure to meet these requirements will result in automatic cancellation of the EA license, the Commission believes this is a sufficient incentive to promote prompt service and prevent spectrum warehousing. Thus, the Commission will not adopt any performance requirements for the 800 MHz SMR service beyond those required by Section 90.685 of the Rules.

8. Treatment of Designated Entities

118. *Overview, Objectives, and the Impact of Adarand Constructors* v. *Peña.* The Communications Act provides that, in developing competitive bidding procedures, the Commission shall consider various statutory objectives and consider several alternative methods for achieving them. Specifically, the statute provides that in establishing eligibility criteria and bidding methodologies the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Small businesses, rural telephone companies and businesses owned by minorities and/or women are collectively referred to as ''designated entities.'' Section 309(j)(4)(A) provides that in order to promote the Communications Act's objectives, the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods.'' The Communications Act also requires the Commission to ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.''

119. To meet the statutory objectives of providing opportunities for designated entities, the Commission has employed a wide range of special provisions and eligibility criteria in other spectrum-based services. The measures adopted thus far for each service were established after closely examining the specific characteristics of the service and determining whether any particular barriers to accessing capital impeded opportunities for designated entities. After examining the record in the Competitive Bidding proceeding in PP Docket 93–253, the Commission established provisions to enable designated entities to overcome the barriers to accessing capital in each particular service. Moreover, these provisions were designed to increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of wireless services.

120. *Impact of Adarand Constructors, Inc.* v. *Peña.* In the broadband PCS docket, the Commission determined that, on separate entrepreneurs' blocks, the bidding credits would vary according to the type of designated entity that applied (*i.e.*, a small business would receive a 10 percent bidding credit, a business owned by minorities or women would receive a 15 percent bidding credit, and a small business owned by women or minorities would receive an aggregated bidding credit of 25 percent), and all entrepreneurs' block licensees would be eligible for varying degrees of installment payments. The Commission adopted special provisions for businesses owned by members of minority groups or women and analyzed their constitutionality using the ''intermediate scrutiny'' standard of review articulated in *Metro Broadcasting* v. *FCC*, because, as in *Metro Broadcasting*, the proposed provisions involved Congressionally-mandated benign race- and gender-conscious measures.

121. After the release of the *Further Notice*, the Supreme Court decided *Adarand Constructors, Inc.* v. *Peña*, which overruled *Metro Broadcasting* ''to the extent that *Metro Broadcasting* is inconsistent with'' the holding in *Adarand* that ''all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny.'' As a result of the *Adarand* decision, the constitutionality of any federal program that makes distinctions on the basis of race must serve a compelling governmental interest and must be narrowly tailored to serve that interest. In this connection, the Bureau issued a Public Notice requesting further comment on the effect of the decision in *Adarand* on the proposals made in the *Further Notice* in order to supplement the record in the 800 MHz SMR proceeding.

122. *Special Provisions for Designated Entities.* In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and provision of spectrum-based services, Congress was well aware of the problems that designated entities would have in competing against large, well-capitalized companies in auctions and the difficulties these bidders encounter in accessing capital. For example, the legislative history accompanying Congress's grant of auction authority states generally that the Commission's regulations ''must promote economic opportunity and competition,'' and ''[t]he Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.'' The House Report states that the House Committee was concerned that, ''unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries.'' More specifically, the House Committee was concerned that adoption of competitive bidding should not have the effect of ''excluding'' small businesses from the Commission's licensing procedures, and anticipated that the Commission would adopt regulations to ensure that small businesses would ''continue to have opportunities to become licensees.''

123. Consistent with Congress's concern that auctions not operate to exclude small businesses, the provisions relating to installment payments clearly were intended to assist small businesses. The House Report states that these related provisions were drafted to ''ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women.'' It also states that the provisions in Section 309(j)(4)(A) relating to installment payments were intended to promote economic opportunity by ensuring that competitive bidding does not inadvertently favor incumbents with deep pockets ''over new companies or start-ups.''

124. In addition, with regard to access to capital, Congress previously made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that ''small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are

experiencing increased difficulties in obtaining credit.'' As a result of these difficulties, Congress resolved to consider carefully legislation and regulations ''to ensure that small business concerns are not negatively impacted'' and to give priority to passage of ''legislation and regulations that enhance the viability of small business concerns.''

125. In the 800 MHz SMR service, as in other auctionable services, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Accordingly, in balancing the objectives set forth in the Communications Act, the *Further Notice* proposed bidding credits and a tax certificate program for businesses owned by women and minorities and installment payments for small businesses on all 800 MHz SMR channel blocks in each MTA.

126. The Commission concludes that special provisions for small businesses are appropriate for the 800 MHz SMR service because build-out of an EA license may require a significant amount of capital. Although the Commission believes that the 800 MHz SMR service is less capital intensive than PCS, the Commission also believes that it is more capital-intensive than the 900 MHz SMR service. The Commission further believes that small entities may be disadvantaged in their efforts of acquiring 800 MHz SMR licenses if required to bid against existing large companies. For instance, if one or more of these big firms targets a market for strategic reasons, there is almost no likelihood that it could be outbid by a small business. The Commission will address this potential outcome in two ways. First, for the upper 10 MHz block, the Commission will adopt the same ''tiered'' installment payments approach adopted in the 900 MHz SMR service. Specifically, licensees who qualify for installment payments will be entitled to pay their winning bid amount in quarterly installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Small businesses with gross revenues less than $15 million will be required to pay interest only for the first two years of the license term at the same interest rate as set forth above. Interest will accrue at the Treasury note rate plus 2.5 percent. Small businesses with gross revenues less that $3 million will be able to make interest-only payments for five years. Interest will accrue at the Treasury note rate without the additional 2.5 percent. Timely payment of all quarterly installments will be a condition of the license grant, and failure to make such timely payment will be grounds for revocation of the license. As the Commission have noted previously, allowing installment payments reduces the amount of private financing needed by prospective small business licensees and therefore mitigates the effect of limited access to capital by small businesses. In determining eligibility for these installment payment plans, the Commission will not attribute gross revenues of investors that hold less than a 20 percent interest in the applicant, but the Commission will include the gross revenues of the applicant's affiliates and investors with ownership interests of 20 percent or more in the applicant. As has been the case in prior auctions where special provisions for small businesses have been made, it also is the Commission's expectation that a qualifying small business or principals of a qualifying small business will retain *de facto* and *de jure* control of the applicant. In determining attribution when 800 MHz SMR licensees are held indirectly through intervening corporate entities, the Commission will use the same multiplier employed for the 900 MHz SMR service.

127. Second, the Commission has proposed additional special provisions for small businesses seeking licenses for the lower 80 and General Category channels in the *Second Further Notice of Proposed Rule Making* in PR Docket No. 93–144, because the Commission believes that most, if not all, of the incumbent licensees relocated will qualify as small businesses under its proposed definition, and the lower 80 and General Category channels will be the spectrum to which they most likely will be relocated. This approach is consistent with the Commission's approach in the broadband PCS context in which the Commission designated certain frequency blocks as ''entrepreneurs' blocks'' and restricted eligibility based on size limitations. The Commission also believes that the service areas and spectrum blocks for the upper 10 MHz block the Commission adopted in the *First R&O* will permit operators of smaller SMR systems to participate in the upper 10 MHz block auction.

128. At this time the Commission concludes that there is an insufficient record to support the adoption of special provisions solely benefitting minority- and women-owned businesses (regardless of size) for the upper 10 MHz block auction. The Commission notes, however, that in the *Second Further Notice of Proposed Rule Making,* the Commission is seeking comment on this issue with respect to the lower 80 and General Category channels. Moreover, the Commission believes that most minority- and women-owned businesses will be able to take advantage of the installment plan described above. The Commission expects that the vast majority of minority- and women-owned businesses will be able to qualify as small businesses under any definition the Commission adopts.

129. *Partitioning.* In the *Further Notice,* the Commission did not propose any special provisions for rural telephone companies, on the basis that: (1) they, like other wireline carriers, then were ineligible to hold SMR licenses; (2) even if wireline entry into SMR was permitted, the Commission questioned whether special bidding provisions would be necessary to ensure the participation of rural telephone companies in the provision of SMR service given the relatively modest build-out costs involved to serve rural areas; and (3) in view of the fact that rural telephone companies may use their existing infrastructure to support integrated 800 MHz SMR service in their rural service areas, the Commission anticipated that they would have ample opportunity to participate in 800 MHz SMR.

130. Since adoption of the *Further Notice,* rural telephone companies have gained eligibility to hold SMR licenses. Thus, the Commission concludes that rural telephone companies will be permitted to acquire partitioned EA licenses in either of two ways: (1) They may form bidding consortia to participate in auctions, and then partition the licenses won among consortia participants; and (2) they may acquire partitioned 800 MHz SMR licenses from other licensees through private negotiation and agreement either before or after the auction. Each member of a consortium will be required to file a long-form application, following the auction, for its respective mutually agreed-upon geographic area. Partitioned areas must conform to established geo-political boundaries (such as county lines), and each area must include all portions of the wireline service area of the rural telephone company applicant that lie within the EA service area. The Commission also will use the definition for rural telephone companies used in its

broadband PCS and 900 MHz SMR rules. Thus, rural telephone companies will be defined as ''local exchange carriers having 100,000 or fewer access lines, including all affiliates.'' In the *Second Further Notice of Proposed Rule Making,* the Commission seeks comment on its proposal to extend the partitioning option to SMR licensees generally.

131. *Set-Aside Spectrum.* In the *Further Notice,* the Commission expressed its concern, based on its experience with PCS, that designated entities may have difficulties competing for 800 MHz SMR licenses against large firms with significant financial resources. The Commission tentatively concluded, however, that it would not be feasible to designate a wide-area spectrum block as an entrepreneurs' block because the large number of incumbents already licensed throughout the spectrum designated for wide-area licensing make it virtually impossible to identify a suitable block.

132. The Commission does not adopt an entrepreneurs' block in the upper 10 MHz block of 800 MHz SMR spectrum. The Commission concluded that an entrepreneur's block in this portion of 800 MHz SMR spectrum is not feasible, given the substantial number of licensees already licensed on such spectrum. However, the Commission is interested in ensuring that small businesses have a meaningful opportunity to continue to participate in the provision of 800 MHz SMR service. Thus, in the *Second Further Notice of Proposed Rule Making* the Commission seeks additional comment on whether designation of an entrepreneurs' block for other 800 MHz spectrum would be feasible.

IV. Procedural Matters and Ordering Clauses

A. Final Regulatory Flexibility Analysis

133. With respect to this *First Report and Order* and *Eighth Report and Order,* pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* in PR Docket No. 93–144. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

Need for and purpose of the action. The rule making proceeding has implemented Sections 332 and 3(n), respectively, of the Communications Act of 1934, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent framework for all commercial mobile radio services (CMRS).

Issues raised in response to the IRFA. No comments were submitted in response to the IRFA.

Significant alternatives considered and rejected. All significant alternatives have been addressed in the *First Report and Order* in PR Docket No. 93–144, the *Third Report and Order* in GN Docket No. 93–252, and the *Eighth Report and Order* in PP Docket No. 93–253.

B. Paperwork Reduction Act

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 16, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554, or via Internet to dconway@fcc.gov; and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., NW., Washington, DC 20503, or via Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dorothy Conway, (202) 418–0217, or via Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Title: Amendment to the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Type of Review: Revised collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 9,570.

Estimated Time Per Response: Approximately 2 hours.

Total Annual Burden: Approximately 17,254 hours.

Total Annual Cost: $6,468,260 this includes the costs for filing the information electronically or mailing submissions and hiring consultants that may be necessary to respond the requests.

Needs and Uses: The information will be used by the Commission for the following purposes: (a) To determine if the grant or retention of an extended implementation schedule is warranted; (b) to update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the upper 10 MHz block of 800 MHz SMR spectrum; (c) to ensure that incumbents are timely notified of possible relocation thus allowing relocation to occur in an orderly, efficient, and expedient manner; and (d) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz SMR service.

C. Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

D. Authority

The legal authority for this proposed information collection includes 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), 303(r), 309(j) and 332 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), 309(j), 332, as amended. The information collection would not affect any FCC forms. The proposed collection would increase minimally the burden on 800 MHz SMR service applicants.

E. Ordering Clauses

It is ordered that the rule changes made herein will become effective March 18, 1996. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

It is further ordered that all requests for extended implementation authority for the 800 MHz SMR service filed pursuant to Section 90.629 of the Commission's rules and currently pending before the Commission are denied.

It is further ordered that the Secretary shall send a copy of this *First Report*

and Order and *Eighth Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 is revised to read as follows:

Authority: 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

Section 90.7 is amended by adding the definitions for ''EA-based or EA license'' and ''Economic Areas (EAs)'' in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

EA-based or EA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 5608, 2025 M St. NW, Washington, DC 20554 and Office of Operations—Gettysburg, 1270 Fairfield Road, Gettysburg, PA 17325.

Economic Areas (EAs). A total of 175 licensing regions based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas available from the Bureau of Economic Analysis at (202–606–3700) defined as of February 1995, with the following exceptions:

(1) Guam and Northern Mariana Islands are licensed as a single EA-like area

(2) Puerto Rico and the U.S. Virgin Islands are licensed as a single EA-like area

(3) American Samoa is licensed as a single EA-like area

* * * * *

3. Section 90.155 is amended by revising paragraph (a) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraphs (b) and (d) of this section and in §§ 90.629, 90.631(f), 90.665, and 90.685, must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

* * * * *

4. Section 90.173 is amended by revising paragraph (k) and adding a new paragraph (n) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) Notwithstanding any other provisions of this part, any eligible person may seek a dispositive preference for a channel assignment on an exclusive basis in the 220–222 MHz, 470–512 MHz, and 800/900 MHz (except on frequencies designated exclusively for SMR service) bands by submitting information that leads to the recovery of channels in these bands. Recovery of such channels must result from information provided regarding the failure of existing licensees to comply with the provisions of §§ 90.155, 90.157, 90.629, 90.631 (e) or (f), or 90.633 (c) or (d). Any recovered channels in the 900 MHz SMR service will revert automatically to the MTA licensee.

* * * * *

(n) Any recovered channels in the 800 MHz SMR service will revert automatically to the holder of the EA license within which such channels are included. If there is no EA licensee for recovered channels, such channels will be retained by the Commission for future licensing.

Section 90.210 is amended by adding a new footnote 3 to the entry for ''806–821/851–866'' in the introductory paragraph table to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency Band MHz.	Mask for equipment with audio low path filter.	Mask for equipment without audio low path filter.
* * * * *		
806–821/851–866 [3].	B	G.
* * * * *		

[3] Equipment used in this band licensed to EA systems shall comply with the emission mask provisions of § 90.691.

* * * * *

6. Section 90.609 is amended by revising paragraphs (c) and (d) introductory text to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(c) Licensees of constructed systems in any category other than Spectrum Block D frequencies in the 800 MHz SMR service (formerly General Category) are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. An applicant authorized to expand an existing system or to create a new system with frequencies from any category other than Spectrum Block D frequencies in the 800 MHz SMR service obtained through partial assignment will receive the assignor's existing license expiration date and loading deadline for the frequencies that are assigned. A licensee that makes a partial assignment of a station's frequencies will not be authorized to obtain additional frequencies for that station for a period of one year from the date of the partial assignment.

(d) A constructed system originally licensed in the General Category that is authorized to operate in the conventional mode may be combined with an existing SMR system above 800 MHz authorized to operate in the trunked mode by assignment of an authorized grant of the General Category station to the SMR station.

* * * * *

7. Section 90.611 is amended by revising paragraphs (a) and (c) and by removing and reserving paragraph (d) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(a) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, except as otherwise specifically provided for in this subpart, they will be assigned a file number and put in pending status. If not, they will be returned to the applicant.

* * * * *

(c) Each application will be reviewed to determine whether it can be granted. Applicants must specify the intended frequency (or frequencies) of operation.

* * * * *

8. Section 90.615 is revised to read as follows:

§ 90.615 Frequencies available in Spectrum Block D in the 800 MHz SMR service (formerly General Category).

(a) Except as indicated in § 90.619, as of March 18, 1996, frequencies in the 800 MHz Spectrum Block D (Channels 1–150) previously designated as General Category channels are re-allocated for use exclusively by the SMR service for either trunked or conventional operations. The frequencies are available to SMR licensees in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border.

(b) Non-SMR stations that were authorized to transmit on these frequencies prior to March 18, 1996 and have remained so authorized continuously since that time may continue to operate in accordance with their current authorizations. Such authorizations may be renewed unchanged or with minor modifications as described in § 90.693.

9. Section 90.617 is amended by revising introductory paragraphs (b) and (c) (the Tables remain unchanged), paragraph (d) and Table 4A of paragraph (d) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(c) The channels listed in Table 3A are available to eligible applicants in the Business Radio Category. This category does not include Specialized Mobile Radio Systems as defined in § 90.7. These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio Systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4A are available to SMR eligibles desiring to be authorized for EA-based service areas in accordance with § 90.681. SMR licensees licensed on Channels 401–600 on or before March 18, 1996 may continue to utilize these frequencies within their existing service areas, subject to the mandatory relocation provisions of § 90.699. Systems licensed on the channels listed in Table 4A as Spectrum Block D or E Channels will be licensed on a site-specific basis. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87) miles from the U.S./Canada border. See § 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in blocks as outlined in Table 4C.

TABLE 4A.—SMR CATEGORY 806–821/851–866 MHZ BAND CHANNELS

Spectrum block	Channel No.
EA-Based SMR Category Systems (200 channels):	
A	401–420.
B	421–480.
C	481–600.
SMR Category (230 channels):	
D	1–150.
E	201–208, 221–228, 241–248, 261–268, 281–288, 301–308, 321–328, 341–348, 361–368, 381–388.

* * * * *

10. Section 90.619 is amended by revising introductory paragraph (a)(3), the introductory text of paragraph (a)(5) and Table 4A of paragraph (a)(5), Table 12 in paragraph (b)(8), Table 16 in paragraph (b)(9), Table 20 in paragraph (b)(10), and Table 24 in paragraph (b)(11) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(3) Tables 2A and 2B list the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). New applications for Specialized Mobile Radio systems will not be accepted for these channels after March 18, 1996.

* * * * *

(5) Tables 4A and 4B list the channels that are available for assignment for the SMR Category (consisting of Specialized Mobile Radio systems as defined in § 90.7). These channels are not available for inter-category sharing.

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 806–821/851–866 MHZ BAND (95 CHANNELS)

Spectrum block	Offset channel No.
EA-Based SMR Category (30 Channels):	
A	None.
B	429, 431, 433, 435, 437,439, 469, 471, 473, 475, 477, 479.
C	509, 511, 513, 515, 517, 519, 549, 551, 553, 555, 557, 559, 589, 591, 593, 595, 597, 599.
SMR Category (65 Channels):	
D	None.
E	None.
Other	228–240, 268–280, 308–320, 348–360, 388–400.

* * * * *

(b) * * *

(8) * * *

TABLE 12.—SMR CATEGORY—95 CHANNELS

[Regions 1, 4, 5, 6]

Spectrum block	Channel No.
EA-Based SMR Category (90 Channels):	
A	None.
B	463–480.
C	493–510, 523–540, 553–570, 583–600.
SMR Category (5 Channels):	

TABLE 12.—SMR CATEGORY—95 CHANNELS—Continued

[Regions 1, 4, 5, 6]

Spectrum block	Channel No.
D	30, 60, 90, 120, 150.
E	None.

(9) * * *

TABLE 16.—SMR CATEGORY—60 CHANNELS

[Region 2]

Spectrum block	Channel No.
EA-Based SMR Category (55 Channels):	
A	None.
B	None.
C	518–528, 536–546, 554–564, 572–582, 590–600.
SMR Category (5 Channels):	
D	18, 36, 54, 72, 90.
E	None.

(10) * * *

TABLE 20.—SMR CATEGORY—135 CHANNELS

[Region 3]

Spectrum block	Channel No.
EA-Based SMR Category (120 Channels):	
A	417–420.
B	421–440, 457–480.
C	497–520, 537–560, 577–600.
SMR Category (15 Channels):	
D	38, 39, 40, 78, 79, 80, 118, 119, 120.
E	None.
Other	158, 159, 160, 198, 199, 200.

(11) * * *

TABLE 24.—(REGIONS 7, 8) SMR CATEGORY—190 CHANNELS

Spectrum block	Channel No.
EA-Based SMR Category (80 Channels):	
A	None.
B	425–440, 465–480.
C	505–520, 545–560, 585–600.
SMR Category (110 Channels):	
D	35–40, 75–80, 115–120.
E	225–228, 265–268, 305–308, 345–348, 385–388.
Other	155–160, 195–200, 229–240, 269–280, 309–320, 349–360, 389–400.

* * * * *

11. Section 90.621 is amended by revising paragraphs (a) introductory text, (a)(1)(iii), (b) introductory text, (c), and (e) introductory text, removing paragraph (a)(1)(iv), and removing and reserving paragraphs (e)(2), (e)(3), and (e)(4) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety, Industrial/Land Transportation, and Business Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

(1) * * *

(iii) There are no limitations on the number of frequencies that may be trunked. Authorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions:

* * * * *

(c) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16), Industrial/Land Transportation, Business, and Spectrum Block D frequencies in the 800 MHz SMR service (formerly General) Categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(e) Frequencies in the 806–821/851–866 MHz bands listed as available for eligibles in the Public Safety, Industrial/Land Transportation, and Business Categories are available for inter-category sharing under the following conditions:

* * * * *

12. Section 90.629 is amended by adding a new paragraph (e) to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(e) As of March 18, 1996, Specialized Mobile Radio systems are not eligible for extended implementation periods under this section. Additionally, all 800 MHz SMR licensees that are operating under extended implementation authority as of March 18, 1996 must, by May 16, 1996, demonstrate that continuing to allow them to have an extended period of time to construct their facilities is warranted and furthers the public interest. If a licensee's extended implementation authority showing is approved by the Bureau, such licensee will be afforded an extended implementation of two years or the remainder of its current extended implementation period, whichever is shorter. Upon the termination of this period, the authorizations for those facilities that remain unconstructed will terminate automatically. If a licensee with a current extended implementation period fails to submit the showing mentioned above within the designated timeframe or submits an insufficient or incomplete showing, such licensee will have six months from the last day on which it could timely file such a showing or from the disapproval of its request to construct the remaining facilities covered under its implementation plan to construct any unconstructed facilities for which it is authorized. The authorizations for those facilities remaining unconstructed after this six-month period will terminate automatically.

13. Section 90.631(b) is amended by removing the words ''General Category'' and adding in their place ''Spectrum Block D frequencies in the 800 MHz SMR service (formerly General Category)''.

14. Subpart S is amended by adding a new centered heading following Section 90.671 to read as follows:

Policies Governing the Licensing and Use of EA-Based SMR Systems in the 816–821/861–866 Band

15. A new § 90.681 is added to Subpart S to read as follows:

§ 90.681 EA-based SMR service areas.

EA licenses for SMR spectrum blocks in the 816–821/861–866 band listed in Table 4A of § 90.617(d) are available in 175 Economic Areas (EAs) as defined in § 90.7.

16. A new § 90.683 is added to Subpart S to read as follows:

§ 90.683 EA-Based SMR system operations.

(a) EA-based licensees authorized in the 816–821/861–866 MHz band pursuant to § 90.681 may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

(1) The EA licensee affords protection, in accordance with § 90.621(b), to all previously authorized co-channel stations that are not associated with another EA license;

(2) The EA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of § 90.619 relating to U.S./Canadian and U.S./Mexican border areas;

(3) The EA licensee limits the field strength of its base stations at any location on the border of the EA service area in accordance with § 90.689;

(4) The EA licensee notifies the Commission within 30 days of the completion of the addition, removal, relocation or modification of any of its facilities within the EA. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any; and

(5) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, Support Services Branch, Gettysburg, PA 17325.

(6) Any additional transmitters placed in operation must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(b) In the event that the authorization for a previously authorized co-channel station within the EA licensee's spectrum block is terminated or revoked, the EA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's official licensing records, and the EA licensee then will be able to construct and operate without regard to that previous authorization.

17. A new § 90.685 is added to Subpart S to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

(a) EA licenses in the 816–821/861–866 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 816–821/861–866 band will be permitted five years to construct their stations. This five-year period will commence with the issuance of the EA-based license and will apply to all of the licensee's stations within the EA spectrum block, including any stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization.

(c) EA licensees in the 816–821/861–866 MHz band must, within three years, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years.

(d) *Channel use requirement.* In addition to the population coverage requirements described in this section, we will require EA licensees to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and to retain such channel usage for the remainder of the construction period.

(e) An EA licensee's failure to meet the population coverage requirements of paragraphs (c) and (d) of this section, will result in forfeiture of the entire EA license. Forfeiture of the EA license, however, would not result in the loss of any constructed facilities authorized to the licensee prior to the date of the commencement of the auction for the EA licenses.

18. A new § 90.687 is added to Subpart S to read as follows:

§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 816–821/861–866 MHz band.

An SMR licensee initially authorized on any of the channels listed in Table 4A of § 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of §§ 90.153 and 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

19. A new § 90.689 is added to Subpart S to read as follows:

§ 90.689 Field strength limits.

(a) For purposes of implementing §§ 90.689 through 90.699, predicted 40 dBuV/m contours shall be calculated using Figure 10 of § 73.699 of this chapter with a correction factor of −9 dB, and predicted 22 dBuV/m contours shall be calculated using Figure 10a of § 73.699 of this chapter with a correction factor of −9 dB.

(b) The predicted or measured field strength at any location on the border of the EA-based service area for EA licensees must not exceed 40 dBuV/m unless all bordering EA licensees agree to a higher field strength. In the event that this standard conflicts with the EA licensee's obligation to provide co-channel protection to incumbent licensees pursuant to § 90.621(b), the requirements of § 90.621(b) shall prevail.

20. A new § 90.691 is added to Subpart S to read as follows:

§ 90.691 Emission mask requirements for EA-based systems.

(a) Out-of-band emission requirement shall apply only to the ''outer'' channels included in an EA license and to spectrum adjacent to interior channels used by incumbent licensees. The emission limits are as follows:

(1) For any frequency removed from the EA licensee's frequency block by up to and including 37.5 kHz, the power of any emission shall be attenuated below the transmitter power (P) in watts by at least 116 $Log_{10}(f/6.1)$ decibels or 50 + 10 $Log_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation, where f is the frequency removed from the center of the outer channel in the block in kilohertz and where f is greater than 12.5 kHz.

(2) For any frequency removed from the EA licensee's frequency block greater than 37.5 kHz, the power of any emission shall be attenuated below the transmitter power (P) in watts by at least 43 + $10Log_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation, where f is the frequency removed from the center of the outer channel in the block in kilohertz and where f is greater than 37.5 kHz.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

21. A new § 90.693 is added to Subpart S to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees in spectrum blocks A, B, and C.

(a) These provisions apply to ''incumbent licensees'', all 800 MHz SMR licensees who obtained licenses or filed applications on or before December 15, 1995. An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu field strength contour and its interference contour shall be defined as its originally-licensed 22 dBu field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within this existing service area without prior notification to the Commission so long as their original 22 dBu field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). The incumbent licensee must, however, notify the Commission within 30 days of the completion of any changes in technical parameters or additional stations constructed through a minor modification of their license. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any. These minor modification applications are not subject to public notice and petition to deny requirements or mutually exclusive applications.

(b) Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBu field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information for each of their external base sites after the close of the 800 MHz SMR auction.

22. A new § 90.699 is added to Subpart S to read as follows:

§ 90.699 Transition of the upper 200 channels in the 800 MHz band to EA licensing.

In order to facilitate provision of service throughout an EA, an EA licensee may relocate incumbent licensees in its EA by providing ''comparable facilities'' on other frequencies in the 800 MHz band. Such relocation is subject to the following provisions:

(a) EA licensees may negotiate with incumbent licensees as defined in § 90.693 operating on frequencies in Spectrum Blocks A, B, and C for the purpose of agreeing to terms under which the incumbents would relocate their operations to other channels in the 800 MHz band, or alternatively, would accept a sharing arrangement with the EA licensee that may result in an otherwise impermissible level of interference to the incumbent licensee's operations. EA licensees may also negotiate agreements for relocation of the incumbents' facilities within Spectrum Blocks A, B or C in which all interested parties agree to the relocation of the incumbent's facilities elsewhere within these bands. ''All interested parties'' includes the incumbent licensee, the EA licensee requesting and paying for the relocation, and any EA licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) The relocation mechanism consists of two phases that must be completed before an EA licensee may proceed to request the involuntary relocation of an incumbent licensee.

(1) *Voluntary period.* There is a one year voluntary period during which an EA licensee and an incumbent may negotiate any mutually agreeable relocation agreement. The Commission will announce the commencement of the first phase voluntary period by Public Notice. EA licensees must notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice that commences the voluntary negotiation period. Failure on the part of the EA licensee to notify the incumbent licensee during this 90 period of its intention to relocate the incumbent will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(2) *Mandatory period.* If no agreement is reached by the end of the voluntary period, a two-year mandatory period will begin during which both the EA licensee and the incumbent must negotiate in ''good faith''. Failure on the part of the EA licensee to negotiate in good faith during this mandatory period will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(c) If no agreement is reached during either the voluntary or mandatory negotiating periods, the EA licensee may request involuntary relocation of the incumbent's system. In such a situation, the EA licensee must:

(1) Guarantee payment of all costs of relocating the incumbent to a comparable facility;

(2) Complete all activities necessary for placing the new facilities into operation; and

(3) Build and test the new system.

(d) If an EA licensee cannot provide comparable facilities to an incumbent licensee as defined in this section, the incumbent licensee may continue to operate its system on a primary basis in accordance with the provisions of this part.

23. A new Subpart V, Sections 90.901 through 90.913, is added to read as follows:

Subpart V—Competitive Bidding Procedures for 800 MHz Specialized Mobile Radio Service

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.
§ 90.902 Competitive bidding design for 800 MHz SMR licensing.
§ 90.903 Competitive bidding mechanisms.
§ 90.904 Aggregation of EA licenses for spectrum blocks A, B, and C.
§ 90.905 Withdrawal, default and disqualification payments.
§ 90.906 Bidding application (FCC Form 175 and 175–S Short-form).
§ 90.907 Submission of upfront payments and down payments.
§ 90.908 Long-form applications.
§ 90.909 License grant, denial, default, and disqualification for spectrum blocks A, B, and C.
§ 90.910 Installment payments for licenses for spectrum blocks A, B, and C.
§ 90.911 Procedures for partitioned licenses in spectrum blocks A, B, and C.
§ 90.912 Definitions for spectrum blocks A, B, and C.
§ 90.913 Eligibility for small business status for spectrum blocks A, B, and C.

§ 90.901. 800 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for Spectrum Blocks A, B, and C in the 800 MHz band are subject to competitive bidding procedures. The general competitive bidding procedures provided in part 1, subpart Q of this chapter will apply unless otherwise indicated in this subpart.

§ 90.902 Competitive bidding design for 800 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when selecting from among mutually exclusive initial applications for EA licenses for Spectrum Blocks A, B, and C in the 800 MHz band, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 90.903 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A, B, and C will be auctioned.

(b) *Grouping.* All EA licenses for Spectrum Blocks A, B, and C will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative competitive bidding design.

(c) *Minimum Bid Increments.* The Wireless Telecommunications Bureau will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping Rules.* The Wireless Telecommunications Bureau will establish stopping rules before or during the multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity Rules.* The Wireless Telecommunications Bureau will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 90.904 Aggregation of EA licenses for spectrum blocks A, B, and C.

The Commission will license each Spectrum Block A, B, and C in the 800 MHz band separately. Applicants may aggregate across spectrum blocks within the limitations specified in § 20.6 of this chapter.

§ 90.905 Withdrawal, default and disqualification payments.

(a) During the course of an auction conducted pursuant to § 90.902, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional monetary asssessment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission. If the default occurs within five (5) business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels.

§ 90.906 Bidding application (FCC Form 175 and 175–S Short-form).

All applicants to participate in competitive bidding for 800 MHz SMR licenses in Spectrum Blocks A, B, and C must submit applications on FCC Forms 175 and 175–S pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of these 800 MHz SMR licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a 800 MHz SMR auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed. In addition to identifying its status as a small business or rural telephone company, each applicant must indicate whether it is a minority-owned entity and/or a women-owned entity, as defined in § 90.912(e).

§ 90.907 Submission of upfront payments and down payments.

(a) Bidders in the 800 MHz SMR auction for Spectrum Blocks A, B, and C will be required to submit an upfront payment of $0.02 per activity unit, in accordance with § 1.2106 of this chapter.

(b) Winning bidders in a 800 MHz SMR auction for Spectrum Blocks A, B, and C must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within five (5) business days after the auction closes, and the remaining balance due on the license shall be paid within five (5) business days after Public Notice announcing that the Commission is prepared to award the license.

§ 90.908 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 600 within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in § 90.119 of this part and any associated Public Notices. Only auction winners (and rural telephone companies seeking partitioned licenses pursuant to agreements with auction winners under § 90.911) will be eligible to file applications on FCC Form 600 for initial 800 MHz SMR licenses in the event of mutual exclusivity between applicants filing FCC Form 175.

§ 90.909 License grant, denial, default, and disqualification for spectrum blocks A, B, and C.

(a) Except with respect to entities eligible for installment payments (*see* § 90.912) each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the license is ready for grant. The Commission will grant the license within ten (10) business days after receipt of full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 90.905 or § 1.2109 of this chapter, as applicable.

(c) EA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 90.166.

§ 90.910 Installment payments for licenses for spectrum blocks A, B, and C.

(a) Each licensee for Spectrum Blocks A, B, and C that qualifies as a small business may pay the remaining 90 percent of the net auction price for the license in quarterly installment payments pursuant to § 1.2110(e) of this chapter. Licensees who qualify for installment payments are entitled to pay

their winning bid amount in installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Payments shall include both principal and interest amortized over the term of the license. An EA license issued to an eligible small business that elects installment payments will be conditioned on the full and timely performance of the license holder's quarterly payments. The additional following terms apply:

(1) An eligible licensee qualifying as a small business under § 90.912(b)(1)(i) may make interest-only payments for five years. Interest will accrue at the Treasury note rate. Payments of interest and principal shall be amortized over the remaining five years of the license term.

(2) An eligible licensee qualifying as a small business under § 90.912(b)(1)(ii) may make interest-only payments for the first two years of the license term. Interest will accrue at the Treasury note rate plus an additional 2.5 percent. Payments of interest and principal shall be amortized over the remaining eight years of the license term.

(b) *Unjust enrichment.* (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval.

(3) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan for which the acquiring entity qualifies will become effective immediately upon transfer.

§ 90.911 Procedures for partitioned licenses in spectrum blocks A, B, and C.

(a) Notwithstanding § 90.661, a rural telephone company, as defined in § 90.912, may be granted a 800 MHz SMR license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among other entities to partition the license pursuant to this section, if won at auction (see § 1.2105(a)(2)(viii) of this chapter);

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 90.153.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area set forth in § 90.685.

§ 90.912 Definitions for spectrum blocks A, B, and C.

(a) *Scope.* The definitions in this section apply to §§ 90.910 and 90.911, unless otherwise specified in those sections.

(b) *Small business: Consortium of small businesses.*

(1) A small business is an entity that either:

(i) Together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $3 million for the three preceding years; or

(ii) Together with its affiliates, persons, or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons, or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth in § 90.912(h).

(3) A small business consortium is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (b)(2) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

(c) *Rural telephone company.* A *rural telephone company* is a local exchange carrier having 100,000 or fewer access lines, including all *affiliates.*

(d) *Gross revenues.* For applications filed after December 31, 1994, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Businesses owned by members of minority groups and/or women.* A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at

least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis.

(f) *Members of minority groups.* Members of minority groups includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(g) *Attributable interests.* Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a licensee or applicant will be attributable.

Note to paragraph (g): Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentages for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(h) *Affiliate.* (1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as ''the applicant'') if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant;

(ii) Is directly or indirectly controlled by the applicant;

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant; or

(iv) Has an ''identity of interest'' with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (h)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (h)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (h)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons

individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (h)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (h)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (h)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

§ 90.913 Eligibility for small business status for spectrum blocks A, B, and C.

(a) *Short-form applications: Certifications and disclosure.* Each applicant for an EA license for Spectrum Blocks A, B, or C which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short-form application (FCC Form 175):

(1) The identity of the applicant's affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, and, if a consortium of small businesses, the members of the joint venture; and

(2) The applicant's gross revenues, computed in accordance with § 90.912.

(b) *Long-form applications: Certifications and disclosure.* In addition to the requirements in this subpart, each applicant submitting a long-form application for license(s) for Spectrum Blocks A, B, or C and qualifying as a small business shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 90.912, for each of the following: the applicant, the applicant's affiliates, the applicant's attributable investors, affiliates of its attributable investors, and, if a consortium of small businesses, the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under §§ 90.910 and 90.911, including the establishment of de facto and de jure control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business and/or consortium of small businesses under §§ 90.910 and 90.911 shall be subject to audits by the Commission, using in-house and

contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 800 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(3) Definitions. The terms affiliate, attributable interests, consortium of small businesses, gross revenues, small business used in this section are defined in § 90.912.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552 and 570

[APD 2800.12A, CHGE 70]

RIN 3090–AF86

General Services Administration Acquisition Regulation; Acquisition of Commercial Items

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to implement Items I and III of Federal Acquisition Circular 90–32 which amended the Federal Acquisition Regulation (FAR) to implement the portions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) dealing with the Truth in Negotiations Act and with the acquisition of commercial items. The GSAR is revised to conform to the FAR as revised by FAC 90–32 and to implement portions of the FAR where necessary to provide agency procedures. The Multiple Award Schedule (MAS) Policy Statement of October 1, 1982 (47 FR 50242, November 5, 1982) is canceled.

DATES: *Effective Date:* March 4, 1996. (See **SUPPLEMENTARY INFORMATION** for further guidance.)

Comment Date: Comments should be submitted in writing to the address shown below on or before April 16, 1996 to be considered in formulating the final rule.

ADDRESSES: Interested parties should submit written comments to the Office of Acquisition Policy (MV), General Services Administration, Room 4010, 18th & F Streets, NW, Washington, DC 20405.

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

SUPPLEMENTARY INFORMATION: All new solicitations for commercial items and open season solicitations issued under the multiple award schedule program issued after March 4, 1996 shall conform to this interim rule. To the maximum extent practical, solicitations for commercial items and open season solicitations, that have been issued but where no contract has been awarded shall be amended to conform to this interim rule. However, offerors shall not be required to resubmit information on commercial sales practices and any requests for additional information shall be limited to the minimum needed. Existing MAS contracts may be modified, at the discretion of contracting officers, to conform to all or part of this interim rule.

A. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. Federal Acquisition Circular 90–32 (60 FR 48206, September 18, 1995) revised the Federal Acquisition Regulation (FAR) to implement Title VIII of Public Law 103–355. Title VIII of Public Law 103–355 contained requirements for the acquisition of commercial items and required publication of implementing FAR revisions by October 1, 1995. The FAR rule became available for use on October 1, 1995, and is mandatory for use by all Federal agencies in commercial items solicitations issued after December 1, 1995. This GSAR rule implements GSA unique requirements and revises the GSAR to bring it into conformance with the FAR. Immediate GSAR coverage is needed to permit GSA contracting activities to comply with Pub. L. 103–355 and the implementing FAR requirements pertaining to the acquisition of commercial items and Truth in Negotiations Act.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

This interim rule is expected to have a positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule simplifies procedures for GSA acquisition of commercial items. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated above. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities will be considered in accordance with Section 610 of the Act.

D. Paperwork Reduction Act

The Paperwork Reduction Act applies to this interim rule. The information collection requirements in 515.804–8 and related provisions and clauses have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0013. The information collection requirements in 552.212–70, Preparation of Offer (Multiple Award Schedule), represent customary commercial practice and are approved under OMB Control Number 3090–0250.

List of Subjects in 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552, and 570

Government procurement.

Accordingly, 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, and 552 and 570 are amended as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552 and 570 continues to read as follows:

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

501.105 [Amended]

2. Section 501.105 is amended by removing the following GSAR references and corresponding OMB control numbers: 510.004–70–3090–0203, 510.011(i)–3090–0246,

512.104(a)(2) and 512.104(a)(4)–3090–0204.

PART 504—ADMINISTRATIVE MATTERS

3. Section 504.803 is amended by revising paragraphs (a)(12) and (a)(25) to read as follows:

504.803 Contents of contract files.

(a) * * *

(12) Cost or pricing data and information other than cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804–1(b)(5), the waiver and documentation supporting the waiver should be filed under this tab.

* * * * *

(25) Any required approvals—GSA 1535, Recommendation for Award, or documentation of approval of Subcontracting Plan (as applicable). The contracting officer's and any other departing procurement official's certificate of procurement integrity, required by FAR 3.104–7(a) and 48 CFR 503.104–7 and the record of individuals authorized access to proprietary or source selection information, required by FAR 3.104–5(d)(2) and 3.104–9(e)(iii) should be filed under this tab.

* * * * *

PART 507—ACQUISITION PLANNING

507.103 [Amended]

4. Section 507.103 is amended by removing ''510.002'' and inserting ''48 CFR 511.002''.

5. Part 510 heading is revised to read as follows:

PART 10—MARKET RESEARCH

510.001 [Redesignated as 511.001]

6. Section 510.001 is redesignated as 511.001.

510.002 [Redesignated as 511.002 and amended]

7. Section 510.002 is redesignated as 511.002 and the first sentence is amended by removing ''FAR 10.002(c)'' and inserting ''FAR 11.002(b).''

510.004 [Removed]

510.004–70 [Removed]

510.004–71 [Removed]

510.007 [Removed]

510.007–70 [Removed]

8. Sections 510.004, 510.004–70, 510.004–71, 510.007 and 510.007–70 are removed.

510.011 [Redesignated as 511.204 and amended]

9. Section 510.011 is redesignated as 511.204 and paragraph (a) is amended by removing ''552.210–70'' and inserting ''48 CFR 552.211–711''; by removing ''552.210–71'' and inserting ''48 CFR 552.211–72'' in paragraph (b); by removing paragraphs (c) and (d); by redesignating paragraph (e) as (c) and in newly designated paragraph (c) removing ''552.210–75'' and inserting ''48 CFR 552.211–73''; by redesignating paragraph (f) as (d), and in newly designated paragraph (d) removing ''552.210–76'' and inserting ''48 CFR 552.211–74'', and by removing ''552.210–75'' and inserting ''48 CFR 552.211–73''; by redesignating paragraph (g) as (e) and in newly designated paragraph (e), by removing ''552.210–77'' and inserting ''48 CFR 552.211–75''; by redesignating paragraph (h) as (f) and in newly designated paragraph (f) removing ''552.210–78'' and inserting ''48 CFR 552.211–76''; by redesignating paragraph (i) as (g), and in newly designated paragraph (g) removing ''552.210–79'' and inserting ''48 CFR 552.211–77.''

510.070 [Removed]

510.070–1 [Removed]

510.070–2 [Removed]

510.070–3 [Removed]

510.070–4 [Removed]

510.071 [Removed]

PART 510—[RESERVED]

10. Sections 510.070, 510.070–1, 510.070–2, 510.070–3, 510.070–4 and 510.071 are removed and Part 510 is reserved.

11. Part 511 heading is revised to read as follows:

PART 511—DESCRIBING AGENCY NEEDS

511.003 [Removed]

511.070 [Removed]

12. Sections 511.003 and 511.070 are removed.

13. Subpart 511.1 consisting of sections 511.103 and 511.170 are added to read as follows:

Subpart 511.1—Selecting and Developing Requirements Documents

Sec.

511.103 Market acceptance.
511.170 Use of brand name or equal product descriptions.

Subpart 511.1—Selecting and Developing Requirements Documents

511.103 Market acceptance.

The contracting officer may require offerors to meet market acceptance criteria in accordance with FAR 11.103 when such criteria determined necessary to satisfy the agency's needs.

511.170 Use of brand name or equal product descriptions.

(a) *Policy.* When a ''brand name or equal'' purchase description is used the purchase description should—

(1) Cite all brand name products known to be acceptable and of current manufacture;

(2) Specify each physical or functional characteristic essential to the intended use of the product including permissible tolerances;

(3) Avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition; and

(4) Give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(b) *Solicitation provisions.* The solicitation—

(1) May require bid samples for ''or equal'' offers, but not for ''brand name'' offers.

(2) Must provide for full consideration and evaluation of ''or equal'' offers against the salient characteristics specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(3) Must include the following immediately after the item description—

Offering on:
Manufacturer's Name _____
Brand _____
Model or Part No. _____

(4) Should include the following notice, unless bid samples are required for ''or equal'' offers, in the item listing after each brand name or equal item (or component part) or at the bottom of each page listing several items:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN MUST PROVIDE ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED.

(c) *Contract clause.* The contracting officer shall include a clause substantially the same as the clause at 48 CFR 552.211–70, Brand Name or Equal, when a brand name or equal

purchase description is used. When component parts or an end item are described by brand name or equal descriptions and application of the clause to some or all of the components is impracticable, either do not use the clause or limit its application to specified components.

14. Subpart 511.2 is added to read as follows:

Subpart 511.2—Using and Maintaining Requirements Documents

PART 512—ACQUISITION OF COMMERCIAL ITEMS

15. Part 512 heading is revised as set forth above.

Subpart 512.1 [Redesignated as Subpart 511.4]

512.101 [Redesignated as 511.401]

512.104 [Redesignated as 511.404 and amended]

15a. Subpart 512.1 is redesignated as subpart 511.4, section 512.101 is redesignated as 511.401, and section 512.104 is redesignated as 511.404.

16. Newly designated section 511.404 is amended by redesignating paragraph (a)(5) as paragraph (a)(6) and amending paragraph (a)(6) by removing ''552.212–72'' and inserting ''48 CFR 552.211–83''; by redesignating paragraph (a)(4) as paragraph (a)(5), and amending paragraph (a)(5) by removing ''552.212–71'' and inserting ''48 CFR 552.211–82''; by redesignating paragraph (a)(3) as paragraph (a)(4) and amending paragraph (a)(4) by removing ''552.212–70'' and inserting ''48 CFR 552.211–81'' and by removing ''552.212–72'' and inserting ''48 CFR 552.211–83''; by removing ''552.212–1(a)'' in paragraph (a)(1) and inserting ''48 CFR 552.211–1''; amending paragraph (b) by removing ''552.212–74'' and inserting ''48 CFR 552.211–84''; and by revising paragraph (a)(2) and adding a new paragraph (a)(3) to read as follows:

511.404 Contract clauses.

(a) * * *

(2) 48 CFR 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) 48 CFR 552.211–79, Acceptable Age of Supplies, or 48 CFR 552.211–80, Age on Delivery, in solicitations and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See 101–27.206–2 of the Federal Property Management Regulation.) The Acceptable Age of Supplies clause at 48 CFR 552.211–79 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, Alternate I to 48 CFR 552.211–79 must be substituted for the basic clause when required by the director of the 48 CFR 552.211–80 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

* * * * *

17. Subpart 512.2 consisting of sections 512.203 and 512.209 is added to read as follows:

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

Sec.

512.203 Procedures for solicitation, evaluation, and award.
512.209 Pricing of commercial items when contracting by negotiation.

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

512.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies in FAR Part 12 and 48 CFR Part 512 in conjunction with the policies and procedures for Federal Supply Schedules in FAR Part 38 and 48 CFR Part 538.

512.209 Pricing of commercial items when contracting by negotiation.

When awarding multiple award schedule contracts for commercial items, the policies and procedures in FAR Part 15 and 48 CFR Part 515 shall be used to establish the reasonableness of prices.

18. Subpart 512.3 consisting of sections 512.301 and 512.302 is added to read as follows:

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
512.302 Tailoring of provisions and clauses for the acquisition of commercial items.

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions/clauses.* The contracting officer shall insert the following provisions or clauses in solicitations for the acquisition of commercial items in accordance with the prescriptions provided:

(1) The provision at 48 CFR 552.212–70, Preparation of Offer (Multiple Award Schedule), in solicitations issued under the multiple award schedule program.

(2) The clause at 48 CFR 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items when listed clauses apply and are incorporated by reference. The clause provides for the incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. The contracting officer may tailor this clause.

(3) The clause at 48 CFR 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items when listed clauses apply and are incorporated by reference. The clause provides for the incorporation by reference of terms and conditions which are required to implement provisions of law or executive orders applicable to acquisitions of commercial items.

(4) The provision at 48 CFR 552.212–73, Evaluation—Commercial Items (Multiple Award Schedule), shall be used instead of FAR 52.212–2 in solicitations issued under the multiple award schedule program.

(b) *Use of required GSAR provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the GSAR (48 CFR Chapter 5), when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(c) *Discretionary use of GSAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other GSAR provisions and clauses when their use is consistent with the limitations contained in FAR 12.302(c).

(d) *Use of additional provisions and clauses.* Provisions or clauses that are not prescribed in the FAR or GSAR for use in contracts for commercial items may not be used unless approved by the Senior Procurement Executive (see 48 CFR 502.101) or determined to be consistent with customary commercial practice through market research.

512.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Requests for waivers shall be prepared in accordance with FAR 12.302(c) and submitted for approval by the chief of the contracting office (see 48 CFR

502.101) if an individual contract is involved or by the contracting director (see 48 CFR 502.101) if a class of contracts is involved.

PART 514—SEALED BIDDING

19. Section 514.201–70 is revised to read as follows:

514.201–70 GSA Forms.

The GSA Form 1602, Notice Concerning Solicitation, may be used to:

(a) Describe the type of contract, the duration of the contract, and the type of supplies or services being procured;

(b) Direct the attention of prospective offerors to special requirements which if overlooked, may result in rejection of the offer;

(c) Highlight significant changes from previous solicitations covering the same supplies and services; and

(d) Include other special notices as appropriate.

PART 515—CONTRACTING BY NEGOTIATION

20. Section 515.106–70 is revised to read as follows:

515.106–70 Examination of records by GSA clause.

The contracting officer shall insert the clause at 48 CFR 552.215–70, Examination of Records by GSA or at 48 CFR 552.215–71 Examination of Records by GSA (Multiple Award Schedule), in solicitations and contracts that

(a) Involve the use or disposition of Government-furnished property,

(b) Provide for advance payments, progress payments based on cost, or guaranteed loan,

(c) Contain a price warranty or price reduction clause,

(d) Involve income to the Government where income is based on operations that are under the control of the contractor,

(e) Include an economic price adjustment clause,

(f) Are requirements, indefinite-quantity or letter type contracts as defined in FAR Part 16,

(g) Are subject to adjustment based on a negotiated cost escalation base or

(h) Contain the provision at FAR 52.223–4, Recovered Material Certification. The clause at 48 CFR 552.215–71 shall be used for solicitations issued and contracts awarded under the multiple award schedule program. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

515.412 [Removed]

21. Section 515.412 is removed.

22. Section 515.414–70 is revised to read as follows:

515.414–70 GSA Forms.

The GSA Form 1602, Notice Concerning Solicitation, may be used as prescribed in 48 CFR 514.201–70.

23. The section heading for 515.804 is revised to read as follows:

515.804 Cost or pricing data and information other than cost or pricing data.

515.804–3 [Reserved]

24. Section 515.804–3 is removed and reserved.

25. Section 515.804–6 is revised to read as follows:

515.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Contracting officers should use Alternate IV of the FAR provision at 52.215–41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, to provide the format for submission of information other than cost or pricing data for multiple award schedule (MAS) contracts. To provide for uniformity in request under the MAS program, contracting officers should insert the following in paragraph (b) of the provisions:

(1) An offer prepared and submitted in accordance with the provision at 552.212–70, Preparation of Offer (Multiple Award Schedule);

(2) Commercial sales practices submitted in the format provided in this solicitation in accordance with the instructions at Table 515–1 of the GSA Acquisition Regulation (48 CFR 515–1); and

(3) Any additional supporting information requested by the Contracting Officer to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation or a request for modification, the Offeror grants the Contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, papers, and other directly pertinent records to verify any request for and exception to the requirement for cost or pricing data, and the reasonableness of prices(s) and for two years after award or modification of this contract to verify that the information submitted was complete, current and accurate. Access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Contracting officers shall insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation (see FAR 12.303). Paragraph (5) may be included when the contracting officer, based on market research, anticipates receipt of offers from dealers without significant commercial sales.

Commercial Sales Practices

Name of Offeror _____

SIN _____

Note: Please refer to provision 552.212–70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE), for additional information concerning your offer.

(1) Request for exception to the requirement for cost and pricing data.

(a) Do you request an exception to the requirement for submission of cost or pricing data [Check applicable item]

(i) _____ based on the fact that you have sold substantial quantities of the commercial items offered to the general public at or based on an established catalog or market price (see FAR 15.804–1(b)(2)(iv)); or

(ii) _____ under the authority of FAR 15.804–1(a)(2) for commercial items.

(b) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12 month period or the offerors last fiscal year. $_____. in the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item (FAR 15.804–1(b)(2)(iv). You may qualify for an exception under the authority of FAR 15.804–1(a)(2), even though substantial sales have not been made, although that exception requires that special post award access to records be included in the contract (see 52.215–43, Audit–Commercial Items).

(2) Show total estimated sales to the Government for the contract term, excluding options, for the SIN offered. $_____

(3) Are the discounts which you offer the Government equal to or better than your best discount to any customer acquiring the same items offered for this SIN regardless of quantity or terms and conditions? YES _____ NO _____ See definition of ''discount'' in 552.212–70.

(4)(a) Provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at 48 CFR Table 515–1 which is provided in this solicitation for your convenience. The information should be provided in the chart below. Rows should be added to accommodate as many customers as required.

Column 1—customer	Column 2—discount	Column 3—quantity/volume	Column 4—FOB term	Column 5—additional discounts or concessions

(b) Do any deviations from the discounting practices disclosed ever result in better discounts (lower prices) than indicated? YES _____ NO _____. If YES, explain deviations in accordance with the instructions at 48 CFR Table 515–1 which is provided in this solicitation for your convenience.

(5) If the Offeror is a dealer/reseller, the sales information relative to the manufacturer's pricing to the dealer required by paragraph (b)(1) through (4) above together with written access to the manufacturer's records in accordance with 52.215–41 (Alt IV), should be provided separately by the offeror for each item/SIN from a single manufacturer whose total sales under any resulting contract are expected to exceed $500,000. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers the dealer/reseller submitting the offer should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's items(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, the dealer/reseller submitting the offer shall submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name
(b) Manufacturer's Part Number
(c) Dealer's/Reseller's Part Number
(d) Product Description
(e) Manufacturer's List Price
(f) Dealer's/Reseller's percentage discount from List Price or net prices

(End of Format)

(c) The contracting officer should include the instructions for completing the commercial sales practices format in Table 551–1 in solicitations issued under the multiple award schedule program.

TABLE 515–1.—INSTRUCTIONS FOR COMMERCIAL SALES PRACTICES FORMAT

If you responded ''YES'' to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart for the customer(s) who receive your best discount. If you responded ''NO'' to question (3), complete the chart for all customers or customer categories to whom you sell at a discount which equals or exceeds the discount(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. The Offeror shall also disclose any changes to discount(s) and discount policies which occur after the offer is submitted, but before the close of negotiations. If the Offeror's discount practices vary by model or product line, the discount information should be by model or product line as appropriate. The offeror may limit the number of models or product lines reported to those which in total anticipated sales exceed 75% of the estimated value of the special item number (SIN).

Column 1—Identify the applicable customer or category or customer. A ''customer is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category or customer if the offeror's discount policies are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

Column 2—Identify the discount. The term ''discount'' is as defined in solicitation provision 552.212–70 Preparation of Offer (Multiple Award Schedule). Indicate the best discount at which the Offeror customarily or repetitively sells to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given, and whether they are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis for your offer. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type of title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

Pricing information need be provided only on customary or repetitive sales. Information need not include erratic, ad hoc discounting; however, the existence of such discounting shall be disclosed. This disclosure should include a discussion of ad hoc discounting practices, including the types of circumstances when ad hoc discounts are given and the frequency of occurrence: i.e., a statement ''the ad hoc sales do not exceed $_____ per year'' or ''the ad hoc sales do not exceed _____% of total sales.'' To be considered ''ad hoc discounting'' the practice shall not: (a) represent a significant pricing practice: that is, accounting for more than a marginal portion of the total commercial sales; (b) establish a preferred customer: e.g., discounts to state and local governments, or repetitive discounts received by a single customer; (c) include other than low value, extraordinary price reductions due to unique situations.

Column 3—Identify the quantity or volume of sales. Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. Specify the period of relevant sales accumulation.

Column 4—Indicate the FOB delivery term for each identified customer. (See FAR 47.3 for an explanation of FOB delivery terms.)

Column 5—Indicate additional discounts or concessions regardless of quantity granted to the identified customer or category of customer. The additional discounts may include per order quantity discount; aggregate discount, prompt payment discount. Concessions are defined in solicitation provision 552.212–70 Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

(d) The contracting officer shall insert the clause at 48 CFR 552.215–72, Price Adjustment for Incomplete, Not Current or Inaccurate Information Other Than Cost or Pricing Data, in solicitations and contracts to be awarded under the multiple award schedule program.

PART 538—FSS SCHEDULE CONTRACTING

26. Part 538 heading is revised as set forth above.

538.000 [Removed]

27. Section 538.000 is removed.

28. Section 538.270 is added to read as follows:

538.270 Evaluation of multiple award schedule offers.

(a) The Government will seek to obtain the offeror's best discount (most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and that there may be legitimate reasons why the best discount is not achieved.

(b) The contracting officer will establish negotiation objectives and determine price reasonableness subject to the requirements of paragraphs (c) through (e) of this section.

(c) The contracting officer will establish negotiation objectives based on a review of relevant data. If an exception may apply pursuant to FAR 15.804–1(a)(2), then information to be acquired pursuant to FAR 15.804–5(b) (1) and (2) shall be limited to that which is reasonably available and quantifiable.

(d) When establishing negotiation objectives and determining price reasonableness, contracting officers will compare the terms and conditions of agreements with customers. The contracting officer will consider the following factors to determine the Government's price negotiation objectives:

(1) Aggregate volume of anticipated purchases;

(2) The purchase of a minimum quantity or a pattern of historic purchases;

(3) Discounts/prices offered;

(4) Length of the contract period;

(5) Warranties, training, maintenance included in the purchase price or provided at additional cost to the product prices;

(6) Ordering and delivery practices; and

(7) Any other relevant information including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the best customers. In cases where the best discount is not offered to the Government, the offeror is responsible for identifying, substantiating and valuating any asserted differences.

(e) The contracting officer may not award a contract containing pricing which is less favorable than the best discount the offeror extends to any commercial customer purchasing under circumstances comparable to the Government, unless the contracting officer makes a written determination that

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated, and

(2) Award of a contract is otherwise in the best interest of the Government.

29. Section 538.271 is added to read as follows:

538.271 MAS contract awards.

(a) MAS awards will, to the maximum extent practicable, be commercial items negotiated as a discount from established catalog prices for items sold in substantial quantities to the general public.

(b) Before awarding any MAS contract, the contracting officer will determine whether offered prices are fair and reasonable in accordance with FAR subparts 15.8 and 15.9 and 48 CFR 538.270.

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES—RESERVED

30. Part 539 is reserved.

539.000 [Removed]

31. Section 539.000 is removed

PART 543—CONTRACT MODIFICATIONS

32. Section 543.205 is amended by adding paragraph (c) to read as follows:

543.205 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 48 CFR 552.243–72, Modifications (Multiple Award Schedule), in solicitations and multiple award schedule contracts. Alternate I should be used when stable technology is involved and few changes are expected.

PART 546—QUALITY ASSURANCE

33. Section 546.710 is amended by revising paragraph (a)(2) to read as follows:

546.710 Contract Clauses.

(a) * * *

(2) If commercial products or items are being acquired under a program other than Multiple Award Schedules, the contracting officer shall use the clause at 48 CFR 552.247.17 with its Alternate I.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.209–73 [Amended]

34. The clause at section 552.209–73 is amended by revising the date of the clause to read ''(FEB 1996)'' and by inserting a period after the word ''default'' and removing all remaining text beginning with the word ''under.''

552.210–70 [Redesignated as 552.211–71 and amended]

35. Section 552.210–70 is redesignated as 552.211–71, the introductory paragraph is amended by removing ''510.011(a)'' and inserting ''48 CFR 511.204(a)'', and the date of the clause is revised to read ''(FEB 1996)''.

552.210–71 [Redesignated as 552.211–72 and amended]

36. Section 552.210–71 is redesignated as 552.211–72, the introductory paragraph is amended by removing ''510.011(b)'' and inserting ''48 CFR 511.204(b)'', and the date of the clause is revised to read ''(FEB 1996)''.

552.210–72 [Redesignated as 552.211–79]

37. Section 552.210–72 is redesignated as 552.211–79, the introductory paragraph is amended by removing ''510.011(c)'' and inserting ''48 CFR 511.404(a)'', by revising the date of the basic clause and the Alternate I to read ''(FEB 1996)'' and by removing all the text in the last sentence in the basic clause after the phrase ''reject the supplies'' and inserting a period after ''supplies''.

552.210–73 [Redesignated as 552.211–80 and amended]

38. Section 552.210–73 is redesignated as 552.211.80, the introductory paragraph is amended by removing ''510.011(c)'' and inserting ''48 CFR 511.404(a)'', by revising the date of the clause to read ''(FEB 1996)'' and by removing all the text in the last sentence after the phrase ''reject the supplies'' and inserting a period after the word ''supplies''.

552.210–74 [Redesignated as 552.211–70]

39. Section 552.211–70 is removed, section 552.210–74 is redesignated as 552.211–70, the introductory paragraph is amended by removing ''510.011(d)'' and inserting ''48 CFR 511.170(c)'' and by revising the date of the clause to read ''(FEB 1996)''.

552.210–75 [Redesignated as 552.211–73]

40. Section 552.210–75 is redesignated as 552.211–73, the introductory paragraph is amended by removing ''510.011(e)'' and inserting

''48 CFR 511.204(c)'' and by revising the date of the clause to read ''(FEB 1996)''.

552.210–76 [Redesignated as 552.211–74 and amended]

41. Section 552.210–76 is redesignated as 552.211–74, the introductory paragraph is amended by removing ''510.011(f)'' and inserting ''48 CFR 511.204(d)'', by revising the date of the clause to read ''(FEB 1996)'', and by removing ''552.210–75'' from the text of the clause and inserting ''48 CFR 552.211–73''.

552.210–77 [Redesignated as 552.211–75 and amended]

42. Section 552.211–77 is redesignated as 552.211–75, the introductory paragraph is amended by removing ''510.011(g)'' and inserting ''48 CFR 511.204(e)'' and by revising the date of the clause to read ''(FEB 1996)''.

552.210–78 [Redesignated as 552.211–76 and amended]

43. Section 552.210–78 is redesignated as 552.211–76, the introductory paragraph is amended by removing ''510.011(h)'' and inserting ''48 CFR 511.204(f)'' and by revising the date of the clause to read ''(FEB 1996)''.

552.210–79 [Redesignated as 552.211–77 and amended]

44. Section 552.210–79 is redesignated as 552.211–77, the introductory paragraph is amended by removing ''510.011(i)'' and inserting ''48 CFR 511.204(g)'' and by revising the date of the clause to read ''(FEB 1996)''.

45. Section 552.211–78 is added to read as follows:

552.211–78 Commercial Delivery Schedule (Multiple Award Schedule).

As prescribed in 48 CFR 511.404(a)(2), insert the following clause:

Commercial Delivery Schedule (Multiple Award Schedule) (Feb 1996)

(a) *Time of Delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the ''Time of Delivery (days ARO)'' column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice. The Government requires the Contractor's normal commercial delivery time, as long as it is less than the ''stated'' delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below:

Items or group of items (special item No. or nomenclature)	Government's stated delivery time (days ARO)	Contractor's normal commercial delivery time

(b) *Expedited Delivery Times.* For those items that can be delivered quicker than the delivery times in paragraph (a), above, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Item or group of items (special item No. of nomenclature)	Expedited delivery time (hours/days ARO)

(c) *Overnight and 2-Day Delivery Times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.
(End of Clause)

§ 552.212–1 [Redesignated as 552.211–1 and amended]

46. Section 552.212–1 is redesignated as 552.211–1, paragraph (a) is amended by removing the paragraph designation ''(a)'' and by removing ''512.104(a)(1)'' and inserting ''48 CFR 511.404(a)(1)'', by revising the date of the clause and the Alternate I to read ''(FEB 1996)'' and by removing paragraph (b).

§ 552.212–70 [Redesignated as 552.211–81 and amended]

47. Section 552.212–70 is redesignated as 552.211–81, the introductory paragraph is amended by removing ''512.104(a)(3)'' and inserting ''48 CFR 511.404(a)(4)'' and by revising the date of the basic clause and the Alternate I clause to read ''(FEB 1996)''.

§ 552.212–71 [Redesignated as 552.211–82 and amended]

48. Section 552.212–71 is redesignated as 52.211–82, the introductory paragraph is amended by removing ''512.104(a)(4)'' and inserting ''48 CFR 511.404(a)(5)'' and by revising the date of the clause to read ''(FEB 1996)''.

§ 552.212–72 [Redesignated as 552.211–83 and amended]

50. Section 552.212–72 is redesignated as 552.211–83, the introductory paragraph is amended by removing ''512.104(a)(5)'' and inserting ''48 CFR 511.404(a)(6)'' and by revising the date of the basic and alternate clause to read ''(FEB 1996)''.

§ 552.212–74 [Redesignated as 552.211–84 and amended]

51. Section 552.212–74 is redesignated as 552.211–84, the introductory paragraph is amended by removing ''512.104(b)'' and inserting 48 CFR 511.404(b)'' and by revising the date of the clause to read ''(FEB 1996)''.

52. Section 552.212–70 is added to read as follows:

552.212–70 Preparation of Offer (Multiple Award Schedule)

As prescribed in 48 CFR 512.301(a)(1), insert the following clause:

552.212–70 Preparation of Offer (Multiple Award Schedule) (Feb 1996)

(a) Definitions. *Concession*, as used in this solicitation, means a benefit, enhancement or privilege (other than a discount), which either reduces the overall costs of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.

Discount, as used in this solicitation, means a reduction to catalog prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions which reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than the list price is considered a ''discount'' by the percentage difference from the list price to the net price.

(b) For each Special Item Number (SIN) included in an offer, the Offeror shall provide the information outlined in paragraph (c). Offerors may provide a single response

covering more than one SIN, if the information disclosed is the same for all products under each SIN. If discounts and concessions vary by model or product line, offerors shall ensure that information is clearly annotated as to item or items referenced.

(c) Provide information described below for each SIN:

(1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. Special catalogs or price lists printed for the purpose of this offer, showing only net prices to the Government or references to previous submissions, are not acceptable.

(2) Next to each offered item in the commercial catalog and/or price list, the Offeror shall write the special item number under which the item is being offered. All other items shall be marked ''excluded,'' lined out, and initialed by the offeror.

(3) The discount(s) offered under this solicitation.

(4) A description of any additional discounts offered, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined within the SIN or whether SINs can be combined to earn discounts, blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation the latter shall govern.

(5) A description of concessions offered under this solicitation which are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(6) If the Offeror is a dealer/reseller or the Offeror will use dealers to perform any aspect of contract awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(End of Provision)

53. Section 552.212–71 is added to read as follows:

§ 552.212–71 Contract terms and conditions applicable to GSA acquisition of commercial items.

As prescribed in 48 CFR 512.301(a)(2), insert the following provision:

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Feb 1996)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial times or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The contracting officer should either check the clauses that apply or delete the clauses that do not apply from the list. The contracting officer may add the date of the clause if desired for clarity.]

—552.203–70 Restriction on Advertising
—552.211–73 Marking
—552.215–70 Examination of Records by GSA
—552.212–71 Examination of Records by GSA (Multiple Award Schedule)
—552.25–72 Price Adjustment for Incomplete, Not Current or Inaccurate Information Other Than Cost or Pricing Data
—552.219–71 Allocation of Orders—Partially Set-Aside Items
—552.228–75 Workmen's Compensation
—552.229–70 Federal, State, and Local Taxes
—552.232–8 Discounts for Prompt Payment
—552.232–23 Assignment of Claims
—552.232–70 Payments by Electronic Funds Transfer
—552.232–77 Availability of Funds
—552.232–78 Adjusting Payments
—552.232–79 Final Payment
—552.237–70 Qualifications of Offerors
—552.237–71 Qualifications of Employees
—552.238–72 Contractor's Report of Sales
—552.238–74 Submission and Distribution of Authorized FSS Schedule Price List
—552.238–76 Price Reductions
—552.242–70 Status Report of Orders and Shipments
—552.243–72 Modifications (Multiple Award Schedule)
—552.246–73 Warranty—Multiple Award Schedule
—552.246–76 Warranty of Pesticides

(End of Provision)

54. Section 552.212–72 is added to read as follows:

552.212–73 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

As prescribed in 48 CFR 512.301(a)(3), insert the following provision:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Feb 1996)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The contracting officer should either check the clauses that apply or delete the clauses that do not apply from the list. The contracting officer may add the date of the clause if desired for clarity.]

—552.223–70 Hazardous Substances
—552.223–71 Hazardous Material Information
—552.223–72 Nonconforming Hazardous Material
—552.225–70 Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware
—552.225–71 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware
—552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
—552.238–75 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
—552.238–77 Industrial Funding Fee

(End of Clause)

55. Section 552.212–73 is added to read as follows:

552.212–73 Evaluation—Commercial Items (Multiple Award Schedule).

As prescribed in 48 CFR 512.301(a)(4), insert the following provision:

552.212–73 Evaluation—Commercial Items (Multiple Award Schedule) (Feb 1996)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a ''commercial item'' in FAR 52.202–1. Award is to be based upon a catalog or market price exception (FAR 15.804–1(a) (i) and (ii)) to the requirement for cost or pricing data or if other exceptions are not available, an exception for commercial items (FAR 15.804–1(a)(2)), without submission of cost or pricing data. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost. In exceptional circumstances, if an item does not qualify for an exception from cost or pricing data requirements, the contracting officer may consider cost or pricing data if pricing cannot be reasonably evaluated without it, and procurement of the item is the best interest of the Government.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

Alternate I (FEB 1996)

When anticipating competition of identical items, add the following paragraph after paragraph (b) of the basic provision.

(c) The Government reserves the right to award only one contract for all or part of a manufacturer's product line. When two or more offerors (e.g., dealer/resellers) offer the identical product, award may be made competitively to only one offeror on the basis of the lowest price. (Discounts for early payment will not be considered as an evaluation factor in determining the low offeror). During initial open season for an option period, any offers that are equal to or lower than the current contract price received for identical items will be considered. Current contractors will also be allowed to submit offers for identical items during this initial open season. The current contractor which has the identical item on contract will be included in the evaluation process. The Government will evaluate all offers and may award only one contract for each specified product or aggregate group.

56. Section 552.215–70 is amended by revising the date of the clause and the last sentence of the clause to read as follows:

552.215–70 Examination of records by GSA.

* * * * *

Examination of Records by GSA (Feb 1996)

* * * * *

The term ''subcontract'' as used in this clause excludes (a) purchase orders not exceeding $100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

57. Section 552.215–71 is added to read as follows:

552.215–71 Examination of records by GSA (Multiple Award Schedule).

As prescribed in 48 CFR 515.106–70, insert the following clause:

Examination of Records by GSA (Multiple Award Schedule) (Feb 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 2 years after the end of the basic contract period or after the end of the option period for any option periods, have access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this contract for overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of this contract. This right is in addition to the right to examine information provided by FAR 52.215–41 (Alt IV) and FAR 52.215–43, if applicable)

(End of Clause)

58. Section 552.215–72 is added to read as follows:

552.215–72 Price adjustment for incomplete, not current or inaccurate information other than cost or pricing data.

As prescribed in 48 CFR 515.804–6(d), insert the following clause:

Price Adjustment for Incomplete, not Current or Inaccurate Information Other Than Cost or Pricing Data (Feb 1996)

(a) If, subsequent to the award of any contract resulting from this solicitation or modification of this contract, it is found that any price negotiated in this contract was increased by a significant amount because of the occurrence of (1), (2) or (3) below, the contract price shall be reduced by such amount of the increase.

(i) The information requested by the Government and submitted by the offeror (contractor) was not complete; or

(2) The information submitted was not current and accurate; or

(3) Changes in the Contractor's commercial prices, discounts or discount policies which occurred after the original submission were not disclosed prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the solicitation closing date or the date it is submitted whichever is later. Failure to agree on the amount of the decrease shall be resolved as a dispute.

(End of Clause)

552.216–71 [Amended]

59. Section 552.216–71 is amended by revising the date of the clause to read ''FEB 1996'' and amending paragraph (d)(2) by removing ''Discount Schedule and Marketing Data'' and inserting ''Commercial Sales Price format.''

552.238–74 [Amended]

60. Section 552.238–74 is amended by removing ''GSA'' in the section heading, clause heading, paragraphs (b), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (e) and inserting ''FSS'' and by revising the date of the clause to read ''(FEB 1996)''.

61. Section 552.243–72 is added to read as follows:

552.243–72 Modifications (Multiple Award Schedule).

As prescribed in 48 CFR 543.205(c), insert the following clause:

552.243–72 MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (FEB 1996)

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (e) of this clause. A separate request should be submitted for each type of proposed modification. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) Types of Modifications.

(1) Additional items/additional SIN's. When requesting additions, the following information must be submitted:

(i) A request for an exemption from the requirement to submit cost and pricing data as required by 52.215–41 (ALT IV) shall be provided. To add items, submit the information requested in paragraph 1(a) of the Commercial Sales Format. To add SIN's provide the information requested in paragraph (1) and (2) of the Commercial Sales Practice Format.

(ii) Discount information for the new item(s) or new SIN(s) as required by 52.215–41 (ALT IV) must be provided. Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with 552.211–78, Commercial Delivery Schedule (Multiple Award Schedules).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215–20, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by 52.223–3 (ALT I), Hazardous Material Identification and Material Safety Data; and 552.223–71, Hazardous Material Information; and as requested by the Separate Charge for Performance Oriented Packaging clause of this contract, if applicable.

(vii) Recovered Material estimate(s) and certification (if applicable) must be submitted as required by 52.223–8 (or 52.223–8 (ALT I) or 52.223–8 (ALT II), Estimate of Percentage of Recovered Material for Designated Items to be used in the Performance of the Contract; and 52.223–9, Certification of Recovered Material Content for EPA Designated Items used in Performance of the Contract.

(viii) A statement that the request for additional item(s) or item(s) under the new SIN(s) is in compliance with 552.225–9, Trade Agreements Act, and 552.225–8, Trade Agreements Act Certificate is required.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of subparagraph (c)(1) of the Price Reduction clause at 552.238–76. If the price reduction falls under item (i) or (ii), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(4) Revision of Commercial Price List. The Contractor may request a modification to substitute a new catalog or price list for the one originally submitted if, after award and no later than 30 calendar days before the start of the schedule contract period, the Contractor changes its established commercial catalog or price list on which the contract was awarded. The new catalog or price list shall be submitted to the Contracting Officer along with a statement that (i) the new commercial price list is or will be in effect prior to the start of the contract period, and (ii) the discount(s) offered to the Government remain at the same ratio to those available to the customer (or category of customer) which was the basic of award.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reduction clause at 552.238–76.

(d) Electronic file updates. The Contractor shall update electronic file submissions to reflect all modifications. Except for price reductions and corrections, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until updates to electronic files are received. Price reductions and correction may be transmitted without prior approval. However, the contracting officer shall be notified as set forth in the Price Reduction clause at 552.238–76.

(e) Amendments to paper Federal Supply Schedule Price Lists. The Contractor shall distribute a supplemental paper Federal Supply Schedule Price List reflecting accepted changes within 15 days after the effective date of the modification. At a minimum, distribution shall be made to these ordering activities that previously received the basic document. In addition, two copies of the supplemental price list shall be submitted to the contracting officer, and one copy shall be submitted to the FSS Schedule Information Center.

(End of Clause)

Alternate I (Feb 1996)

Substitute the following introductory text in subparagraph (1) for the introductory text in subparagraph (1) of the basic clause.

(1) Additional items/additional SIN's. Consideration for adding new items or new SIN's will be given 3 months into the contract period. After then, the contractor may request additions at any time. When requesting additions the following information must be submitted.

62. Section 552.246–73 is amended by revising the date of the clause and the basic clause to read as follows:

552.246–73 Warranty—Multiple Award Schedule.

* * * * *

Warranty—Multiple Award Schedule (Feb 1996)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list will apply to this contract.

(End of Clause)

552.253–70 [Removed]

63. Section 552.253–70 is removed.

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

570.308–2 [Amended]

64. Section 570.308–2 is amended in paragraph (c) by removing ''and 515.804–3'' at the end of the sentence.

570.602–2 [Amended]

65. Section 570.602–2 is amended in paragraphs (c)(3) and (d) by removing ''and 515.804–3''.

Dated: February 6, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96–3593 Filed 2–15–96; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–3; Notice 6]

RIN 2127–AF63

Federal Motor Vehicle Safety Standards; Air Brake Systems; Air Compressor Cut-In

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

ACTION: Final rule.

SUMMARY: This document concludes a rulemaking proceeding begun in response to a petition for rulemaking submitted by the Truck Trailer Manufacturers Association (TTMA). It amends Standard No. 121, *Air Brake Systems,* to require the automatic activation of the air compressor on a powered vehicle whenever the pressure in the air brake system drops below 100 pounds per square inch (psi). The agency has concluded that the amendment will ensure that new truck tractors provide trailers with sufficient air pressure for release of the trailer parking brakes and provide adequate service braking. In addition, the amendment will provide greater air reserves on all air braked vehicles.

DATES: *Effective date.* The amendment becomes effective March 18, 1996. *Compliance date.* Compliance with the amendment will be required on and after March 1, 1997.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than April 1, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Richard Carter, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5274.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems,* specifies performance and equipment requirements for braking systems on vehicles equipped with air brakes, including a requirement specifying the minimum air pressure at which a towing vehicle's air compressor governor must automatically activate the compressor. The governor maintains reservoir air pressure between predetermined minimum and maximum pressures. Under the current requirement in S5.1.1.1, the governor must automatically activate the air compressor when air pressure in the reservoir falls to 85 pounds per square inch (psi). Currently manufactured air brake systems typically operate between 100 psi and 120 psi.

NHTSA adopted the air compressor governor minimum cut-in requirement on October 8, 1991. (56 FR 50666) In adopting the requirement, the agency explained that the requirement will ensure, in the event of an air leak in a tractor's brake supply system, the air compressor for the system will be activated to restore or maintain pressure in the system until the air leak is detected and corrected. The agency further stated that since most vehicles already complied with the cut-in requirement, it would not result in an undue burden for manufacturers.

The October 1991 final rule also amended Standard No. 121 by deleting the requirement for each trailer to have a separate protected reservoir for the purpose of releasing the parking brake. Under the rule, air pressure from the tractor supply lines may be used to

release the trailer parking brakes instead of air from a separate reservoir. The final rule also specified requirements for a minimum air pressure of 70 psi in the trailer's supply line in the event of pneumatic failure. The final rule also prevents the automatic application of the trailer parking brakes while the minimum trailer supply line air pressure is maintained.

II. Rulemaking Petition

On August 2, 1994, the Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking to amend S5.1.1.1 of Standard No. 121 to increase the minimum air pressure, at which the governor is required to activate the air compressor, from 85 psi to 100 psi. The petitioner stated that its requested amendment is necessary to assure that new truck tractors provide air braked trailers with sufficient pressure for release of the trailer parking brakes and to provide adequate service braking. TTMA said that the current 85 psi air pressure compressor cut-in requirement may not be sufficient to ensure that adequate pressure is supplied to a trailer being towed by a tractor. TTMA also stated that higher truck or tractor air pressures increase the speed at which trucks or tractors can resupply trailers with air and that these higher pressures will store more air for use by the braking systems. The petitioner further stated that ''all tractor manufacturers are now building tractors whose nominal compressor cut-in pressure is at least 100 psi.''

III. NHTSA Proposal

On June 13, 1995, NHTSA published a notice of proposed rulemaking (NPRM) proposing to increase the required minimum air compressor cut-in pressure from 85 psi to 100 psi. (60 FR 31135) The agency set forth the following reasons for its decision to propose increasing the cut-in air pressure above the current 85 psi level. First, the agency believed that the proposed amendment would enhance safety by better ensuring that new truck tractors are capable of providing trailers with sufficient pressure for release of the trailer parking brakes and provide adequate service braking. Specifically, raising the minimum cut-in pressure would allow the storage of an additional volume of compressed air that would be available for an air brake system. Second, the agency stated that the proposal to maintain an overall higher system air pressure would allow a better ''match up'' of protection valve settings between the tractors and trailers. Third, the agency stated that a greater margin of safety would be provided for long stroke brake chambers, which need more compressed air.

After explaining its tentative conclusion that increasing the cut-in pressure to 100 psi would not result in any safety problems, NHTSA invited comments about whether the proposed amendment would affect safety.

NHTSA further stated that its analysis of current manufacturing practices confirmed TTMA's statement that manufacturers are typically building vehicles with a cut-in pressure of at least 100 psi. The docket includes a memorandum summarizing the agency's discussions with vehicle manufacturers and the American Trucking Associations (ATA) in which they indicate that new truck tractors are typically equipped with governors that activate the air compressor when air pressure drops to 100 psi. In addition, Midland-Grau and Allied Signal, which together produce over 95 percent of the air compressors and governors in the United States, stated that they set their air compressors and governors at 100 psi or higher. Based on its research, NHTSA was aware of no company that manufactures these devices with a cut-in pressure between 85 and 100 psi nor of any purchaser that requests a cut-in pressure in this lower range. Accordingly, NHTSA believed that the proposed amendment would codify existing industry practice, since equipment on new vehicles are being built with the proposed settings.

IV. Comments on the NPRM and Final Rule

NHTSA received comments from ATA, the Truck Manufacturing Association (TMA), the Heavy Duty Brake Manufacturing Council (HDBMC), the Truck Trailer Manufacturers Association (TTMA), the Advocates for Highway Safety (Advocates), vehicle manufacturers (Ford, Mack Truck, Navistar, and PACCAR), brake manufacturers (Allied Signal and Midland-Grau), and an engineering consultant.

The commenters generally supported the proposal to raise the air compressor cut-in pressure to 100 psi or more. Even though it did not oppose the proposal, TMA stated that there was little need for adopting the proposal since the vast majority of vehicles already meet the proposed requirements and the rest will soon comply. That organization expressed concern that while most domestic manufacturers already comply with the cut-in requirements, new entries and imports may be designed to the 85 psi requirement. However, NHTSA believes that in Europe, cut-in pressure is typically over 100 psi. Should TMA have specific data on this issue, it is encouraged to present it to the agency. TMA, Navistar, AlliedSignal, Mack Trucks, and HDBMC requested that the agency modify the wording to state that the cut-in pressure shall be ''100 psi or greater.'' These commenters believed that this modified wording will accommodate variations in manufacturers' recommended cut-in pressures.

Based on its review of the comments and the available information, NHTSA has decided to amend Standard No. 121 to require the automatic activation of the air compressor whenever the pressure in the air brake system drops below 100 psi. As the agency stated in the NPRM, this amendment will ensure that new truck tractors are capable of providing trailers with sufficient pressure for release of the trailer parking brakes and provide adequate service braking. Specifically, raising the cut-in pressure allows the storage of an additional volume of compressed air that will be available for an air brake system. Second, requiring an overall higher system air pressure will allow a better ''match up'' of protection valve settings between the tractors and trailers. Third, the amendment will provide a greater margin of safety for long stroke brake chambers, which need more compressed air. The agency anticipates no safety problems as the result of this amendment.

ATA commented that it had no objection to the proposal if it applied only to towing trucks and tractors. However, that organization opposed applying the proposal to single unit vehicles.

NHTSA has decided to apply the air compressor cut-in pressure requirements to all powered vehicles, including single unit vehicles. The agency believes that raising the air compressor cut-in pressure to 100 psi provides potential safety benefits in addition to providing faster brake release times between the tractor and trailers and better balancing of pressures. The agency has decided to include single unit vehicles in the requirements because of its concern over increased air consumption with long stroke brake chambers combined with ABS. The agency is currently reviewing petitions for reconsideration on its rule allowing long stroke brake chambers and, subsequent to its response, encourages ATA and others to reexamine this issue. Even though ATA stated that it was concerned that there may be some special applications or vehicle types where a lower air pressure is desirable or necessary, the agency is not aware of any specific examples of

any such special conditions that preclude the use of the higher air pressure.

In the NPRM, NHTSA proposed that compliance date for the final rule be 30 days after its publication in the Federal Register. The agency stated that this amendment would have no adverse effect on manufacturers since all manufacturers currently comply with the proposed requirements. NHTSA requested comments about whether a leadtime of 30 days would be appropriate or whether more lead time was necessary.

Advocates favored a compliance date of 30 days after the notice's publication. Mack requested that the compliance date not occur before March 1, 1996, since that company manufactures two low volume truck tractor models and a high volume truck model that require a longer leadtime to convert to the higher cut-in pressure. PACCAR, commenting through TMA, stated that it will need 12 months to adapt to the proposed change.

NHTSA has decided to set a compliance date of March 1, l997 for the amended air compressor cut-in pressure. The agency believes that providing additional leadtime is necessary given that some manufacturers will need additional time to modify certain vehicles. Given that these manufacturers would have to make significant changes to certain air brake systems, they would not be able to make the modifications within the 30 day period that was initially proposed. This compliance date also corresponds to that for the antilock brake system and stopping distance requirements for truck tractors.

V. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule will have a minimal effect on the costs or performance of the existing air brake systems. For most manufacturers and most vehicles, today's amendment merely codifies an existing industry practice.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. Vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles will not be significantly affected by the requirements since the cost of new vehicles will not change. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending part 571 of Title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S5.1.1.1 is revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.1.1 Air compressor cut-in pressure. The air compressor governor cut-in pressure shall be 100 p.s.i. or greater.

* * * * *

Issued on: February 8, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–3258 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–5260–02; I.D. 021296B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The closure is effective 12 noon, local time, February 12, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of

king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing a notification in the Federal Register. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone was reached on February 12, 1996. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:00 noon, local time, February 12, through June 30, 1996, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) The Dade/Monroe County, FL, boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, FL, boundary (25°48′ N. lat.) from April 1 through October 31.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

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

Dated: February 12, 1996.

Richard W. Surdi,

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

[FR Doc. 96–3520 Filed 2–12–96; 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 33
Friday, February 16, 1996

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 95N–0138]

Disqualification of a Clinical Investigator

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the investigational new drug regulation that provides for disqualification of clinical investigators for submitting false information. It has come to the agency's attention that, as written, the regulation may be unclear. The proposed amendment would clarify the agency's authority to reach sponsor-investigators under the existing regulation.

DATES: Written comments by May 16, 1996. FDA proposes that any final rule based on this proposal become effective 60 days after its date of publication in the Federal Register.

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: Howard P. Muller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is proposing to amend the regulations governing disqualification of clinical investigators to clarify that existing § 312.70 (21 CFR 312.70) reaches sponsor-investigators. Although the proposed amendment would not signify a change in policy, it has come to the agency's attention that, as written, the regulation may be unclear.

Generally, clinical investigators who conduct clinical trials to investigate new drugs submit their data to individual or corporate sponsors. Part 312 (21 CFR part 312) requires sponsors to monitor the progress of clinical investigations and to submit clinical investigation reports to the agency. Thus, data generated by the clinical investigator become the subject of reports that are submitted to the agency.

Sponsor-investigators both directly conduct investigations and report data to the agency. Section 312.3(b) defines ''sponsor-investigator'' as ''an individual who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed.'' The definition specifically states that ''[t]he requirements applicable to a sponsor-investigator under this part include both those applicable to an investigator and a sponsor.'' Therefore, existing § 312.70 covers the disqualification of sponsor-investigators. However, the language of § 312.70, as it applies to sponsor-investigators, may be confusing.

Under existing § 312.70(b), the agency may disqualify an investigator who has ''deliberately or repeatedly submitted false information to the sponsor in any required report.'' However, unlike investigators, sponsor-investigators submit information directly to FDA and not to a separate sponsor. Although FDA believes that § 312.70 encompasses the disqualification of sponsor-investigators, because a sponsor-investigator does not submit information to a sponsor, the existing regulatory language may be ambiguous. Therefore, the agency is proposing to amend § 312.70 for clarity.

The proposed rule, if finalized, would clarify that the agency can disqualify clinical investigators and sponsor-investigators for submitting to sponsors, or to FDA, false information in any required report.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

III. 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 this proposed regulation does not impose paperwork or recordkeeping burdens, 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.

IV. Effective Date

FDA proposes that any final rule based on this proposal become effective 60 days after its date of publication in the Federal Register.

V. Request for Comments

Interested persons may, on or before May 16, 1996, 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 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 312 be amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.70 is amended by revising the first sentences of paragraphs (a) and (b) to read as follows:

§ 312.70 Disqualification of a clinical investigator.

(a) If FDA has information indicating that an investigator (including a sponsor-investigator) has repeatedly or deliberately failed to comply with the requirements of this part, part 50, or part 56 of this chapter, or has submitted to FDA or to the sponsor false information in any required report, the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research will furnish the investigator written notice of the matter complained of and offer the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, in an informal conference. * * *

(b) After evaluating all available information, including any explanation presented by the investigator, if the Commissioner determines that the investigator has repeatedly or deliberately failed to comply with the requirements of this part, part 50, or part 56 of this chapter, or has deliberately or repeatedly submitted false information to FDA or to the sponsor in any required report, the Commissioner will notify the investigator and the sponsor of any investigation in which the investigator has been named as a participant that the investigator is not entitled to receive investigational drugs. * * *

* * * * *

Dated: February 9, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–3384 Filed 2–15–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–95–062]

RIN 2115–AA97

Security Safety Zone Regulations Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard will hold a public hearing to receive comments on proposals to establish security and safety zones during the 1996 Centennial Olympic Games to be held in the Savannah, Georgia area. The Coast Guard believes these security and safety zones are necessary to protect both Olympic athletes and the maritime public during a variety of activities associated with the Olympic sailing competitions. The proposed regulations are to establish the security and safety zones as early as July 2, 1996 and disestablish them as late as August 5, 1996.

DATES: The public hearing will be held on February 29, 1996, from 7 p.m. to 9 p.m. at the Juliette Low Federal Building, 100 West Oglethorpe Avenue, Room 1015, Savannah, Georgia 31402.

ADDRESSES: The public hearing will be held at the Juliette Low Federal Building, 100 West Oglethorpe Avenue, Room 1015, Savannah, Georgia 31402. Those wishing to make presentations at this public meeting should contact LT L. Fagan or CPO P. Webber at (912) 652–4353. Written comments may be mailed to CPO P. Webber at 222 West Oglethorpe Avenue, Suite 402, Savannah, Georgia 31401. Comments will become part of this docket and will be available for inspection or copying at 222 West Oglethorpe Avenue, Suite 402, Savannah, Georgia 31401, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT L. Fagan, Coast Guard Marine Safety Office Savannah at (912) 652–4353.

SUPPLEMENTARY INFORMATION: .

The Coast Guard is proposing to establish security and safety zones to protect both the Olympic athletes and the maritime community from the potential hazards associated with the large influx of boaters anticipated during the festivities and sailing venue competitions of the Olympic Games. (January 3, 1996; 61 FR 136) These security and safety zones will affect the following waterways: Bull River; Savannah River; Wassaw Sound; Wilmington River; Tybee Cut; Turners Creek; and Half Moon River, as early as July 2, 1996 and as late as August 5, 1996.

The Coast Guard will hold a public hearing on February 29, 1996 at 7 p.m. at the Juliette Low Federal Building, 100 West Oglethorpe Avenue, Room 1015, Savannah, Georgia 31402, to receive comments/presentations regarding whether the Coast Guard should establish all or amend some of the proposed security and safety zones.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under the **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting until March 4, 1996.

Dated: February 12, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–3602 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–28–1–7164b; FRL–5316–8]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Revisions to the South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 3, 1995, the State of South Carolina, through the South Carolina Department of Environment, Health and Natural Resources, submitted revisions to the South Carolina State Implementation Plan (SIP). These revisions involve R.61–62.5 Standard Number 7. Prevention of Significant Deterioration. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final

rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 18, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Environment, Health and Natural Resources, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext. 4212.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–2584 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[NM28–1–7087; FRL–5423–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Mexico; Albuquerque/Bernalillo County; Approval of the Vehicle Inspection and Maintenance Program, Emissions Inventory, and Maintenance Plan; Redesignation of the Nonattainment Area to Attainment; and Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 14, 1995, the Governor of New Mexico submitted a request for redesignation to attainment for the Albuquerque/Bernalillo County carbon monoxide (CO) nonattainment area. This request included a revision to the State Implementation Plan (SIP) for the administration of a vehicle inspection and maintenance (I/M) program, a 1993 emissions inventory for Albuquerque/Bernalillo County, and an attainment maintenance plan. The submission of the revised I/M program was intended to fulfill previously unfulfilled requirements for an I/M program. In this action, the EPA is proposing approval of the Albuquerque/Bernalillo County I/M program, 1993 periodic emissions inventory, and the request for redesignation, because all meet the requirements set forth in the Clean Air Act (Act).

DATES: All written comments must be received by March 18, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza Room 3023, Albuquerque, New Mexico 87102

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm) (specifically 11.1 ppm), under sections 107(d)(4)(A) and 186(a) of the Act, upon enactment of the Clean Air Act Amendments (CAAA) of 1990 (the Act).[1] Please reference 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 13529 (April 16, 1992). On November 5, 1992, the Governor of New Mexico submitted to the EPA a SIP revision for CO concerning Albuquerque/Bernalillo County that was intended to satisfy the Act's requirements due on November 15, 1992. The Act outlines certain required items to be included in CO SIPs. The required items for the Albuquerque/Bernalillo County CO SIP, due November 15, 1992, included: (1) a comprehensive, accurate, and current inventory of actual emissions from all sources of CO in the nonattainment area (sections 172(c)(3) and 187(a)(1) of the Act); (2) no later than September 30, 1995, and no later than the end of each three year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the Act; (3) a permit program to be submitted by November 15, 1993, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of CO (section 172(c)(5)); (4) contingency measures due November 15, 1993, that are to be implemented if the EPA determines that the area has failed to attain the primary standards by the applicable date (section 172(c)(9)); (5) a commitment to upgrade and submit a SIP revision for the I/M program by November 15, 1993, (section 187(a)(4)); and (6) an oxygenated fuels program (section 211(m)).

The Albuquerque/Bernalillo County Air Quality Control Board has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standards (NAAQS) during the period from 1992 through September of 1995. Therefore, in an effort to comply with

[1] The Clean Air Act as amended (1990 Amendments) made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the CO NAAQS (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the CAAA, 42 U.S.C. sections 7401 *et seq.*

the Act and to ensure continued attainment of the CO NAAQS, on April 14, 1995, the Governor of New Mexico submitted a CO redesignation request and a maintenance plan for the Albuquerque/Bernalillo County area. The redesignation request and maintenance plan were both approved by the Albuquerque/Bernalillo County Air Quality Control Board (hereafter referred to as City/County) after a public hearing held on April 13, 1995.

II. Evaluation Criteria

The Act revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment. These five requirements follow below:

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement must be permanent and enforceable; and
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.
5. The area must have met all applicable requirements under section 110 and Part D of the Act.

III. Review of City/County Submittal

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] See also section 110(l) of the Act. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565 of April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, City/County held a public hearing on April 13, 1995, to entertain public comment on the CO redesignation request and maintenance plan. Following the public hearing, these elements were adopted by the City/County, signed by the Governor on April 14, 1995, and submitted to the EPA as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA shortly after its submittal to determine if it was administratively complete in accordance with the criteria referenced above. A letter dated June 2, 1995, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The information contained in the City/County redesignation request demonstrates that the area has met the five requirements of section 107(d)(3)(E) of the Act as noted above. The following is a brief description of how the City/County fulfilled each of these requirements. For a more detailed analysis of the submittal, refer to the Technical Support Document. In addition, because the maintenance plan is a critical element of the redesignation request, the EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the CO NAAQS

The City/County request contains an analysis of quality- assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. The ambient air CO monitoring data for calendar years 1992 through September of 1995 show no violations of the CO NAAQS in the City of Albuquerque and Bernalillo County area. Since the area has complete quality- assured data showing no violations of the CO NAAQS over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and 40 CFR 50 appendix C).

2. Fully Approved SIP Under Section 110(k) of the CAA

The City/County CO SIP is made up of a number of elements which were approved at different times prior to this action. The 1990 base year inventory, the oxygenated fuels program, and the winter wood burning program were approved on November 29, 1993, at 58 FR 62535. The nonattainment New Source Review program was approved on December 21, 1994, at 58 FR 67326. Required contingency measures were approved on May 5, 1995, at 59 FR 23167. In addition, a Clean Fuel Fleet demonstration project was approved with the contingency measures. Though not a requirement and not a contingency measure, it was approved because it could provide some emission reductions. Transportation conformity rules were approved on November 8, 1995, at 60 FR 56238. This action proposes to approve the 1993 emissions inventory, the vehicle inspection and maintenance program, maintenance plan, and maintenance contingency provisions.[3] If approved, the City/County will have a completely approved SIP for the purposes of redesignation. Although the EPA has not approved City/County's general conformity SIP provision, the EPA believes it is reasonable to proceed with redesignation, and approve the state's general conformity provisions in a subsequent notice. See section C titled Conformity of this notice for the EPA's rationale for proceeding with the redesignation.

A. Emission Inventory

Under cover dated November 5, 1992, the State of New Mexico submitted a comprehensive inventory of CO emissions from the Albuquerque/Bernalillo County area. The inventory included emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. The 1990 inventory was approved after the EPA performed the Level I, II, and III reviews required to determine that the submission positively fulfilled the evaluation criteria. The comprehensive base year emissions inventory was submitted in the National Emission Data System format.

Section 187(a)(5) of the Act requires that nonattainment plan provisions include a periodic comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area after the 1990 base year inventory has been prepared. Albuquerque/Bernalillo County included the requisite periodic inventory in the CO Redesignation SIP. The periodic inventory was for 1993, using a three month CO season of November 1993 through January 1994. Stationary point, stationary area, on-road mobile, and non-road mobile sources of CO were included in the inventory. Stationary sources with emissions greater than 100 tons per year within a 25-mile buffer of the designated area were also included in the inventory. The periodic inventories are to be prepared with the same guidance used in preparing the 1990 base year inventory. The available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

[2] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] The attainment contingency measure approved on May 5, 1995 at 59 FR 23167 would become one of two maintenance contingency measures through final action on this petition.

Section 110(k) of the Act sets out provisions governing EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(5) (see 57 FR 13565–66, April 16, 1992). The EPA is granting approval of the Albuquerque/Bernalillo County 1993 periodic CO emissions inventory submitted on May 11, 1995, based on the EPA review guidance. Please refer to the technical support document for a description of the EPA review process.

The following list presents a summary of the CO peak season daily emissions estimates in tons per day by source category: point sources, 3.18 tons per day; Area sources, 111.60 tons per day; Mobile Onroad sources, 274.16 tons per day; Mobile Nonroad sources, 45.74 tons per day; Total sources, 434.69 tons per day.

The EPA is approving this emission inventory as having met the requirements of Section 187(a)(5) of the Act as well as approving the inventory for redesignation purposes. Please reference appendix A of the Albuquerque/Bernalillo County CO Redesignation SIP for specific details on the inventory.

B. Vehicle Inspection and Maintenance

(1) *Background.* In a letter dated April 14, 1995, the State of New Mexico submitted to the EPA rules for an Albuquerque SIP revision to implement an I/M program in the Albuquerque/Bernalillo County carbon monoxide (CO) nonattainment area. These rules were submitted as part of the SIP revision regarding requirements pursuant to Section 182 of the Act and 40 CFR Part 51, Subpart S of the Federal I/M rule. The SIP was submitted in conjunction with a redesignation request and maintenance plan since the area has the air quality data to support such a request. In addition to the State regulations (Air Quality Control Board Regulation 28, Motor Vehicle Inspection), Albuquerque has submitted its I/M ''Procedures Manual'' narrative describing the I/M program, Analyzer Specification Manual, the legal authority for the program (NM Air Quality Control Act 74–2, NM Statutes Chapter 66, Motor Vehicles) and other supporting documents relating to the I/M program.

As a moderate CO nonattainment area, the City of Albuquerque was required to submit an I/M SIP by November 15, 1993, which met all the requirements of the Federal I/M Rule for a basic I/M program. Since a SIP was not received by EPA, on January 14, 1994, EPA issued a finding of nonsubmittal which initiated an 18 month sanction clock. EPA stopped the sanction clock on June 2, 1995, upon the determination that the SIP submitted by the State on April 14, 1995, was complete.

On January 5, 1995, EPA issued rules providing basic I/M areas such as Albuquerque that were redesignating to attainment significant amounts of flexibility determining which features in the I/M program the State would implement (See 60 FR 1735–38). Essentially, the rule allows that areas having an ultimately approvable redesignation request could keep their current I/M program without upgrades, if upgrades were not needed to maintain the standard in the ten year maintenance plan. For this reason EPA is publishing the approval of the I/M SIP at the same time as the redesignation to attainment. Since such a program would not be fully upgraded to meet the requirements of a basic program as contained in 40 CFR Part 51, Subpart S of the Federal I/M rule, the program implemented would have to assume an 80% rule effectiveness for the purposes of modeling in the ten year maintenance plan.

(2) Review Criteria and Determination. The criteria used to review the submitted SIP revision is based on the requirements contained in the I/M redesignation rule published January 5, 1995. This notice lists four criteria that are needed for the Agency to approve the redesignation request and the I/M program if the program is not fully upgraded to meet all the requirements in the Federal I/M rule. These criteria are: (1) legal authority for a basic I/M program, meeting all the requirements of Subpart S such that implementing regulations can be adopted without further legislation; (2) a request to place the I/M plan or upgrades, as defined in the I/M redesignation rule, (as applicable) in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below; (3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the designee to adopt regulations to implement the I/M program in response to the specified triggering event; and (4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones, in the event the contingency measure is triggered (milestones shall be defined by states in terms of months since the triggering event).

Legal Authority

Legal authority for the current I/M program along with a potential future upgrade is contained in the New Mexico Air Quality Control Act as well as the New Mexico Motor Vehicle Code. Specifically, authority for the implementation of the I/M program is contained in Article 2 of the Air Quality Control Act, section 74–2–4. This section gives the local authority the ability to adopt rules, regulations and guidelines, set fees, and operate alternate program types in case of a federally required contingency. Authority for enforcement of the program by requiring a valid emission inspection certificate before a registration is granted is found in the New Mexico Motor Vehicle Code 66–3–7.1. No other legal authority is needed to fully upgrade the program to meet the basic I/M requirements of 40 CFR Part 51.

I/M Program Upgrades In Contingency Measure

Air Quality Control Board Regulation 28.23, Motor Vehicle Inspection contains the provision for program automatic upgrades as a contingency measure if the area experiences a violation of the ambient carbon monoxide standard. By regulation the program will convert to an annual testing program and will be upgraded to meet the performance standards as outlined in 40 CFR Part 51.

I/M Contingency Effective Upon Triggering Mechanism

By Regulation 28.23, the triggering mechanism is effective upon an EPA confirmed violation of the federal ambient carbon monoxide standard. The effective date of Regulation 28.23 is July 1, 1995.

Schedule for Implementing Triggered I/M Upgrade

Regulation 28.23 sets forth the schedule for implementing program upgrades, a major feature of which would be to increase the testing frequency from biennial to annual. The regulation calls for I/M program upgrades 120 days after the EPA confirmed violation of the carbon monoxide standard.

In addition to these four criteria being met, the redesignation portion of the SIP has incorporated the 80% rule effectiveness in its calculations demonstrating that the area can

maintain the standard for ten years. See pages 30 and Appendix Ba of the redesignation SIP for these calculations.

(3) Current I/M Program Parameters

Parameter	Albuquerque I/M program
Network Type	Decentralized, Test and Repair.
Emission Test	Two Speed idle test with BAR90 as of 1/1/96. BAR84 analyzers allowed prior to that date. Visual check includes catalytic converter, air injection system, and oxygen sensor.
Vehicle Coverage	1975 and later spark ignition motor vehicles between 1,000 and 26,000 pounds, including fleets operating within Bernalillo County and vehicles operating on Federal installations in the county.
Test Frequency	Biennial.
Extensions	Excludes an emission-related tune-up. Motorists have 12 months to perform repairs up to $300 and 24 months for repairs over $300.
Waivers	None.
Enforcement Penalties against Test Stations or Inspectors	Monetary penalties and/or denial, suspension or revocation of certification.
Enforcement Penalty against Motorists	Registration Denial.
Contingency Measure	Annual testing and upgrades to meet the performance standards in 40 CFR Part 51.
Upgrade Triggering Mechanism	An EPA-confirmed violation of the carbon monoxide standard.

(4) Finding of the EPA Review. EPA has reviewed the Albuquerque I/M SIP submittal SIP revision submitted to the EPA, using the criteria stated above. Albuquerque's regulations and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements in view of the approvable redesignation request.

C. Conformity

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (transportation conformity). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, the EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

The EPA promulgated final conformity regulations on November 24, 1993, (58 FR 62188) and November 30, 1993, (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under the Act's section 175A. The City/County submitted both transportation and general conformity rules to the EPA for approval. The transportation conformity rule was approved at 60 FR 56280 on November 8, 1995.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity (58 FR 62188) and general conformity (58 FR 63214) rules, the EPA believes it is reasonable to proceed with a redesignation while approval of general conformity rules is under consideration by the EPA. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to enforce the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in approving State general conformity rules does not relieve an area from the obligation to implement such requirements. Hence, EPA believes the area has met these requirements for the purpose of a redesignation request.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

The control measures producing emission reductions are comprised of the following: (1) the Federal Motor Vehicle Control Program; (2) the oxyfuels program; (3) the winter wood burning program; and (4) the I/M program. The EPA finds that these control measures contribute to the permanence and enforceability of reductions in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation that is adequate to assure prompt correction of any air quality problems. In this action, the EPA is proposing to approve the City/County's maintenance plan because the EPA finds that the plan meets the requirements of section 175A.

A. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from a 1990 base year out to 2006. These projected inventories were prepared in

accordance with EPA guidance. The redesignation request contains the detailed inventory data and summaries by source category. Like the base year inventory, the inventory projections were prepared in accordance with EPA guidance. The following table summarizes the 1990 base year inventory and inventory projections to the year 2006.

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

Year	Area	Non-road	Mobile	Point	Total
1993	111.60	45.75	274.16	3.18	434.69
1996	116.28	48.12	235.50	0.00	399.90
1999	120.98	50.48	207.95	0.00	379.41
2002	125.71	52.86	197.13	0.00	375.70
2005	130.42	55.22	199.12	0.00	384.76
2006	131.98	55.98	202.95	0.00	390.91

Please reference appendix B for specific details of the projected inventories. The projections show that calculated CO emissions are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that the City/County area will maintain the CO standard.

B. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Albuquerque/ Bernalillo County area depends, in part, on the City/County's efforts in tracking the indicators of continued attainment during the maintenance period. The City/County has also committed to submit periodic inventories of CO emissions every three years to fulfill the requirements of sections 187(a)(1) and 187(a)(5).

C. Contingency Plan

In accordance with section 175A(d) of the Act, the City/County has submitted contingency measures designed to ''assure that the state will promptly correct any violation of the standard which occurs after the redesignation.'' The City/County submitted one contingency measure to correct a violation of the CO standard, and another contingency measure designed to forestall such a violation. The EPA appreciates the quality of both contingency measures for several reasons.

The City/County submitted a ''primary'' contingency measure that will take effect without further action by the City/County or the State of New Mexico. If EPA confirms that two exceedences have occurred in the maintenance area, and issues a notice of violation, two automatic policy changes will occur. One, the vehicle inspection and maintenance program will become annual rather than biannual. Two, the oxygenated fuel regulation will require that all fuel sold in the nonattainment area contain no less than 3.0 percent oxygenate by weight. The change in the I/M program will take place within 120 days after the violation is confirmed by EPA. The requirement to increase the oxygenate content will be effective at the beginning of the next CO season. For this area, the CO season begins on November 1 and concludes the last day of February. The EPA favors the contingency measures as corrective actions because they produce real and quantifiable reductions of CO, that are readily enforceable.

The City/County submitted a ''secondary'' contingency measure that can take effect if the periodic emissions inventory exceeds the baseline inventory used in this request for redesignation. In this contingency measure, the City/County authority will consider implementing the primary contingency measures if the periodic emissions inventory surpasses the amount of emissions quantified in the baseline inventory.

It is important to note that a CO inventory every three years after redesignation is not a requirement of the Act. The City/County has volunteered to perform such an inventory in addition to the requirements to submit a ten year maintenance plan, and revise the SIP eight years after the designation to attainment, to assure maintenance of the standard for an additional 10 years.

This contingency measure is particularly advantageous to the City/County because the consideration of contingency measures is required through the use of a forecasting model. By properly using the periodic emissions inventory as a forecasting tool, the City/County should be able to act to prevent any exceedences. This secondary measure is therefore protective of air quality and the status of attainment.

D. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the City/County has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. This SIP revision must provide for the maintenance of the CO standard for an additional ten years.

5. Applicable Requirements of Section 110 and Part D

The 1990 Amendments modified section 110(a)(2) and revised section 172 of part D, by adding new requirements for all nonattainment areas. The EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act prior to or at the time the City/County submitted its redesignation request.

Under section 187(a), areas designated nonattainment for CO under the Act and classified as moderate were required to meet several requirements by November 15, 1992. The City/County was required to submit a 1990 Emission Inventory. The EPA has reviewed and approved the 1990 base year emission inventory (see 58 FR 62535–62539, November 29, 1993). Section 211(m) further required the City/County to submit an oxygenated fuels regulation. This rule was submitted to the EPA and approved on November 29, 1993, in the FR. Finally, the I/M program requirement has been met by the City/County's submittal to the EPA on May 8, 1995.

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Two requirements under section 172(c) for Albuquerque/ Bernalillo County were: (1) to submit a preconstruction permit program for new or modified major stationary sources that wish to locate in a nonattainment area (section 172(c)(5)); and (2) to submit contingency measures to be implemented if the area failed to make reasonable further progress (RFP) or to attain the applicable NAAQS by the

applicable date (section 172(c)(9)). The City/County submitted both of the above programs, which were fully approved in the FR (Please reference 58 FR 67326–67330, December 21, 1993, for the nonattainment New Source Review (NSR) program approval, and 59 FR 23167–23169, May 6, 1994, for the contingency measures approval). Upon redesignation to attainment, the Prevention of Significant Deterioration (PSD) permitting program will be applicable. City/County's PSD program was approved in the FR on December 21, 1993, at 58 FR 67330–67334. In addition, City/County's preconstruction permit program was approved in the FR on March 15, 1994, at 59 FR 12170–12172, and the winter wood burning program was approved on November 29, 1993, at 58 FR 62535–62539.

IV. Proposed Action

The EPA is proposing to approve the request of the State of New Mexico to redesignate to attainment the Albuquerque CO nonattainment area to attainment status. The EPA is also proposing approval of the vehicle inspection and maintenance program, the 1993 periodic emissions inventory, and the attainment maintenance plan. The EPA will take final action on this notice following analysis of public comments on this proposal.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. § 7410(a)(2)).

Unfunded Mandates

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 30, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–3583 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 61 and 63

[FRL–5423–8]

Request for Approval of Section 112(l) Delegated Authority; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval and delegation.

SUMMARY: EPA invites public comment on today's proposal to approve the state of Washington Department of Ecology (Ecology) request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and 63. EPA as well invites public comment on its proposal to approve specific rules submitted to EPA by Ecology in order to recognize conditions and limitations established pursuant to these rules as federally enforceable. These adopted regulations would be implemented and enforced by both Ecology and the seven local air authorities (The Benton County Clean Air Authority (BCCAA), the Northwest Air Pollution Authority (NWAPA), the Olympic Air Pollution Control Authority (OAPCA), the Puget Sound Air Pollution Control Agency (PSAPCA), the Southwest Air Pollution Control Authority (SWAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), and the Yakima County Clean Air Authority (YCCAA); collectively referred to as ''the Washington permitting authorities'') within the state of Washington.

DATES: All comments on this submittal must be received by the close of business on March 18, 1996.

ADDRESSES: Copies of this submittal are available for inspection and copying during normal business hours at the following addresses: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, and the State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington, 98504. Written comments should be addressed to: Chris Hall, U.S. EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Chris Hall at 206–553–1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the amended Clean Air Act of 1990 (''the Act'') established new, more stringent requirements upon a state or local agency who wish to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of the federal NESHAP regulations to the State and Local agencies occurred without formal rulemaking by EPA. The new section 112(l) of the Act requires EPA to approve state and local toxics rules and programs under this authority, through formal notice and comment rulemaking. Now, State and Local air agencies who wish to implement and enforce a federally-approved air toxic program must make a showing to EPA that they have adequate legal authorities and adequate resources to implement and enforce the delegated NESHAP regulations. Approval is granted by the EPA through the authority contained in section 112(l), and implemented through the federal rule found at 40 CFR Part 63, subpart E, if the Agency finds that: (1) The State program or rule is ''no less stringent'' than the corresponding federal rule or program, (2) adequate authority and resources exist to implement the State or Local program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or Local program is otherwise in compliance with federal guidance.

II. Discussion of the Washington 112(l) Submittal

On January 5, 1995 (as supplemented on May 8, 1995, October 18, 1995, and January 9, 1996), the Washington permitting authorities submitted to EPA an application requesting delegation of authority to implement and enforce specific 40 CFR Part 61 and Part 63 NESHAP regulations adopted into Washington state and local law [Washington Administrative Codes (WAC) Chapter 173, Division 400, Section 075, as in effect on February 16, 1993; NWAPA Regulation 104.2 as in effect December 8, 1993; PSAPCA Regulation III, Section 2.02 as in effect on October 19, 1995; SWAPCA Regulation 400–075 as in effect on February 1, 1995; and YCCAA Section 12.02 of the Restated Regulation I, as in effect on September 14, 1994].

Contained within the Washington permitting authorities' section 112(l) application are the following documents: a written finding by the State Attorney General and the independent legal counsel for the seven local air authorities stating that the Washington permitting authorities have the legal authority to implement and enforce their state and locally-adopted regulations as well as assure compliance by all sources within their respective jurisdiction; a copy of the relevant state and local regulations, which contain the fully-adopted NESHAP regulations which are to be substituted for the federal NESHAP regulations upon approval, and which contain the permitting requirements for each source subject to them, including the State regulatory order regulations and the State new source review regulations; and complete program descriptions for both Ecology and the seven local air authorities. The full program submittal is available for review for more detailed information.

A. Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR 63.91, the Washington permitting authorities are seeking delegated federal authority to implement and enforce 40 CFR Part 61; subparts A, C through F, J, L through P, V, Y, BB, and FF, as adopted into state and local law. EPA has previously delegated authority for 40 CFR Part 61 subparts H and I to the state of Washington Department of Health (see 60 FR 39263, August 2, 1995, ''Interim approval of Delegation Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington'').

Three local air agencies, NWAPA, PSAPCA, and SWAPCA are also requesting delegated authority to implement and enforce specific 40 CFR Part 63 NESHAP regulations adopted into local law (see section IV.A which lists the specific 40 CFR Part 63 regulations adopted by these agencies).

B. Voluntary Limits on Emissions

The Washington permitting authorities are also requesting federal approval of specific regulations adopted into state and local law (WAC 173–400–091, 110, 112, 113, and 114, WAC 173–460; NWAPA sections 300 through 303; OAPCA Regulation 1, Article 7; PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; SCAPCA Regulation I, Article II and V; SWAPCA 400–090, –110, –112, –113, and –114; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01) which would allow the Washington permitting authorities to establish federally-enforceable emission limitations by permit for the purpose of limiting a source's potential to emit hazardous air pollutants (HAP) below major source thresholds. On May 8, 1995, the Washington permitting authorities withdrew their request for EPA approval of WAC 173–460 as a federally-enforceable regulation for limiting a source's potential to emit HAP, therefore EPA will not be proposing to take any action in regard to this rule. Additionally, since EPA has previously approved the provisions of WAC 173–400–091 as a mechanism for limiting a sources potential to emit HAP under the authority of section 112(l), it is not necessary to take any further action in regard to this rule (see 60 FR 28726, June 2, 1995, ''Approval and Promulgation of State Implementation Plans: Washington Approval of Section 112(l) Authority; Operating Permits; Washington'').

If approved, these state and local potential-to-emit (PTE) regulations (including WAC 173–400–091 which has already been approved under section 112(l)) would provide the mechanism for the owner or operator of a source to apply for and obtain federally-enforceable conditions that would limit their potential to emit HAP. Such limitations would be contained in a permit issued by Ecology or one of the seven local air authorities, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with these limitations. As mentioned previously, if approved, limits established pursuant to these regulations would be considered federally-enforceable, providing the Washington permitting authorities with the ability to set limits which would be sufficient to exempt a source from the requirement to obtain a WAC 173–401 issued operating permit and/or comply with federal, state or local hazardous air pollutant regulations. Approval under section 112(l) is necessary because the Washington SIP-approved rules extends solely to the control of criteria pollutants. Federally-enforceable limits on criteria pollutants (i.e., volatile organic compounds or particulate matter) may have the incidental effect of limiting emissions for the majority of the HAPs listed pursuant to section 112(b), however, section 112 of the Act provides the underlying authority for establishing federally-enforceable limits for all HAP emissions.

C. Section 112(g)

As part of their original delegation request the Washington permitting authorities requested approval for specific state and locally-adopted regulations for the purpose of implementing section 112(g) of the Act (WAC 173–400–110, –112, –113, and

–114, and WAC 173–460; NWAPA Regulations sections 300 through 303; OAPCA Regulation 1, Article 7; and PSAPCA Regulation I, Article 6, and Regulation III, Appendix A). On May 8, 1995, the Washington permitting authorities officially withdrew their request for approval of these rules for the purposes of implementing section 112(g); therefore EPA will not be taking any action in regard to section 112(g).

III. Authority and Commitments for Section 112 Implementation

Under 40 CFR 63.91 the minimum documentation needed to be provided to EPA for a straight delegation request are: (1) A written finding by the State attorney general (and the independent legal counsel for the Local air authorities) confirming that the State (Local) has adequate legal authorities to implement and enforce the State (Local) rule(s) or program(s); (2) copies of the State and/or Local statutes, regulations and other documents which contain the appropriate provisions for which the State and/or Local are requesting delegation; (3) a demonstration of adequate resources to implement and enforce all aspects of the delegated rules or program; (4) a schedule demonstrating expeditious implementation of the delegated rules or program; (5) a plan that assures expeditious compliance by all sources; and, (6) a demonstration of adequate legal authority to implement and enforce all delegated rules or program and to assure compliance by all sources upon approval.

A. Written Findings by Legal Counsel

40 CFR 63.91 (b)(1) and (b)(6) requires that at a minimum a state and/or local agency requesting section 112(l) delegation have the following authorities: (1) Enforcement authorities that meet the requirements of 40 CFR 70.11 of this chapter; (2) authority to request information from regulated sources regarding their compliance status; (3) authority to inspect sources and any records required to determine a source's compliance status; and (4) if the State delegates authorities to a Local agency, the state must retain enforcement authority unless the Local agency's authorities meet the requirements of 40 CFR 70.11 of this chapter.

The Washington permitting authorities have provided to EPA legal opinions from both the Washington state Attorney General's office and the independent legal counsel for the seven local air authorities which clearly outline their enforcement authorities as they pertain to the requirements of 40 CFR 63.91(b)(1) and (b)(6). EPA has previously reviewed Washington's civil and criminal enforcement authorities contained in the Revised Code of Washington (RCW) where EPA determined that the authorities in RCW 70.94.430 do not fully meet the requirements of 40 CFR 70.11 and therefore 40 CFR 63.91 (see 59 FR 42552, August 18, 1994, for a detailed explanation of this issue). However, although EPA believes that Washington's criminal authorities do not fully meet 40 CFR 70.11 requirements, EPA has granted a two-year interim approval of the Washington permitting authorities 40 CFR Part 70 operating permit programs, effective December 9, 1994, thereby allowing the state of Washington until December 9, 1996, to correct their statutory deficiencies.

The Washington permitting authorities would implement and enforce the delegated federal regulations throughout the State of Washington under the authority of RCW 70.94. RCW 70.94.331(3) gives the seven local air authorities authority to implement and enforce WAC 173–400 and –401, or adopt their own more stringent rules.

B. Copies of State Statutes and Regulations

Complete copies of WAC 173–400, WAC 173–401, and RCW 70.94; BCCAA regulation 1, NWAPA sections 104, 200, 300–303, 320–324, and 326; OAPCA regulation 1, article 7; PSAPCA regulation I–III; SCAPCA regulation I, article II and V; SWAPCA 400 and 401; and YCCAA regulation I sections 4.02, 12.01 and 12.02; have been provided to EPA as required by 40 CFR 63.91(b)(2). In addition, OAPCA Regulation I, Article 5 was provided to EPA with the Washington permitting authorities Title V application submittal.

C. Demonstration of Adequate Resources

40 CFR 63.91(b)(3) requires the State and Local to provide for adequate resources to implement and enforce all aspects of the delegated program or rule. Specifically, 40 CFR 63.91(b)(3) requires a State to provide: (1) A description in narrative form of the scope, structure, coverage, and processes of the State program; (2) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and (3) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

EPA believes the Washington permitting authorities have taken the necessary steps to provide for adequate resources to support implementation and enforcement of the respective HAP programs which are at least as stringent as the 40 CFR 63.91(b)(3) requirements. The recently adopted regulations cited in section III.B. provide the regulatory framework for administering the respective HAP programs. The stringency requirement of 40 CFR 63.91(b)(1) is met because the relevant Washington state and local regulations adopt by reference all the 40 CFR Part 61 and Part 63 NESHAP regulations being requested for delegation. Therefore, if approved, the Washington permitting authorities' air toxics programs would cover the same sources and the same pollutants which are presently being covered under the federal Part 61 NESHAP regulations.

Further, on November 9, 1994, EPA granted interim approval to the Washington permitting authorities operating permit programs, where EPA found that Washington substantially possesses adequate resources to implement and enforce their statewide operating permit program (see 59 FR 42552, August 18, 1994, and 59 FR 55813, November 9, 1994, for further discussion regarding the interim approval of state of Washington Part 70 operating permit programs, which includes discussion of adequate resources).

Program costs for major sources subject to the state-adopted NESHAP regulation would be funded through four separate fee programs: annual operating permit fees; new source review fees; source registration fees; and RACT determination fees. EPA believes that these four program fee collection mechanisms will be adequate to cover the costs of implementing and enforcing the federal NESHAP regulations proposed for delegation. The EPA plans to continually monitor the implementation of the respective HAP programs for each of the Washington permitting authorities to ensure that adequate resources are in fact available.

D. Demonstration of Expeditious Implementation of 40 CFR Part 61 Requirements

40 CFR 63.91(b)(4) requires the state or local authority to demonstrate that they can expeditiously implement each delegated NESHAP regulation or program upon approval. EPA believes that the Washington permitting authorities' statutory and regulatory authorities are more than adequate to expeditiously implement these 40 CFR Parts 61 and 63 regulations which they have adopted into state and local law to date. RCW 70.94 provides the

Washington permitting authorities with the broad legal authority to implement and enforce all federal NESHAP regulations adopted into state or local law or included in a state or locally-issued operating permit issued pursuant to WAC 173–401. The Washington permitting authorities would adopt, implement and enforce all new and amended NESHAP regulations through their respective HAP programs. Operating permits will be issued to all major NESHAP sources, where each permit will contain all federal, state, and local air pollution control requirements applicable to that source, including all NESHAP requirements. By law, the Washington permitting authorities are to have issued operating permits to all existing major sources by December 9, 1997, three years from the date of EPA approval of the WAC 173–401 operating permit program. New major sources will be issued an operating permit at startup.

E. Demonstration of Expeditious Compliance by Sources Subject to 40 CFR Part 61 Requirements

The EPA believes that the HAP program regulations for each of the Washington permitting authorities provide for an expeditious schedule for assuring that sources are in compliance with the NESHAP regulations as required by 40 CFR 63.91(b)(5). The Washington permitting authorities have demonstrated to EPA that they indeed have the resources and authority to assure compliance for all major sources covered under WAC 173–400 and WAC 173–401 (or equivalent local regulation), which includes those sources that are subject to the federal NESHAP regulations. Nothing in Washington state or local regulations would allow a source to avoid or delay compliance with any CAA requirement beyond the date required by the federal NESHAP regulations.

The framework for the Washington permitting authorities compliance and enforcement programs are outlined in the State/EPA ''Compliance Assurance Agreement'' (included in Washington's Title V program submittal). The Washington permitting authorities' compliance programs will be run through the WAC 173–401 operating permit program (or equivalent local program), in which sources are required by federal, state, and local law to comply with all conditions and requirements of the operating permit upon issuance.

IV. Programs for Proposed Approval and Disapproval

A. 40 CFR Part 61 and Part 63 NESHAP Regulations

With this notice EPA proposes to grant interim approval to the state of Washington Department of Ecology's January 5, 1995, request for delegated authority to implement and enforce 40 CFR Part 61, subparts A, C through F, J, L through P, V, Y, BB, and FF, as adopted into WAC 173–400, NWAPA Section 104.2, PSAPCA Regulation III Section 2.02, SWAPCA 400 Section 075, and YCCAA Regulation I Section 12.02, as these rules apply to Part 70 sources (i.e., those major sources which will be issued a Title V operating permit). EPA is also proposing to grant interim approval to the NWAPA, PSAPCA, and SWAPCA request for delegated authority to implement and enforce the locally-adopted 40 CFR Part 63 NESHAP regulation as these rules apply to Part 70 sources only (NWAPA regulation 104.2 which adopts by reference 40 CFR Part 63 subparts A through D, F through I, L, M, and Q, as amended on October 19, 1994; PSAPCA Regulation III, Section 2.02 as in effect on October 19, 1995, which adopts by reference all 40 CFR Part 63 NESHAP regulations in effect as of July 1, 1995; and, SWAPCA regulation 400–075 as in effect on February 1, 1995, which adopts by reference 40 CFR Part 63 subparts A, B, D, F–I, L–O, R, Q, T, and EE).

It is EPA's belief that the Washington permitting authorities' request for delegation substantially meets the requirements of 40 CFR 63.91. However, since EPA has determined that Washington's criminal authorities under RCW 70.94.430 do not meet the stringency requirement of 40 CFR 70.11, EPA is therefore only proposing to grant interim approval to the Washington permitting authorities' request for delegated authority. This interim delegation of authority would apply to all of the state-adopted NESHAP regulations being requested for delegation by the Washington permitting authorities, but only as these regulations apply to Part 70 sources. EPA will retain implementation and enforcement authority for these rules as they apply to non-Part 70 sources during the interim period until such time as the Washington permitting authorities demonstrate that their criminal authorities meet EPA requirements.

Interim delegation has been deemed by EPA to be an acceptable delegation option for states who substantially, but do not fully meet the stringency requirements of 40 CFR 63.91 (see December 10, 1993, John Seitz memo ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V''). In this respect EPA is allowing the Washington permitting authorities the opportunity to amend their state regulations within a specified timeframe while at the same time delegating federal authority to allow them to implement and enforce the federal NESHAP regulations as adopted into state law.

Finally, this delegation of authority to implement and enforce the federal NESHAP regulations would only extend until December 9, 1996, which coincides with the end of the interim delegation period for the Washington permitting authorities Part 70 operating permit program. EPA will not extend this interim delegation past December 9, 1996.

B. Voluntary Limits on HAP Emissions

EPA is also proposing to approve WAC 173–400–091, 110, 112, 113, and 114; NWAPA sections 300 through 303; OAPCA Regulation 1, Article 7; PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; SCAPCA Regulation I, Article II and V; SWAPCA 400–090, –110, –112, –113, and –114; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01, under the authority of section 112(l) of the Act in order to recognize these regulations as federally-enforceable for purposes of establishing PTE limitations. Approval of these regulations would provide the Washington permitting authorities the ability to create federally-enforceable emission limits by order for those sources which have the potential to emit HAPs above major threshold levels but have actual HAP emissions which are below major source levels (thereby becoming a ''synthetic area source'').

The EPA plans to codify the approval criteria for synthetic area source programs through amendments to subpart E of 40 CFR Part 63, the regulations promulgated to implement section 112(l) of the Act. The EPA believes it has authority under section 112(l) to approve programs which limit potential to emit HAP prior to this revision to subpart E. The EPA is proposing approval of the Washington permitting authorities' synthetic area source program regulations now so that they may begin to issue federally-enforceable permits as soon as possible. EPA believes it is consistent with the intent of section 112 and the Act for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a

federally-enforceable limit on their potential to emit HAP.

EPA, as well, believes that the five approval criteria for approving state operating permit programs into the SIP, as specified in the June 28, 1989 Federal Register notice, are also appropriate for evaluating and approving state synthetic area source programs under section 112(l) of the Act. The June 28, 1989 notice does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. The EPA currently anticipates that the regulatory criteria to be set forth in the revisions to 40 CFR part 63, subpart E rule, as they apply to state synthetic area source permit programs, will mirror those set forth in the June 28, 1989 Federal Register notice.

Therefore, EPA proposes to approve the Washington permitting authorities' state and locally-adopted PTE regulations under the authority of section 112(l) of the Act. Furthermore, EPA proposes that after final approval of this section, synthetic area source permits issued pursuant to these regulations (including terms and conditions for HAPs contained therein) would be enforceable by EPA and by citizens under section 304 of the Act regardless of whether such permits were issued prior to EPA approval of these regulations. However, such permits would have to have been issued after the effective date of the applicable state or local regulation and in accordance with the provisions set forth within such regulation. Additionally, the EPA believes that since state new source review permit programs approved pursuant to section 112(l) prior to the planned subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will also not be necessary.

C. Requirements for ''Full'' Approval

It is EPA's position that the state of Washington criminal enforcement authorities do not meet the requirements of 40 CFR 63.91(b)(1) and (b)(6). In order for the Washington permitting authorities to receive full delegation of authority for the NESHAP regulations requested they need to demonstrate to EPA that their criminal enforcement authorities are consistent with the enforcement requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically the state of Washington will need to:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii),

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 61.91.

Though EPA is proposing interim delegation of authority to enforce the NESHAP regulations to the Washington permitting authorities, it is important to note that EPA retains oversight authority for sources subject to these federal CAA requirements. EPA has the authority and responsibility to enforce the federal regulations in those situations where the State or Local does not have sufficient authority to file criminal charges against a facility. Therefore, even though EPA believes that the Washington permitting authorities' criminal authorities are not fully adequate, EPA believes that Ecology and the seven local air authorities, in conjunction with EPA, can provide for adequate enforcement of the federal NESHAP regulations.

D. Typographical Error

EPA has noted an error in a cross-reference to a regulation in support of the Washington permitting authorities' request for approval of their PTE regulations. EPA is assuming that the reference in WAC 173–400–171(i) to WAC 173–400–090 meant to reference WAC 173–400–091.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposed interim approval. Copies of the state of Washington submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is a file of information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by March 18, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the state of Washington is already imposing. Therefore, because section 112 delegation approvals do not impose any new requirements, I certify that it would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning State programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

If EPA's final action is a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the state of Washington submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that any final disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new federal requirement.

D. Unfunded Mandates Reform Act

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law,

and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. Summary of Action

Pursuant to the authority of section 112(l) of the Act EPA is soliciting public comment on today's proposal to delegate in the interim the authority to implement and enforce specific federal NESHAP regulations which have been adopted into Washington state law. Additionally, EPA is proposing to approve specific state and local air regulations for the purpose of conferring federal enforceability to PTE permits or orders issued pursuant to these regulations.

Interested parties are invited to comment on all aspects of this proposed rule. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by March 18, 1996, will be considered in the final rulemaking action taken by EPA. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve the Washington submittal within 30 days after the close of the public comment period. EPA will give notice of this decision in a final Federal Register rulemaking. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 6, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–3584 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 96–6; FCC 96–17]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rule Making (''Notice''), we propose that broadband Commercial Mobile Radio Service (''CMRS'') (''broadband CMRS'') providers be authorized to offer fixed wireless local loop service. We also solicit comment on whether other or all fixed services should be permitted in addition to the mobile and related fixed services now permitted. We initiate this proceeding on our own motion to address the uncertainty in our existing rules on the extent to which fixed services may be provided by broadband Personal Communications Service (''PCS''), Cellular Radiotelephone Service (''cellular''), and Special Mobile Radio (''SMR'') providers. The measures we propose should increase competition within wireless services and promote competition between wireless and wireline services.

DATES: Comments are to be filed on or before February 26, 1996. Reply Comments are to be filed on or before March 18, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Danner, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION:

This *Notice of Proposed Rule Making* in WT Docket No. 96–6, adopted January 24, 1996, and released January 25, 1996, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 1400, Washington, D.C. 20037 (telephone (202) 857–3800).

I. Introduction

1. In this *Notice of Proposed Rule Making* (''Notice'') in WT Docket No. 96–6, we propose that broadband Commercial Mobile Radio Service (''CMRS'') (''broadband CMRS'')[1] providers be authorized to offer fixed wireless local loop service. We also solicit comment on whether other or all fixed services should be permitted in addition to the mobile and related fixed services now permitted. We initiate this proceeding on our own motion to address the uncertainty in our existing rules on the extent to which fixed services may be provided by broadband Personal Communications Service (''PCS''), Cellular Radiotelephone Service (''cellular''), and Special Mobile Radio (''SMR'') providers. The measures we propose should increase competition within wireless services and promote competition between wireless and wireline services.

II. Background

2. The Communications Act[2] defines ''mobile service'' as a ''radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.'' 47 U.S.C. 153(n).

3. In the *Second Report and Order* in GN Docket No. 93–252, 59 FR 18493 (April 19, 1994) (''*CMRS Second Report & Order*''), the Commission interpreted the statutory definition of mobile service to include ''all auxiliary services provided by mobile services licensees,'' but then distinguished between fixed point-to-point services and those services capable of being provided in a ''mobile mode.'' The *CMRS Second Report and Order* excludes from the mobile definition those services which are solely fixed in nature (*e.g.*, Basic Exchange Telephone Radio Service (BETRS)), but categorizes other services that have some fixed uses as mobile by virtue of having a mobile component or mobile capabilities. For example, we determined that services provided through dual-use equipment, such as Inmarsat-M terminals that can be moved while transmitting, are mobile.

4. Our current rules for broadband CMRS services allow licensees to provide all forms of mobile services, including local loop services that are mobile in nature. In addition, broadband CMRS providers may

[1] The services under ''broadband CMRS'' includes Broadband Personal Communications Service, Cellular Radiotelephone Service and Specialized Mobile Radio. *See in the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* GN Docket No. 93–252, 59 FR 59945 (November 12 1994), *Third Report and Order,* 9 FCC Rcd 7988, 8105–8110, ¶¶ 252–265 (1994).

[2] Communications Act of 1934, as amended, 47 U.S.C. 332 (''Communications Act'').

provide some forms of fixed service subject to certain limitations. Our PCS rules, for instance, permit PCS licensees to provide any fixed service that is ancillary to their mobile operations. Likewise, SMR providers may use licensed spectrum for certain fixed uses on a secondary, non-interference basis to the primary mobile operations of any other licensee. Cellular carriers may provide auxiliary common carrier services and services premised on the use of alternative cellular technologies, so long as such services do not interfere with the authorized cellular service. Fixed services also may be provided by cellular licensees as incidental communication services under our incidental service rules.

5. Local exchange service delivered by radio link may be provided using architectures consisting of mobile, fixed, or a combination of those components. For example, one possible architecture would be radio-based telephone instruments that are mobile, whether in the home, office, or any other fixed location. Another example would combine wired telephone instruments with a fixed wireless link from the street to a demarcation box on the side of a house, building, or other premises to which wiring connects. Our current rules are unclear, however, on the scope of fixed ancillary services that may be provided by PCS carriers, and as to the types of secondary, auxiliary or incidental services that may be provided by other CMRS providers. Although we previously held that all auxiliary services provided by mobile service licensees would be considered in the definition of ''mobile'' service by such carriers, we are finding that carriers are hesitant to take advantage of that flexibility without further guidance from the Commission. We note our original purpose in limiting this spectrum to mobile and related services was to ensure that adequate spectrum was available for these services, which cannot feasibly be provided at higher frequencies. However, it appears that the characterization of permissible use in our rules may be inhibiting carriers intending to use radio links to replace existing wireline service or to bring service to rural or less attractive areas otherwise not being adequately served by wireline providers.

6. We propose to define ''wireless local loop'' as the path between the subscriber and the first point of switching or aggregation of traffic. We seek comment on whether this definition will encompass the anticipated service needs of consumers and whether such a definition gives certainty to CMRS providers that are planning and marketing competitive wireless telecommunications networks. We propose a definition for wireless local loop that is sufficiently broad that it is unnecessary to examine the mobile or fixed nature of each particular application.

7. The Commission has discretion under Section 303 of the Communications Act to prescribe the nature of the service to be rendered over radio frequencies and to assign or allocate frequencies to various classes of stations. Nothing in the language of Section 303 (or its legislative history) suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use. Furthermore, the Commission is guided by the policies set forth in the Communications Act to encourage the provision of new technologies and services to the public.

8. The federal government as well as state governments are interested in removing barriers to competitive provision of local exchange service throughout the United States. Over the last several years, the Commission and various state governments have taken a number of actions that increased opportunities for competitive provision of local telecommunications services. A number of states have already enacted legislation or completed other measures to introduce new local exchange service providers. In a series of decisions from 1992 to 1994, the Commission implemented expanded interconnection and collocation policies that created new opportunities for competitive provision of access services that have been traditionally offered by only the local telephone companies. These decisions were fundamental to opening the interstate special access and switched transport markets to competition.

9. More recently, in a *Third Notice of Proposed Rule Making and Supplemental Tentative Decision* in CC Docket No. 92–297, 60 FR 43740 (August 23, 1995), the Commission noted that the Local Multipoint Distribution Service—a wireless technology operating in the 28 GHz band—''may provide services that compete with local exchange carriers in the provision of local exchange service * * *'' By the instant *Notice*, the Commission takes additional steps to foster competitive local exchange service by proposing that broadband CMRS providers also be able to offer the equivalent of local exchange service using existing allocations for PCS, cellular and SMR. The flexible regulatory scheme proposed in this *Notice* will help eliminate the need for the Commission to initiate a rule making or grant multiple waivers each time a broadband CMRS provider or new entrant to a market wishes to adjust its operational mode to respond to consumers' changing communications requirements. Our proposed approach here is consistent with prior decisions and current proposals.

III. Discussion

A. Expanded Service Options on PCS Channels

10. In the *Notice of Proposed Rule Making* in GEN Docket No. 90–314 and ET Docket No. 92–100, 57 FR 40672 (September 4, 1992) (''*PCS NPRM*''), we observed that personal communications requirements are changing rapidly as our society becomes more mobile and the demand for nearly instantaneous communications and universal access increases. We proposed to define PCS as a family of services that could provide communications to individuals and business, and be integrated with a variety of competing networks. Most of the commenters in the PCS proceeding agreed that PCS should be flexible enough to provide a wide range and variety of services, envisioned generally as mobile or portable radio communications. The *PCS NPRM* further proposed that fixed services generally be allowed only as ancillary to mobile PCS services. Some parties in the PCS proceeding argued, however, that restrictions on use of PCS spectrum for fixed services on PCS channels are inadequate to define an emerging technology and implementation of a new service.

11. A number of early trials under PCS experimental licenses included a variety of technologies and service concepts, including personal communications networks (PCN), private branch exchange (PBX), and wireless local loop. We indicated that wireless local loop service is a type of PCS in the *PCS NPRM*. Based upon concepts expressed in comments, the experimental applications granted, and the pioneer preference requests, we concluded in the PCS Second Report and Order that proposed services and devices would likely range from advanced wireless replacements for ordinary telephones to radio communications devices capable of sending and receiving voice and data to and from virtually anywhere. Specific kinds of PCS services and devices cited in the *Second Report and Order* in GEN Docket No. 90–314, 8 FCC Rcd 7700, 7712, 58 FR 59174 (Nov. 8, 1993) (''*PCS Second Report and Order*'') were expected to include advanced forms of

cellular telephone service, advanced digital cordless telephone service, portable facsimile services, wireless PBX services, and wireless local area network (LAN) services, among others. We predicted that these new services and devices would operate through existing public switched networks, or through alternative local networks such as cable television systems. We also indicated, however, that PCS also would exist independent of local wired networks, ''filling gaps in existing communications services and creating new markets.'' *See* ''*PCS Second Report and Order*''.

12. Accordingly, our current PCS rules permit licensees to provide any mobile communications service on their assigned frequencies to satisfy mobile communications needs. The rules also provide that ''fixed services (except for broadcast services) may be provided if ancillary to mobile operations.'' 47 C.F.R. § 24.3. Otherwise, a carrier must seek a waiver to offer primarily fixed service, demonstrating that such service best meets the demands of an area. The rationale for prohibiting broadcast and non-ancillary fixed services in PCS spectrum was the limited amount of spectrum available to provide mobile service and the availability of other frequency bands or other media to provide broadcast and fixed services. The ancillary fixed use language was not intended, however, to exclude fixed services totally, but to preserve the anticipated mobile operations attributable to PCS technologies as understood in the earlier stages of PCS development.

13. The current restriction on fixed use of the channels in our PCS rules may not reflect current stages of the developing PCS market and could hinder carriers from quickly and economically using channel capacity to meet changing market demand. As indicated in the earlier PCS proceedings, we always have intended wireless local loop to be a part of the family of services that meet our definition of PCS, whether implemented as a mobile or fixed service. We therefore propose to amend our existing broadband PCS rules to clarify that broadband PCS providers may provide wireless local loop services, as defined above, along with mobile service as principal uses of spectrum allocated to broadband PCS. Under this proposal, the permissible communications language in the existing broadband PCS rules would be amended to explicitly encompass fixed wireless local loop.

14. While broadband PCS systems will use digital or other highly efficient technology to achieve tremendous system capacity, current technology supports economical mobile services only up to approximately 3 GHz. Given this technological constraint, we seek comment on whether the currently allocated broadband PCS spectrum will provide sufficient capacity for mobile uses if fixed wireless local loop services are provided on broadband PCS spectrum. Alternatively, should the Commission allow the operation of the market to determine the most efficient use of the broadband PCS spectrum?

15. Finally, we seek comment on whether additional interference or other operational rules are needed to accommodate fixed wireless local loop uses of the broadband PCS channels. What changes are needed to our existing technical rules? Are additional technical rules required to govern fixed wireless local loop uses in the broadband PCS bands? Our intent is to have the necessary technical rules to minimize interference without unduly hindering a carrier's ability to offer a variety of services.

B. Expanded Service Options on Other CMRS Channels

16. The proposed changes in the broadband PCS rules to expand the service offerings permissible on broadband PCS channels to include fixed wireless local loop services would suggest that similar treatment be afforded to other categories of CMRS that have the potential to directly compete with PCS. The Commission previously has held that all commercial mobile radio services are ''substantially similar'' by virtue of existing competition or the potential for competition among the CMRS categories. In our recent report to Congress on CMRS competition, we reiterated our previous findings in the CMRS proceeding that cellular and SMR services in the short term are most likely to directly compete with each other and with broadband PCS, because each service consists largely of two-way, mobile telephony. Broadening the permissible service options for cellular and SMR results in those CMRS providers having more flexibility to meet market demand, including meeting demand that traditionally has been serviced by wireline common carriers. We therefore propose to permit licensees to provide fixed wireless local loop services on their licensed cellular and SMR spectrum.

17. As with PCS, we seek comment regarding (1) whether and to what extent cellular and SMR service rules should be changed to permit flexibility in the provision of fixed wireless local loop as well as mobile services; (2) implications on the availability of spectrum for mobile services (*see ¶ 14, supra*); and (3) specific operational, interference or technical rules to permit fixed wireless local loop uses of the cellular and SMR channels.

18. In recognition that CMRS consists of ''substantially similar'' services by virtue of potential competition among and between all of those services, we also request comment on whether the public interest would be served by also permitting ''narrowband'' CMRS providers the operational flexibility to offer fixed wireless local loop services as proposed for broadband CMRS. These other ''narrowband'' CMRS offerings include paging, narrowband PCS, commercial 220 MHz service, and interconnected business radio service (collectively, ''narrowband CMRS'').

C. Regulatory Treatment When Fixed Wireless Local Loop

Services Are Provided On CMRS Systems.

19. If we ultimately decide to allow fixed wireless local loop services by CMRS providers, we also must decide how such services are to be regulated. It is clear that PCS providers intend to integrate mobile, wireless fixed, wireline networks, and cable facilities into seamless packaged offerings that could span several states. Some of these networks will go beyond regional coverage to achieve seamless nationwide coverage. The Omnibus Reconciliation Act of 1993 (''Budget Act''), which amended the Communications Act to create the CMRS regulatory classification, reflects Congress' intent to establish regulatory symmetry among mobile services. The broad goal of this legislation was to ensure that economic forces—not disparate regulatory requirements—shape the development of the CMRS marketplace. In addition, we established in the *CMRS Second Report and Order* that all auxiliary services provided by mobile services licensees would be included within the definition of mobile services, including ancillary fixed communications offered by PCS providers, to preserve the flexibility necessary to meet growing consumer demand for a broad range of mobile services.

20. The ability of a carrier to offer consumers a ''menu'' of services, which could include fixed wireless local loop services, adds value to the carrier's mobile services because it gives the mobile customer the option of using the fixed and mobile applications offered by a single provider. Presumably, to achieve economies of scale with such integrated networks, those carriers

would use the same facilities, regardless of whether the services are provided intrastate or interstate. Consequently, we do not want to discourage the development of such integrated networks by subjecting carriers to multiple layers of regulation. We, therefore, propose to treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider, so long as the carrier otherwise offers interconnected, for-profit mobile service to the public on licensed CMRS spectrum as provided by the Communications Act. We seek comment on this proposal and invite commenters to offer alternate proposals. We note that in the *CMRS Second Report and Order* we presumptively classified PCS as CMRS, allowing each PCS provider to make a showing that one or more of its services are private by demonstrating that the service is not within the CMRS definition. We will continue to allow PCS licensees to overcome the CMRS presumption upon the proper demonstration that such services do not qualify as CMRS.

D. Universal Service Obligations

21. The Commission has a number of universal service programs in place that seek to promote the availability of telephone service. Our Lifeline and Link Up programs provide assistance to low income and elderly residential subscribers, and the Universal Service Fund program provides assistance to telephone companies operating in high cost areas. These programs are administered by the National Exchange Carrier Association in cooperation with the states pursuant to Commission requirements. Should we ultimately adopt the rules we propose herein, CMRS licensees would be permitted to provide fixed wireless local loop services that in some respects could be similar to wireline telephone local exchange service. We seek comment on the extent to which any of our universal service programs should be modified to encompass, or impose obligations on, CMRS providers that offer the equivalent of local exchange service. We currently are examining universal service issues more broadly in separate proceedings, including the extent to which competitive local exchange service providers should be eligible for high cost support. As stated in those proceedings, competition in local exchange service can be provided by different kinds of service providers, including cellular carriers, and our universal service programs should not favor a particular technology. It is the Commission's preference, if feasible, to treat the universal service obligation issues raised in this proceeding in our decisions in the universal service proceedings.

E. Other Possible Fixed Services for CMRS

22. In addition to proposing that CMRS providers be allowed to offer fixed as well as mobile wireless local loop, we seek comment on whether certain other fixed services should be allowed as well, or alternatively, whether CMRS providers should be allowed to provide any form of fixed service without restriction. We note that wireless local telephone service may not be the only technically and economically viable fixed service that could be accommodated on spectrum allocated to CMRS providers. Other potential wireless fixed services may include wireless Internet access, electronic funds transfers, point-of-purchase credit card verification, and remote monitoring. We seek comment on whether these potential uses are included or excluded in our proposed definition of wireless local loop. If excluded, should CMRS providers be allowed to provide these services in addition to wireless local loop? Are there other potential fixed services for which demand may exist? We seek comment on whether allowing CMRS providers to offer fixed wireless local loop but not other fixed services may unduly restrict the ability of carriers to develop wireless networks that otherwise would meet various needs of the consuming public.

23. Assuming that we allow CMRS providers to offer fixed services other than fixed wireless local loop, we also seek comment on whether there should be any restrictions on fixed use of this spectrum. Allowing CMRS spectrum to be used for certain fixed applications does not necessarily mean that all fixed services should be permitted. On the other hand, imposing restrictions on fixed use of this spectrum could impose a regulatory burden on carriers, increase the need for oversight of CMRS operations by the Commission to verify compliance, and might inhibit development of beneficial uses of the spectrum that we cannot anticipate. We note that, as a practical matter, technical factors may limit CMRS providers' ability to offer some fixed services on channels allocated for mobile telecommunications. There are many point-to-point operations which may not be feasible on a system designed for mobile use. Under what circumstances should we limit fixed services by CMRS providers in order to ensure technical compatibility?

24. We believe that our regulatory approach should allow licensees to adapt quickly to technological innovation and changing consumer demands. We also seek to ensure, however, that our approach to fixed use of this spectrum does not restrict the potential future growth of mobile services, particularly in light of the relatively limited portion of the spectrum in which mobile use is feasible as compared to the much larger amount compatible with fixed use. Recently, the National Telecommunications and Information Administration concluded that demand for mobile spectrum will substantially increase over the next decade, while demand for fixed use will decrease. We solicit comment on these conclusions, including ways to ensure that spectrum is available to meet future mobile needs, and on the implications for our proposals herein. Parties identifying a potential deficiency for mobile services should also address whether that deficiency could be remedied by authorizing mobile services in spectrum currently designated for fixed services. Would the public benefit more from continuing to provide CMRS spectrum for principally mobile uses, from broadening our definition of permissible fixed services to include specific additional applications, or from permitting all fixed and mobile uses in the same spectrum?

25. To the extent that we permit CMRS providers to offer fixed services other than fixed wireless local loop, the issues raised in previous sections may also apply. We seek comment on those issues applicable to other fixed services. In particular, if we permit CMRS providers to offer fixed services in addition to fixed wireless local loop, we must determine how those services are to be regulated. We therefore ask for comment on the issues raised in ¶¶ 19–20, *supra.*

F. Proposed Changes to Table of Frequency Allocations

26. In accordance with our proposals listed above, we propose to amend the domestic Table of Frequency Allocations as set forth below. *See* 47 CFR § 2.105. Currently, wide-area SMR and cellular bands are allocated internationally to fixed and mobile services on a co-primary basis, but within the United States they are allocated only to land mobile services. Therefore, we propose to amend the domestic Table of Frequency Allocations for the 806–821, 851–866, 896–901, and 935–940 MHz bands to permit them to make use of the allocations for both fixed and mobile

services on a co-primary basis. The extent to which such allocations may be used will be determined by final decisions resulting from the service rules proposals in this proceeding. We request comment on this proposal.

IV. Conclusion

27. The proposals set forth in this Notice expand the services available to consumers and the service options available to broadband CMRS providers developing competitive wireless offerings. The Notice proposes to allow all broadband CMRS providers the regulatory flexibility to offer fixed wireless local loop services, and seeks comment on whether the public interest is served by further expansion to include some or all other fixed services. Where fixed wireless local loop services are offered, we propose that CMRS regulation continue to apply if a carrier offers interconnected, for-profit mobile service to subscribers. Comment is sought on similar treatment for other categories of fixed services. Our purpose is to reduce any undue regulatory burdens on CMRS providers, as contemplated by the Communications Act, and to enhance competition. Our efforts should promote the development and deployment of new and innovative wireless telecommunications networks.

V. Procedural Matters

A. Regulatory Flexibility Act

28. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the proposed rule. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

B. Paperwork Reduction Act

The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments should be submitted on or before April 16, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554, or via Internet to dconway@fcc.gov; and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., N.W., Washington, DC 20503, or via Internet to fain____t@al.eop.gov.

For further information contact: Dorothy Conway, (202) 418–0217, or via Internet at dconway@fcc.gov.

Title: Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services.

Type of Review: New collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,500.

Estimated Time Per Response: Approximately 1–2 hours.

Total Annual Burden: Approximately 1,875 hours.

Total Annual Cost: $337,688; this includes the costs for filing the information electronically or mailing submissions and hiring consultants that may be necessary to respond to the requests.

Needs and Uses: The information will be used by the Commission to determine if the service provider is technically qualified to offer fixed wireless local services and as part of the Commission's management of spectrum for commercial uses. Without such information, the Commission could not determine whether the provider is operating in compliance with the Commission's Rules.

C. Ex Parte Rules—Non-Restricted Proceeding

29. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

D. Comment Dates

30. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments by February 26, 1996; reply comments are due on or before March 18, 1996. To file formally in this proceeding you must file an original and four copies of all comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. A copy of all comments should also be filed with the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, (202) 857–3800. Comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 2025 M Street, N.W., Room 5608, Washington, D.C. 20554.

E. Ordering Clause

31. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 309(j), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 309(j) and 332(c).

F. Contact Person

32. For further information concerning this proceeding, contact Sandra K. Danner (Acting Chief, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau) at (202) 418–0620.

List of Subjects in 47 CFR Part 2

Common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. The entries for the 470–790 through 942–960 MHz frequency bands are removed.

b. New entries for 470–512 through 944–960 MHz are added.

c. International Footnote Nos. 675, 676, 678, 697, and 703 in the listing of International Footnotes are revised.

d. International Footnote Nos. 682 and 708 are removed and reserved.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
470–512 BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	470–512 BROADCASTING Fixed Mobile 674 675	470–512 FIXED MOBILE BROADCASTING 673 677 679	470–512	470–512 BROADCASTING LAND MOBILE NG66 NG114 NG127 NG149	RADIO BROADCAST (TV) (73) PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22) Auxiliary Broadcasting (74)	
512–585 BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	512–585 BROADCASTING 678	512–585 FIXED MOBILE BROADCASTING 673 677 679	512–585	512–585 BROADCASTING NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
585–608 BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	585–608 BROADCASTING 678	585–608 FIXED MOBILE BROADCASTING RADIONAVIGATION 688 689 690	585–608	585–608 BROADCASTING NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
608–610 BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	608–610 RADIO ASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space) 688 689 690	608–610 FIXED MOBILE BROADCASTING RADIONAVIGATION US74 US246	608–610 RADIO ASTRONOMY US74 US246	608–610 RADIO ASTRONOMY		
610–614	610–614	610–614	610–614	610–614		

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	RADIO ASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space)	FIXED MOBILE BROADCASTING RADIONAVIGATION 677 688 689 690 691 693 701	RADIO ASTRONOMY US74 US246	RADIO ASTRONOMY US74 US246		
614–790 BROADCASTING 676 677A 683 684 685 686 686A 687 689 693 694	614–790 BROADCASTING Fixed Mobile 675 692 692A 693	614–790 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	614–790	614–790 BROADCASTING NG30 NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
790–806 FIXED BROADCASTING 694 695 695A 696 697 700B 702	790–806 BROADCASTING Fixed Mobile 675 692 692A 693	790–806 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	790–806	790–806 BROADCASTING NG30 NG43 NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
806–821 FIXED BROADCASTING 694 695 695A 696 697 700B 702	806–821 FIXED MOBILE BROADCASTING 692A 700 700A	806–821 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	806–821	806–821 FIXED LAND MOBILE NG30 NG31 NG43 NG63 NG128	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
821–824 FIXED BROADCASTING 694 695 695A 696 697 700B 702	821–824 FIXED MOBILE BROADCASTING 692A 700 700A	821–824 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	821–824	821–824 LAND MOBILE NG30 NG43 NG63 NG128	PRIVATE LAND MOBILE (90)	
824–849 FIXED BROADCASTING 694 695 695A 696 697 700B 702	824–849 FIXED MOBILE BROADCASTING 692A 700 700A	824–849 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	824–849	824–849 LAND MOBILE NG30 NG43 NG63 NG128 NG151	PUBLIC MOBILE (22)	
849–851 FIXED BROADCASTING 694 695 695A 696 697 700B 702	849–851 FIXED MOBILE BROADCASTING 692A 700 700A	849–851 FIXED MOBILE BROADCASTING 677 688 689 690 691 693 701	849–851	849–851 AERONAUTICAL MOBILE NG30 NG63 NG128	PUBLIC MOBILE (22)	
851–862 FIXED BROADCASTING	851–862 FIXED MOBILE BROADCASTING	851–862 FIXED MOBILE BROADCASTING	851–862	851–862 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
694 695 695A 696 697 700B 702	692A 700 700A	677 688 689 690 691 693 701		NG30 NG31 NG63 NG128		
862–866 FIXED MOBILE except aeronautical mobile BROADCASTING 703	862–866 FIXED MOBILE BROADCASTING	862–866 FIXED MOBILE BROADCASTING	862–866	862–866 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
866–869 FIXED MOBILE except aeronautical mobile BROADCASTING 703	866–869 FIXED MOBILE BROADCASTING	866–869 FIXED MOBILE BROADCASTING	866–869	866–869 LAND MOBILE	PRIVATE LAND MOBILE (90)	
700b 704	692a 700 700a	677 688 689 690 691 693 701		NG30 NG63 NG128		
869–890 FIXED MOBILE except aeronautical mobile BROADCASTING 703	869–890 FIXED MOBILE BROADCASTING	869–890 FIXED MOBILE BROADCASTING	869–890	869–890 LAND MOBILE	PUBLIC MOBILE (22)	
700B 704	692A 700 700A	677 688 689 691 693 701		NG30 NG63 NG128 NG151		
890–894 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	890–894 FIXED MOBILE except aeronautical mobile Radiolocation	890–894 FIXED MOBILE BROADCASTING Radiolocation	890–894	890–894 LAND MOBILE	PUBLIC MOBILE (22)	
704	700A 704A 705	706	US116 US268 G2	US116 US268 NG151		
894–896 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	894–896 FIXED MOBILE except aeronautical mobile Radiolocation	894–896 FIXED MOBILE BROADCASTING Radiolocation	894–896	894–896 AERONAUTICAL MOBILE	PUBLIC MOBILE (22)	
704	700A 704A 705	706	US116 US268 G2	US116 US268		
896–901 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	896–901 FIXED MOBILE except aeronautical mobile Radiolocation	896–901 FIXED MOBILE BROADCASTING Radiolocation	896–901	896–901 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
704	700A 704A 705	706	US116 US268 G2	US116 US268		
901–902 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	901–902 FIXED MOBILE except aeronautical mobile Radiolocation	901–902 FIXED MOBILE BROADCASTING Radiolocation	901–902	901–902 FIXED MOBILE	PERSONAL COMMUNICATIONS (24)	
704	700A 704A 705	706	US116 US268 G2	US116 US268 US330		
902–928	902–928	902–928	902–928	902–928		

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED Amateur Mobile except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation	RADIOLOCATION		Amateur (97)	915 ± 13 MHz: Industrial, scientific and medical frequency
704	705 707 707A	706	707 US215 US218 US267 US275 G11 G59	707 US215 US218 US267 US275		
928–929	928–929	928–929	928–929	928–929		
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED MOBILE except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation		FIXED	PRIVATE LAND MOBILE (90) PRIVATE OPERATIONAL FIXED MICROWAVE (94) PUBLIC MOBILE (22)	
704	705	706	US116 US215 US268 G2	US116 US215 US268 NG120		
929–930	929–930	929–930	929–930	929–930		
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED MOBILE except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation		LAND MOBILE	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
704	705	706	US116 US215 US268 G2	US116 US215 US268 NG120		
930–931	930–931	930–931	930–931	930–931		
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED MOBILE except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation		FIXED MOBILE	PERSONAL COMMUNICATIONS (24)	
704	705	706	US116 US215 US268 G2	US116 US215 US268 US330 NG120		
931–932	931–932	931–932	931–932	931–932		
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED MOBILE except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation		LAND MOBILE	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
704	705	706	US116 US215 US268 G2	US116 US215 US268 NG120		
932–935	932–935	932–935	932–935	932–935		
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation	FIXED MOBILE except aeronautical mobile Radiolocation	FIXED MOBILE BROADCASTING Radiolocation	FIXED	FIXED	DOMESTIC FIXED (21) PUBLIC MOBILE (22)	
704	705	706	US215 US268 G2	US215 US268 NG120		
935–940	935–940	935–940	935–940	935–940		

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	FIXED MOBILE except aeronautical mobile Radiolocation 705	FIXED MOBILE BROADCASTING Radiolocation 706	US116 US215 US268 G2	FIXED LAND MOBILE US116 US215 US268 NG120	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
940–941 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	940–941 FIXED MOBILE except aeronautical mobile Radiolocation 705	940–941 FIXED MOBILE BROADCASTING Radiolocation 706	940–941 US116 US268 G2	940–941 FIXED MOBILE US116 US268 US330 NG120	PERSONAL COMMUNICATIONS (24)	
941–942 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	941–942 FIXED MOBILE except aeronautical mobile Radiolocation 705	941–942 FIXED MOBILE BROADCASTING Radiolocation 706	941–942 FIXED US268 62	941–942 FIXED US268 NG120	DOMESTIC PUBLIC FIXED (21) PUBLIC MOBILE (22)	
942–944 FIXED MOBILE except aeronautical mobile BROADCASTING 703 704	942–944 FIXED MOBILE	942–944 FIXED MOBILE BROADCASTING 701	942–944 FIXED US301 US302	942–944 FIXED US301 US302 NG120	DOMESTIC PUBLIC FIXED (21)	
944–960 FIXED MOBILE except aeronautical mobile BROADCASTING 703 704	944–960 FIXED MOBILE	944–960 FIXED MOBILE BROADCASTING 701	944–960	944–960 FIXED NG120	AUXILIARY BROADCASTING 74 PUBLIC MOBILE (22) INTERNATIONAL PUBLIC FIXED (23) PRIVATE OPERATIONAL FIXED (94)	
*	*	*	*	*	*	*

International Footnotes

* * * *

675 Additional allocation: in Chile, Colombia, Cuba, Ecuador, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

676 Additional allocation: in Burundi, Cameroon, the Congo, Ethiopia, Israel, Kenya, Lebanon, Libya, Malawi, Senegal, Sudan, Syria, and Yemen, the band 470–582 MHz is also allocated to the fixed service on a secondary basis.

* * * * *

678 Additional allocation: in Costa Rica, Cuba, El Salvador, Ecuador, the United States, Guatemala, Guyana, Honduras, Jamaica, Mexico and Venezuela, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under the procedures set forth in Article 14.

* * * * *

682 [Reserved]

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697 Additional allocation: in the Federal Republic of Germany, Burkina

Faso, Cameroon, Côte d'Ivoire, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Malta, the Gabonese Republic and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with this band.

* * * * *

703 In Region 1, in the band 862–960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. 400 to 403) excluding Algeria, Egypt, Spain, Libya and Morocco, subject to agreement obtained under the procedure set forth in Article 14.

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708 [Reserved]

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[FR Doc. 96–3557 Filed 2–15–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 96–52]

Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this *Notice of Proposed Rule Making* in WT Docket No. 96–18 and PP Docket No. 93–253 (*Notice*), the Commission proposes to implement geographic licensing for paging services to streamline licensing procedures for Common Carrier Paging (CCP) and Private Carrier Paging (PCP). The Commission proposes to transition to a geographic licensing approach, and issue licenses for geographic areas, rather than on a transmitter-by-transmitter basis. The Commission also proposes to adopt competitive bidding rules to select among mutually exclusive paging applications.

The Commission also addresses how paging applications should be treated during the pendency of this rulemaking. The Commission proposes to hold in abeyance and not process applications for paging channels received after the adoption date of this *Notice*, except during the pendency of this proceeding incumbent licensees may add sites to existing systems or modify existing sites, so long as such additions or modifications do not expand the interference contour of the incumbent's existing system. With respect to CCP and PCP licensees who have obtained nationwide exclusivity, the Commission will allow applications for additional sites, without restrictions.

With respect to paging applications that were filed prior to the February 8, 1996 adoption date of this *Notice* and remain pending, the Commission proposes to process such applications provided that they are not mutually exclusive with other applications, and the relevant period for filing competing applications has expired as of the adoption date of this *Notice*. The processing of mutually exclusive pending applications and applications for which the relevant period for filing competing applications has not yet expired will be held in abeyance until the conclusion of this proceeding. In the Notice, the Commission examines ways to promote continued growth and preserve vigorous competition in the paging industry through revisions to the common carrier and private carrier paging regulations. The Commission seeks to establish a comprehensive and consistent regulatory scheme that will simplify and streamline licensing procedures. To reach this objective, the Commission proposes to transition to geographic licensing and to adopt competitive bidding rules for mutually exclusive paging applications.

DATES: Comments are to be filed on or before March 18, 1996. Reply Comments are to be filed on or before April 2, 1996. Comments on the Interim Licensing Proposal are to be filed on or before March 1, 1996. Reply Comments on the Interim Licensing Proposal are to be filed on or before March 11, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir or Rhonda Lien, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rule Making* in WT Docket No. 96–18 and PP Docket No. 93–253, adopted February 8, 1996, and released February 9, 1996, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 140, Washington, D.C. 20037 (202) 857–3800).

Synopsis of *Notice of Proposed Rule Making:*

I. Background

1. The Commission first allocated spectrum for the CCP service in 1949. The Commission responded to the growth of the paging market in 1982 by allocating 40 new channels in the 931 MHz band exclusively for use by CCP operators and dedicating three of these channels for use by nationwide systems.

2. PCP was established by the Commission, and authorized on specified channels within each private radio service category, with licensees authorized either to operate systems for their own internal use or to provide service to limited categories of eligible users. In 1982, the Commission allocated 40 channels in the 929 MHz band for PCP, with some channels to be licensed for internal-use systems and others for PCP systems that could provide commercial paging service to eligible users under Part 90. In 1993, the Commission allowed PCP operators to provide service to the public on virtually the same unrestricted basis as CCP operators.

3. The Omnibus Budget Reconciliation Act of 1993 amended the Communications Act of 1934, as amended (the Act) to divide all mobile services into two categories: Commercial Mobile Radio Services (CMRS) and private mobile radio service (PMRS), and mandated that ''substantially similar'' mobile services receive comparable regulatory treatment. The Commission concluded in the *CMRS Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, GN Docket No. 93–252, 59 Fed. Reg. 18493 (April 19, 1994) (*CMRS Second Report and Order*), that PCP services were subject to reclassification as CMRS as of August 10, 1996. In the *CMRS Third Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93–252, 59 Fed. Reg. 59945 (Nov. 21, 1994) (*CMRS Third Report and Order*), the Commission concluded that PCP and CCP are substantially similar services that should be subject to comparable regulation to the extent feasible, and that geographic licensing should be considered in both services.

A. Common Carrier Paging

a. Current Licensing Procedures

4. Under current rules, a CCP channel is assigned to a single licensee in each area on an exclusive basis. Licensees' protected service areas are based upon predicted coverage of the transmitters in their systems; licensees must apply for additional transmitter locations when expanding their systems. On all CCP allocations other than 931 MHz, known as lower band CCP channels, applicants specify which channels they want. Applications filed within the designated filing window for the same channel in the same area are, by definition, mutually exclusive. The 931 MHz band applications are not channel-specific. Therefore, when there are more available channels in an area than there are applications for new channel assignments, 931 MHz applications are not mutually exclusive. In most major markets, the number of applications often exceeds the number of available channels, resulting in all applications being treated as mutually exclusive.

b. Part 22 Rewrite Order

5. In the *Part 22 Rewrite Order,* Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order,* CC Docket No. 92–115, 59 Fed. Reg. 59502 (Nov. 17, 1994) (*Part 22 Rewrite Order*), the Commission revised its licensing rules for all Part 22 services, including adoption of new licensing rules for 931 MHz paging frequencies. The *Part 22 Rewrite Order* provided that, as of January 1, 1995, all 931 MHz applicants, including those who had applications pending under the old rules, would be required to specify channels in their applications. After a 60-day filing window for such channel-specific applications, the Commission would grant those applications that were not mutually exclusive and use competitive bidding to select among the mutually exclusive applications.

B. Private Carrier Paging

a. Current Licensing Procedures

6. Historically, PCP channels have been licensed on a shared basis, such that licensees would not obtain exclusive rights to a particular channel and may be required to share the channel with others in the same area. Under the current rules, PCP applicants for all non-929 MHz PCP channels and five of the forty 929 MHz channels must submit their applications to a frequency coordinator who recommends a channel to be assigned by the Commission. PCP applicants are not currently subject to competing applications or mutual exclusivity selection procedures, such as lotteries, comparative hearings, or auctions.

7. As a result of the Commission's adoption of the *PCP Exclusivity Order,* Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Report and Order,* PR Docket No. 93–35, 58 Fed. Reg. 62289 (Nov. 26, 1993) (*PCP Exclusivity Order*), thirty-five of the forty 929 MHz PCP channels may be licensed on an exclusive basis. Licensees whose systems operate on these channels were allowed to earn exclusivity on a local, regional, or nationwide basis, by constructing multi-transmitter systems meeting certain build out criteria. The remaining incumbent licensees are allowed to continue operating without being forced to change channels or location. Applicants for exclusive PCP channels continue to submit their applications to a frequency coordinator, and applications are processed on a first-come, first-served basis.

II. Discussion

A. Geographic Licensing Proposal

a. Overview

8. Paging operators currently choose the areas they seek to serve by applying for licenses on a site-by-site basis. The boundary of the licensee's service area is derived from the composite service areas of existing base stations. Geographic licensing for paging channels would enhance regulatory symmetry with other CMRS services. In this *Notice,* the Commission considers geographic licensing in the context of all paging channels, including 931 MHz, 929 MHz, and lower band CCP and PCP channels.

9. The Commission tentatively concludes that the public interest would be served by converting to geographic licensing for all paging channels that are licensed on an exclusive, non-nationwide basis. Licensing such systems by geographic areas for ten-year license terms, rather than by individual sites, would simplify paging system expansion and substantially reduce the administrative burden on both paging licensees and the Commission.

10. The Commission proposes that all incumbent systems be entitled to continue operating under existing authorizations with full protection from interference. Geographic licensees and incumbents could enter into voluntary negotiations with respect to the purchase or relocation of the incumbents' facilities. Any request for transfer or assignment of an incumbent authorization to the geographic licensee is presumed to be in the public interest, although each request will be reviewed as required by Section 310(d) of the Act. In addition, if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, the Commission proposes that the geographic area covered by the incumbent's authorization revert automatically to the geographic licensee. To the extent geographic licensing is adopted, the Commission proposes to eliminate the finder's preference under Part 90 of the Commission's rules. The Commission seeks comment on the geographic licensing proposal.

11. *931 MHz and 929 MHz Channels.* Under the geographic licensing proposal in this *Notice,* 931 and 929 MHz licensees would be extended the same flexibility, to the extent feasible, as cellular and PCS licensees in terms of the location, design, construction, and modification of their facilities throughout their geographic areas. The Commission tentatively concludes that geographic licensing would decrease the filing burden on 931 and 929 MHz licensees and provide additional operational flexibility. Such licensing also would expedite the processing of applications by reducing the number of licenses to be issued and simplifying the determinations of which license applications are mutually exclusive. The Commission seeks comment on this tentative conclusion.

12. *Nationwide Channels.* The Commission proposes to exclude from geographic licensing the following channels that have been assigned to single licensees on a nationwide basis under the existing rules: the three CCP channels (931.8875, 931.9125, and 931.9375 MHz) dedicated for nationwide use and all PCP channels for which licensees have met the construction requirements for nationwide exclusivity as of the adoption date of this *Notice.* The Commission will announce, by Public Notice, the specific PCP channels excluded for nationwide use at a later time. The Commission tentatively concludes that a licensee who has obtained nationwide exclusivity on a paging channel should be given a single nationwide license for use of the channel instead of continuing to operate under site-specific authorizations. The Commission tentatively concludes that if a licensee fails to comply with the construction and service requirements for nationwide exclusivity, the channel should be made available for geographic licensing, and such licensee would receive protection as an incumbent only

for those areas where it has completed construction and commenced service. The Commission seeks comment on whether MTel's second channel (931.4375 MHz) used virtually on a nationwide basis, should be designated a nationwide channel, and whether it should be excluded from our geographic licensing proposal.

13. *Lower Band CCP Channels.* The Commission also tentatively concludes that geographic licensing should be extended to CCP channels in the 35, 43, 152, and 454 MHz bands. The Commission asks commenters to address the relative costs and benefits of converting lower band channels to geographic licensing. The Commission also seeks comment on whether competitive bidding should be used to select among mutually exclusive paging and BETRS applications, and whether to allow geographic partitioning of licensing areas to make spectrum available to BETRS operators in sparsely populated regions.

14. *Shared PCP Channels.* The Commission seeks comment on whether and when to use geographic licensing for lower band PCP channels (*i.e.*, those PCP frequencies in the 152/158 MHz, 462 MHz, 465 MHz bands), which currently are licensed on a shared basis. The Commission also seeks comment on whether to (1) convert lower band shared PCP channels to exclusive use and implement geographic licensing; (2) issue only a certain number of licenses per shared channel and use competitive bidding to choose among mutually exclusive applications once the limit is reached; or (3) retain the *status quo.* The Commission tentatively concludes that if the shared paging channels were to convert to exclusive licensing, a geographic licensing approach would be appropriate.

15. The Commission requests comment on the costs and benefits of continuing to license some channels on a shared basis versus licensing all channels on an exclusive basis, how such licensing plans would affect the rights of incumbent licensees, and whether a geographic plan is the most practical way in which to begin licensing these channels on an exclusive basis.

b. Defining the Service Areas

16. The Commission seeks comment on the use of Metropolitan Statistical Areas (MTAs) and on other options for defining service areas for all of the various paging services. The Commission tentatively concludes that MTAs form the most appropriate geographic area boundaries for paging systems, because they are economically-defined regions that appear to best mirror the size and development of existing paging systems. MTAs also offer advantages from an administrative perspective, because they are more efficient for the Commission to license than smaller areas that require issuance of more licenses. Commenters should provide empirical data on the area covered by existing paging systems and how such coverage areas compare to MTAs.

17. The Commission tentatively concludes that, if MTA service areas are adopted, three licensing regions in addition to the 47 Rand McNally MTAs would be used to cover United States territories: Guam and the Northern Mariana Islands would be licensed as a single area, Puerto Rico and the U.S. Virgin Islands as a single area, and American Samoa as a single area. Alaska would be licensed as a single area separate from the Seattle MTA.

18. Rand McNally is the copyright owner of the MTA/BTA Listings, which list the counties contained in each BTA/MTA, as embodied in Rand McNally's Trading Area System BTA/MTA Diskette and geographically represented in the map contained in Rand McNally's *Commercial Atlas & Marketing Guide.* Rand McNally has licensed the use of its copyrighted MTA/BTA Listings and maps for certain services such as PCS, 800 MHz and 900 MHz SMR, and Local Multipoint Distribution Services. These blanket licensing agreements authorize the conditional use of Rand McNally's copyrighted material in connection with these particular services, require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership, and provide for a payment of a license fee to Rand McNally. Currently, paging services are not covered by a blanket copyright license agreement. A paging authorization grantee who does not obtain a copyright license (either through a blanket license agreement or some other arrangement) from Rand McNally for use of the copyrighted material may not rely on grant of a Commission authorization as a defense to any claim of copyright infringement brought by Rand McNally against such grantee.

c. Treatment of Incumbents

19. The Commission tentatively concludes that there is no feasible means to relocate incumbents to alternative channels. Therefore, incumbent licensees would be allowed to continue to operate under their existing site-specific authorizations or a single system-wide license, and geographic licensees would be required to provide protection to all co-channel systems that are constructed and operating within their service areas. No incumbent licensee would be allowed to expand beyond its existing interfering contour and into the geographic licensee's territory without the consent of the geographic licensee unless the incumbent in question is itself the geographic licensee for the relevant channel.

20. The Commission proposes that incumbent licensees should be permitted to modify or add transmitters in their existing service area without prior notification to the Commission, as long as the interfering contour of the pre-existing system is not expanded. Incumbents would be free to negotiate voluntary arrangements with geographic licensees to allow expansion within a geographic area. The Commission seeks comment on whether this proposal strikes a proper balance between the competing interests of geographic and incumbent licensees and whether there are any circumstances under which incumbents should be permitted to expand into unserved areas without the geographic licensee's consent.

d. Coverage Requirements

21. The Commission seeks comment on whether geographic paging licensees should be subject to minimum coverage requirements as a condition of licensing. The Commission tentatively concludes that geographic licensees should be required to provide coverage to one-third of the population within their geographic areas within three years of initial license grant and to two-thirds of the population by the end of five years, or in the alternative, provide substantial service to the geographic license area at five years. A geographic licensee must, three years from license grant, either submit a showing that the one-third population coverage standard has been met, or provide written notification that it has elected to show substantial service to the geographic license area five years from license grant. Each geographic licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. The Commission tentatively concludes that population-based coverage requirements are more appropriate than geographic-based coverage requirements, because strictly geographic-based requirements may lead to coverage in sparsely populated areas where service is not needed or is economically unjustified. The Commission requests comment on the costs and benefits of imposing coverage requirements on geographic licensees,

the specific coverage criteria proposed, and any alternative criteria.

22. The Commission tentatively concludes that under this geographic licensing scheme, ''slow growth'' extensions for paging systems in the 929–930 MHz spectrum are unnecessary and that such extensions could hinder geographic licensing because an incumbent licensee obtaining a construction extension could effectively occupy an entire market area. Therefore, the Commission proposes to dismiss all ''slow growth'' applications pending at the time an order pursuant to this *Notice* is adopted, without prejudice to refile under the new geographic licensing scheme. The Commission seeks comment on its tentative conclusion and proposal to dismiss pending ''slow-growth'' extensions.

23. The Commission also tentatively concludes that, regardless of the extent to which their respective service areas are occupied by co-channel incumbents, geographic licensees should be responsible for meeting their coverage requirements. This rule will deter applicants who have a limited ability to provide coverage in a geographic area from seeking the geographic license for anti-competitive reasons, *e.g.*, to block expansion by an incumbent who already provides substantial coverage. The ''substantial service'' option will provide an incentive for incumbents already providing substantial coverage to seek geographic licenses in the areas they serve. The Commission proposes to require the geographic licensee to meet its coverage requirement directly (*e.g.*, by utilizing vacant spectrum or acquiring such spectrum through buy-outs of incumbent licensees). The Commission asks commenters to address the advantages and disadvantages of these proposals and any alternatives.

24. The Commission tentatively concludes that a geographic licensee's failure to meet the coverage requirements should result in automatic cancellation of the geographic license. The Commission also tentatively concludes that if a licensee loses its geographic license for failure to comply with coverage requirements authorizations that the licensee held prior to the auction for sites constructed and operating would be reinstated. The Commission requests comment on this proposal and any alternatives.

e. Co-Channel Interference Protection

25. The Commission seeks comment on the appropriate interference protection criteria for incumbent co-channel facilities and to co-channel licensees in neighboring service areas.

a. *Protection of Incumbent Systems*

26. Paging systems are currently protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between stations, the licensee's protected service area, and/or the field strength of the licensee's service and interfering signals. The Commission proposes to retain these criteria to define the interference protection rights of incumbent licensees under any geographic licensing scheme that may be adopted. There are some variations in the specific methodologies used to measure interference in the different paging services. Therefore, the Commission seeks comment on whether to adopt a standard methodology for measuring interference in all paging bands or to retain existing criteria in our rules.

27. *Lower Band CCP Channels.* In the *Part 22 Rewrite Order,* the Commission adopted a series of mathematical formulas to determine service and interfering contours in each CCP frequency range, other than 931 MHz. If lower band CCP channels are converted to geographic licensing, the Commission proposes to retain the mathematical formulas and contour overlap provisions adopted in the *Part 22 Rewrite Order* to define the interference protection rights of incumbents. The Commission seeks comment on this proposal, and asks commentators to provide empirical evidence showing whether the current Part 22 formulas would provide satisfactory co-channel protection to incumbents.

28. *931 MHz Channels.* The Commission seeks comment on whether incumbents licensed in the 931 MHz band should continue to be protected based on our existing tables of standard radii if geographic licensing is adopted for 931 MHz channels. The Commission tentatively concludes that the eight-radial contour method and mathematical formulas used for the lower band CCP channels may be preferable to a fixed table of standard radii, because it will more reasonably predict potential interference to incumbents and provide geographic licensees with greater flexibility in placing their facilities. The Commission invites comment on this tentative conclusion.

29. The Commission seeks comment on the appropriate mathematical formula for determining service and interference contours if the eight-radial contour method for 931 MHz channels is adopted. The Commission proposes to use the following mathematical formula, which is similar to the formulas used in the lower band CCP services:

$$d = k \times h^x \times p^y$$

The proposed formula is derived from the form of equations commonly used for propagation path loss. In this formula, ''d'' is the radial distance to the contour, ''h'' is the antenna center of radiation height above average terrain along the cardinal radial, ''p'' is the radial effective radiated power. The remaining factor ''k'' and exponents ''x'' and ''y'' are numerical figures that can be determined experimentally by matching the resulting curve to that of an established propagation model for a given signal field strength. The Commission proposes to assume a median field strength of 47 dBμV/m as the basis for the service contour to determine the appropriate formula for the 931 MHz service and interference contour calculations. Statistically, this equates to a reasonably strong field strength (in the 32 to 40 dBμV/m range) at more than 90% of locations in a suburban environment. The Commission proposes to assume a median field strength of 21 dBμV/m as the basis for the interfering contour. The Commission proposes to derive corresponding distances from these field strengths by using the Okumura 900 MHz propagation curves as the propagation model. The specific formulas would be:

Service: $d_{km} = 0.108 \times h_m^{0.61} \times p_w^{0.32}$

Interfering: $d_{km} = 3.033 \times h_m^{0.38} \times p_w^{0.16}$

In these formulas, ''km'' represents kilometers, ''m'' represents meters, and ''w'' represents watts. The Commission seeks comment on these formulas and their suitability for calculating service and interfering contours for 931 MHz paging systems. Applying the formula, a paging station operating at 1000 watts effective radiated power with an antenna height of 305 meters (1000 feet) above average terrain would have a service contour of approximately 32.2 kilometers (20 miles), which is consistent with the service radius afforded under the current rules. The Commission seeks comment on whether any variations in the formula are needed, and on the field strength proposed for service and interfering contours.

30. *929 MHz Exclusive Channels.* Interference protection for exclusive 929 MHz licensees currently is provided by rules requiring standard minimum geographic separations between stations, which are based on station height and power. These separations are based on the same height-power table that is used for 931 MHz paging. The PCP rules, unlike the CCP rules, do not

formally define a protected service contour or interference contour for each station. The Commission proposes to adopt service and interference contour criteria for 929 MHz paging using the same methodology proposed for 931 MHz paging.

31. *Non-Exclusive PCP Channels.* Rules for paging systems on non-exclusive PCP channels prescribe operating requirements such as monitoring prior to transmitting to determine if the channel already is in use, minimizing the length of messages, and yielding to others transmitting communications related to the immediate safety of life. The Commission requests comment on whether incumbent licensees should receive interference protection.

b. Maximum Power and Height-Power Limits

32. *Maximum Power Limits.* In the *Part 22 Rewrite* proceeding, the Commission concluded that a maximum power limit of 3500 Watts ERP is appropriate for paging facilities in the 931 MHz band, because it allows for the use of high power facilities where needed, yet provides sufficient protection from intermodulation interference and receiver desensitization. The Commission tentatively concludes that the maximum ERP limit for these facilities should be raised to a maximum of 3500 Watts in order to bring the rules governing non-nationwide 929 MHz facilities into conformity with those already in effect for 931 MHz, nationwide 929 MHz, and Narrowband PCS facilities. This would provide 929 MHz licensees with the benefits of higher power operation without unduly increasing the risk of interference. The Commission proposes to retain the current maximum ERP limits for the various lower band paging channels and seeks comment on this proposal and any alternatives.

33. *Maximum Height-Power Limits.* Height-power limits serve to limit the service and interfering range of a facility to a constant distance. The Commission proposes to eliminate the height-power limit for 929 MHz licensees. With respect to the lower band channels, most of which continue to be occupied by smaller systems, the Commission proposes to maintain the current height-power limits, to continue to limit the range of each facility and promote spectrum efficiency.

c. Adjacent Geographic Licensees

34. The Commission tentatively concludes that geographic licensees should provide interference protection either by (1) reducing the signal level at their service area boundary (*e.g.*, by positioning directional antennas in such a way that the contour does not encroach on a geographic licensee's adjacent territory), or (2) negotiating some other mutually acceptable agreement with all potentially affected geographic licensees in adjacent areas. The Commission seeks comment on this proposal and any alternatives.

f. Licensing in Mexican and Canadian Border Areas

35. In the Mexican and Canadian border areas, paging channel availability may be restricted by treaty and limitations on ERP and antenna height may be placed on additional channels. The Commission tentatively concludes that all geographic areas should be licensed on a uniform basis without distinguishing border from non-border areas, even if some spectrum is unusable, if paging services are converted to geographic licensing. The Commission proposes that geographic licensees be entitled to use any available border-area channels, subject to the relevant rules regarding international assignment and coordination of such channels.

g. Eligibility

36. The Commission tentatively concludes that both incumbents and new entrants should be allowed to apply for geographic licenses without restrictions on eligibility. In cases where there are multiple co-channel incumbents in a geographic area, the Commission tentatively concludes that incumbents can form consortia or joint ventures and apply collectively for the geographic license, or enter into partitioning agreements. The Commission seeks comment on these proposals. In particular, commenters are requested to discuss the relationship between the coverage already provided by an incumbent in a geographic area and the perceived value of the geographic license to that incumbent and other potential applicants.

h. Channel Aggregation Limit

37. The Commission proposes to assign geographic licenses on a channel-by-channel basis. The Commission seeks comment on whether an aggregation limit is appropriate for paging frequencies, and if so, what that limit should be. The Commission seeks comment on whether it would be more appropriate to cap the combined aggregation of paging and narrowband PCS spectrum rather than imposing a limit on paging only.

B. Competitive Bidding Issues

a. Auctionability of Paging Services

38. The Commission proposes to adopt comparable competitive bidding procedures for both exclusive PCP channels and CCP channels, and seeks comment on this proposal. The Commission seeks comment on what competitive bidding methods should be used to award licenses in conjunction with the proposal to adopt geographic licensing for CCP services. The Commission also seeks comment on whether to adopt equivalent competitive bidding procedures for competing applications for exclusive PCP channels.

b. Competitive Bidding Design

a. Bidding Methodology

39. In the *Competitive Bidding Second Report and Order,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order,* PP Docket No. 93–253, 59 Fed. Reg. (May 4, 1994) (*Competitive Bidding Second Report and Order*), the Commission established criteria to select which auction design method to use for particular auctionable services. The two most important design elements are the number of auction rounds (single or multiple), and the order in which licenses are auctioned (sequentially or simultaneously). These two elements can be combined to create four basic auction designs: sequential single round, simultaneous single round, sequential multiple round, and simultaneous multiple round. The Commission seeks comment on which of the above auction methodologies should be used for the auction of paging licenses.

40. In the *Competitive Bidding Second Report and Order,* the Commission stated that simultaneous multiple round auctions would be the preferred method where licenses have strong value interdependencies. The Commission seeks comment on whether simultaneous multiple round auctions would be too burdensome to implement from an administrative perspective, given the large number of paging licenses, and whether simultaneous multiple round auctions or another competitive bidding methodology such as oral outcry is most appropriate for the paging services.

b. License Grouping

41. Depending upon the auction methodology chosen, there are several alternatives for grouping of paging licenses. The Commission seeks comment on how paging licenses should be grouped for competitive

bidding purposes and on possible license groupings.

c. Bidding Procedures

42. In the *Competitive Bidding Second Report and Order,* the Commission established general procedures for simultaneous multiple round auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. The Commission seeks comment on the bidding procedures that should be used for licensing of paging services.

43. *Bid Increments.* If a multiple round auction is used, the Commission proposes to establish minimum bid increments for bidding in each round of the auction, based on the same considerations in prior orders. The Commission proposes to adopt a minimum bid increment of five percent of the high bid in the previous round or $0.01 per activity unit, whichever is greater. The Commission proposes to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. The Commission also proposes to retain the discretion to keep an auction open if there is a round in which no bids or proactive waivers are submitted.

44. *Stopping Rules for Multiple Round Auctions.* In a multiple round auction, a stopping rule must be established for determining when the auction is over. Markets may close individually, simultaneously, or a hybrid approach may be used. The Commission seeks comment on whether a stopping rule is needed and if so, which one should be used. A market-by-market stopping rule would be the least complex approach from an administrative perspective, if a multiple round auction is used. Under a market-by-market approach, bidding closes on each license after one round passes in which no new acceptable bids are submitted for that particular license. With a simultaneous stopping rule, bidding remains open on all licenses until there is no bidding on any license. Under a hybrid approach, a simultaneous stopping rule, coupled with an activity rule designed to bring the markets to close within a reasonable period of time, could be used to close auctions with high value licenses. For lower value licenses, the simpler market-by-market closing could be employed.

45. *Activity Rules.* The Commission tentatively concludes that it is unnecessary to implement an activity rule if a market-by-market stopping rule is employed. An activity rule is less important when markets close one by one, because failure to participate in any given round may result in a lost opportunity to bid at all, if that round turns out to be the last. The Commission seeks comment on this tentative conclusion.

46. The Commission tentatively concludes that if an activity rule is used, the Milgrom-Wilson approach should be used. The Commission seeks comment on this tentative conclusion. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the self-declared maximum eligibility, will increase during the course of the auction. During the first stage of the auction, a bidder is required to be active on licenses encompassing at least 60 percent of the activity units for which it is eligible. The penalty for falling below that activity level is a reduction in eligibility. During the first stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-thirds (5/3). In the second stage, a bidder who wishes to maintain its current eligibility is required to be active on 80 percent of the activity units for which it is eligible in the current round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In the third stage, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing 95 percent of the activity units for which it is eligible in the current round. In the final stage, if activity in the current round is below the required activity level, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

47. *Duration of Bidding Rounds.* The Commission proposes to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run two or more rounds per day rather than one), in order to move the auction toward closure more quickly. If this mechanism is used, the Commission would most likely shorten the duration and/or intervals between bidding rounds where there are relatively few licenses to be auctioned, where the value of the licenses is relatively low, or in early rounds to speed the auction process. Where license values are expected to be high or where large numbers of licenses are being auctioned, the Commission proposes to increase the duration and/or intervals between bidding rounds. The Commission proposes to announce by Public Notice the duration and intervals between bidding rounds. The Commission also proposes to announce by Public Notice, before each auction, the stopping rule to be used. The Commission seeks comment on these proposals.

48. *Anti-Collusion Rules.* In the *Competitive Bidding Second Report and Order,* the Commission adopted a special rule designed to prevent collusive conduct in the context of competitive bidding. The Commission tentatively concludes that the anti-collusion rules should be applied to the auctions for paging services. The Commission proposes to apply Section 1.2105(c) of the rules, which prohibits bidders that have applied for any of the same geographic license areas from communicating with one another regarding the substance of their bids or bidding strategies after short-form applications (FCC Form 175) have been filed. Additionally, applicants may not discuss the substance of their bids or bidding strategies with bidders, other than those identified on the short-form application, that are bidding in the same geographic license areas. The post-filing deadline prohibition on discussions extends to providing indirect information that affects bids or bidding strategy. Communications among bidders concerning matters unrelated to the license auction would be permitted. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the geographic license areas from which the first applicant withdrew. In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for licenses in any of the same geographic license areas. Additionally, the Commission proposes to amend Section 22.129 of the rules to prohibit settlements between applicants after the short-form deadline has passed. The Commission also proposes to require winning bidders to submit with their long-form application a detailed explanation of the terms, conditions, and parties involved in any auction-related consortium, joint venture, partnership, or other agreement entered into prior to the close of bidding.

49. There are three exceptions to the rule prohibiting discussions with other applicants after the filing of the short-form application. First, an applicant may modify its short-form application to reflect formation of bidding agreements or changes in ownership at any time before or during the auction, as long as

the changes do not result in change of control of the applicant, and the parties forming the bidding agreement have not applied for licenses in any of the same geographic license areas. Applicants may also make agreements to bid jointly for licenses, so long as the applicants have not applied for licenses in any of the same geographic license areas. Finally, a holder of a non-controlling attributable interest in an applicant may acquire an ownership interest in, or enter into a bidding agreement with other applicants in the same geographic license area, if the owner of the attributable interest certifies that it has not communicated and will not communicate bids or bidding strategies of more than one of the applicants in which it holds an attributable interest or with which it has a bidding agreement, and the arrangements do not result in any change of control of an applicant.

50. Bidders who are found to have violated the Commission's anti-collusion rules or who are in violation of U.S. antitrust laws in connection with participation in the auction process may, among other sanctions, be subject to the loss of their down payment or their full bid amount, cancellation of their licenses, and may be prohibited from participating in future auctions. The Commission seeks comment on these proposals.

c. Procedural and Payment Issues

a. *Pre-Auction Application Procedures*

51. As geographic licensees gain use of a large geographic area and the freedom to locate base stations anywhere within that larger geographic region, they differ from the existing paging service licenses that are essentially confined to a smaller region. Accordingly, the Commission proposes to treat all geographic applicants as initial applicants for Public Notice, application processing, and auction purposes, regardless of whether they are already incumbent operators.

52. In the *Competitive Bidding Second Report and Order*, the Commission determined that only a short-form application prior to competitive bidding should be required, and that only winning bidders should be required to submit a long-form license application after the auction. The Commission proposes to extend the application of these rules to the competitive bidding process for paging services.

53. Under this proposal, before a paging services auction, the Wireless Telecommunications Bureau would release an initial Public Notice announcing the auction. The initial Public Notice would specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice would specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted after the deadline specified by Public Notice would be dismissed, with prejudice, as untimely.

54. All bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants would be encouraged to file FCC Form 175 electronically. Detailed instructions regarding electronic filing would be contained in a bidder information package. Those applicants filing manually would be required to submit one paper original and one diskette original of their application, as well as two diskette copies. The short-form applications would require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant would be required to specify on its FCC Form 175 application certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the geographic areas and channel(s) or channel blocks(s) for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. The Commission seeks comment on this proposal and specifically on whether further ownership disclosure should be required.

55. The Commission proposes that if only one application that is acceptable for filing for a particular license is received, and thus there is no mutual exclusivity, a Public Notice would be issued cancelling the auction for that license and establishing a date for the filing of a long-form application (FCC Form 600), the acceptance of which would trigger the procedures permitting petitions to deny. If no petitions to deny are filed, the application would be grantable after 30 days. The Commission would require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and may dismiss applications not meeting those requirements prior to the competitive bidding.

b. *Amendments and Modifications*

56. To encourage maximum bidder participation, the Commission proposes to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. On the date set for submission of corrected applications, applicants that on their own discover minor errors in their applications (*e.g.*, typographical errors, incorrect license designations, etc.) would be permitted to file corrected applications. Applicants would not be permitted to make any major modifications to their applications until after the auction. Applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In addition, applications that are not signed would be dismissed as unacceptable.

57. Upon reviewing the short-form applications, the Commission would release a Public Notice listing all accepted, rejected, and incomplete applications. Applicants would be given an opportunity to cure incomplete applications. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned would not be identified on this Public Notice as a qualified bidder. Each applicant listed on the Public Notice would be issued a bidder identification number and further information and instructions regarding auction procedures.

c. *Upfront Payments*

58. The Commission proposes to require paging auction participants to tender a substantial upfront payment as a condition of bidding, in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For services that are licensed by simultaneous multiple round auction, the Commission proposes a standard upfront payment formula of $0.02 per activity unit for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding. The Commission proposes a minimum upfront payment of $0.02 per

activity unit or $2,500, whichever is greater. The Commission tentatively concludes that a minimum $2,500 upfront payment should be required regardless of the bidding methodology.

59. Upfront payments would be due approximately fourteen days before a scheduled auction. This period should be sufficient to allow the Commission time to process upfront payment data and release a Public Notice listing all qualified bidders. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

d. *Down Payment and Full Payment*

60. The Commission proposes to apply the 20 percent down payment requirement set forth in the *Competitive Bidding Second Report and Order* to winning bidders for paging licenses. Such a down payment would be due within five business days following the Public Notice announcing the winning bidders. The Commission proposes to require paging auction winners to pay the full balance of their winning bids within five business days following Public Notice that the Commission is about to award the license.

e. *Bid Withdrawal, Default, and Disqualification*

61. The Commission proposes to adopt bid withdrawal, default, and disqualification rules for the paging services based on the procedures in the general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the Commission. The bidder would be required to pay the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. A defaulting auction winner would be assessed an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The additional payment would be satisfied first from the upfront payment, and additional funds would be required if necessary. In the event that an auction winner defaults or is otherwise disqualified, the Commission proposes to re-auction the license either to existing or new applicants. The Commission would retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

f. *Long-Form Applications*

62. If the winning bidder makes the down payment in a timely manner, the Commission proposes the following procedures: A long-form application would be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. After the winning bidder's down payment and long-form application is received, the Commission will review the application to determine if it is acceptable for filing. In addition to the information required in the FCC Form 600, designated entities will be required to submit evidence to support their claim to any special provision available for designated entities ultimately adopted by an Order as a result of this *Notice*. This information may be included in an exhibit to FCC Form 600. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility for bidding credits, installment payment options, and any other special provisions. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

g. *Petitions to Deny and Limitations on Settlements*

63. The petition to deny procedures in Sections 22.130 and 90.163 of the Commission's rules will apply to the processing of applications for the paging services. Thus, a party filing a petition to deny against a paging application will be required to demonstrate standing and meet all other applicable filing requirements. The Commission will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

h. *Transfer Disclosure Requirements*

64. The Commission tentatively concludes that the transfer disclosure requirements of Section 1.2111(a) of the Commission's rules should apply to all paging services licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

i. *Performance Requirements*

65. Section 309(j)(4)(B) of the Act requires the Commission to establish rules for auctionable services that ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittee, and to promote investment in and rapid deployment of new technologies and services.'' The Commission decided, in the *Competitive Bidding Second Report and Order,* that in most auctionable services, existing construction and coverage requirements provided in the service rules would be sufficient to meet this standard, and that it was unnecessary to impose additional performance requirements. In this *Notice* the Commission proposed service rules for paging that would require geographic licensees either to meet minimum population coverage requirements or demonstrate substantial service in their licensing areas. The Commission tentatively concludes that these proposed coverage requirements are sufficient to meet the requirements of Section 309(j)(4)(B) of the Act. The Commission proposes that failure to meet these requirements would result in automatic license cancellation, and does not propose to adopt additional performance requirements for paging services.

d. Treatment of Designated Entities

a. *Overview and Objectives*

66. Section 309(j)(3)(B) of the Act provides that in establishing auction eligibility criteria and bidding methodologies, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' The Commission seeks comment on various proposals and tentative decisions regarding designated entity provisions that should be incorporated into the competitive bidding procedures for paging services.

b. *Eligibility for Designated Entity Provisions*

67. *Small Businesses.* The Commission tentatively concludes that it is appropriate to establish special provisions in the paging rules for competitive bidding by small businesses. The Commission believes that small businesses applying for paging licenses should be entitled to some form of bidding credit and should be allowed to pay their bids in installments, and seeks comment on this tentative conclusion.

68. *Minority and Women-Owned Businesses.* Prior to the Supreme Court's decision in *Adarand Contractors, Inc.* v. *Pena,* 115 S.Ct. 2097 (1995) (*Adarand*), the Commission concluded that in licensing of broadband and narrowband PCS, minority and women-owned businesses might have difficulty accessing sufficient capital to be viable auction participants or service providers in the absence of special provisions in our auction rules. In *Adarand,* however, the Supreme Court ruled that racial classifications imposed by the federal government are subject to strict scrutiny. At this time, the Commission does not have a sufficient factual record with respect to spectrum-based services generally or paging services specifically to sustain such measures under strict scrutiny.

69. The Commission proposes to limit special provisions in the paging auction rules to small businesses. The Commission seeks comment on this proposal. The Commission seeks comment on the possibility that in addition to small business provisions, separate provisions for women and minority-owned entities should be adopted for paging services. To comply with the Supreme Court's ruling in *Adarand,* any race-based classification must be a narrowly tailored measure that furthers a compelling governmental interest. The Commission seeks comment on whether the capital requirements of paging pose a barrier to entry by minorities and women, and whether assisting women and minorities to overcome such a barrier, if it exists, would constitute a compelling governmental interest. The Commission seeks comment on whether separate provisions for women and minorities are necessary to further such an interest and whether such provisions can be narrowly tailored to satisfy the strict scrutiny standard.

c. *Set-Aside Spectrum*

70. The Commission tentatively concluded that it is not necessary to adopt an entrepreneurs' block for paging. The Commission tentatively concludes that the capital requirements of the paging service are not so substantial that certain blocks of spectrum should be insulated from very large bidders in order to provide meaningful opportunities for designated entities.

d. *Bidding Credits*

71. Bidding credits allow eligible designated entities to receive a payment discount (or credit) on their winning bid in an auction. In the *Competitive Bidding Second Report and Order,* the Commission determined that competitive bidding rules applicable to individual services would specify the entities eligible for bidding credits and the bidding credit amounts for each particular service. As a result, the Commission has adopted a variety of bidding credit provisions for small businesses and other designated entities in auctionable services. The Commission seeks comment on the appropriate level of bidding credit for paging in comparison to other auctionable services.

72. The Commission also seeks comment on the possibility of offering tiered bidding credits for different sizes of small businesses. The Commission proposes to establish two levels of bidding credits: a 10 percent bidding credit for all small businesses and a 15 percent credit for small businesses that meet a more restrictive gross revenue threshold. These two levels of bidding credits would not be cumulative.

73. The Commission also seeks comment on the appropriate definition of small business to be applied for purposes of the bidding credits proposed above. In conjunction with the proposal to provide two levels of bidding credits, the Commission proposes to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to $15 million in average gross revenues for the previous three years; to obtain a 15 percent credit, the applicant would be limited to $3 million in gross revenues for the previous three years. In both cases, the applicant would be required to aggregate the gross revenues of its affiliates and attributable investors for purposes of determining eligibility. If a control group is formed, the applicant must aggregate the gross revenues of its affiliates and attributable investors for purposes of determining eligibility. The Commission seeks comment on whether these thresholds, and the proposed bidding credit amounts associated with them, are sufficient for paging in light of the build-out costs associated with constructing a paging system throughout a market area, or whether alternative definitions would be more suitable. Comment is also sought on whether the proposed small business definitions are sufficiently restrictive to protect against businesses receiving bidding credits when in fact they do not need them.

74. The Commission seeks comment on the degree to which the revenues of affiliates and major investors should be considered in determining small business eligibility. The Commission also seeks comment on which attribution threshold should be applied to paging applicants seeking to qualify as small businesses.

75. The Commission proposes to make the small business bidding credit available on all paging channels that are licensed on a geographic basis, rather than limiting its availability to certain channels. The Commission seeks comment on this proposal, and on whether there is a reasonable basis for providing credits on some channels and not others.

e. *Installment Payments*

76. The Commission proposes to adopt an installment payment option for small businesses that successfully bid for paging licenses. Under this proposal, licensees who qualify for installment payments would be entitled to pay their winning bid amount in quarterly installments over the ten-year license term, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. In addition, the Commission proposes to tailor installment payments to the needs of different size entities. Small businesses with $3 million or less in gross revenues for the preceding three years would make interest-only payments for the first five years of the license term, while small businesses with $15 million or less in gross revenues for the preceding three years would make interest-only payments during the first two years.

77. The Commission tentatively concludes that small businesses eligible for installment payments may pay a reduced down payment. Five percent of the winning bid would be due five days after the auction closes, with the remaining five percent down payment due five days after Public Notice that the license is ready for grant. Under this proposal, the license would be granted within ten business days after receiving such down payment. The Commission seeks comment on this proposal, and the need, if any, for a reduced upfront payment for entities qualifying as a small business.

f. *Unjust Enrichment Provisions*

78. The Commission seeks comment on whether, in services such as paging, where there is no entrepreneurs' block to further restrict the class of entities eligible for substantial governmental benefits, the public interest would be served by adopting an approach similar to that used in the narrowband PCS context, in which bidding credits and installment payments immediately become due upon transfer to an ineligible entity. The Commission also seeks comment on whether an approach to unjust enrichment similar to that adopted for the 900 MHz SMR service, in which a holding period was imposed, would be optimal for the paging services.

g. *Rural Telephone Company Partitioning*

79. The Act directs the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas. The Commission seeks comment on whether similar provisions should be incorporated into the paging rules. Commenters are specifically encouraged to provide information on the extent to which paging service is available in rural areas.

80. The Commission believes that geographic partitioning should be made available to rural telephone companies on the same basis as in PCS. Such a partitioning scheme would provide rural telephone companies with the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. Under this proposal, rural telephone companies would be permitted to acquire partitioned paging licenses in one of two ways: (1) by forming bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partitioning the licenses won among consortia participants, or (2) by acquiring partitioned paging licenses from other licensees through private negotiation and agreement either before or after the auction. Partitioned areas would be required to conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the wireline service area of the rural telephone company applicant that lies within each PCS area. In addition, if a rural telephone company receives a partitioned license post-auction from another PCS licensee, the partitioned area must be reasonably related to the rural telephone company's wireline service area. The Commission also proposes to use the definition for rural telephone companies implemented in the *Competitive Bidding Fifth Report and Order* for broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. The Commission seeks comment on whether CCP and PCP paging applicants would benefit from expanding this concept to other designated entities or to all paging licensees in general, and whether partitioning should be extended to small businesses that may be able to provide niche services in a specific geographic area.

C. Interim Licensing

a. Freeze on New Applications

81. Because of the fundamental changes proposed in the paging licensing rules, the Commission is suspending the acceptance of new applications for paging channels as of the adoption date of this *Notice*, except as provided below. This interim policy will not apply to assignment or transfer of control applications, which will continue to be processed under existing procedures.

82. Incumbent licensees will be allowed to add sites to existing systems or modify existing sites, provided that such additions or modifications do not expand the interference contour of the incumbent's existing system. Under the current Part 22 rules, such additions or modifications are allowed by CCP licensees without prior Commission approval if the added site is within both existing service and interference contours. The Commission finds that the public interest is served by continuing to allow such modifications because they will give incumbents the flexibility to make internal site modifications without affecting spectrum availability to others. The Commission also believes that it serves the public interest to exempt incumbents from the requirement that the service area not be modified so long as the licensee's interference contour is maintained. Using the interference contour as the sole basis for modification provides the same protection to other licensees as the current rules but provides a simpler analysis of determining permissible modifications.

83. The Commission also finds that it is in the public interest to allow 929 MHz licensees on exclusive channels the same flexibility as Part 22 licensees to make similar changes within their interference contours. Such modifications afford incumbents flexibility and will not prejudice other licensees, as no expansion is allowed beyond the incumbent's interference contour. The Commission believes that such modifications will not affect any auction for geographic area licenses, as the size of an incumbent's protected interference contour will not change.

84. CCP and PCP licensees with nationwide exclusivity on a paging channel will be allowed to apply for additional sites without restrictions. The addition of such sites by the nationwide licensee will not affect the spectrum availability to others.

85. The Commission seeks comment on an expedited basis on whether during the pendency of this proceeding, incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorization. Secondary operations may not cause interference to operations authorized on a primary basis, and they are not protected from interference from primary operations. Thus, under this alternative, applications to expand an incumbent's existing interference contour would receive no interference protection in the event that the Commission ultimately adopts the geographic licensing proposals in this *Notice.* Such an approach would be similar to the interim licensing policy in the 900 MHz SMR service. The Commission seeks comment on this alternative and on whether any limitations on secondary licensing are needed.

b. Processing of Pending Applications

86. With respect to paging applications that were filed prior to the adoption of this *Notice* and that remain pending, the Commission will process such applications provided that (1) they are not mutually exclusive with other applications as of the adoption date of this *Notice,* and (2) the relevant period for filing competing applications has expired as of the adoption date of this *Notice.* The Commission believes that this approach gives the appropriate consideration to those applicants who filed applications prior to our proposed changes and whose applications are not subject to competing applications. Processing of mutually exclusive pending applications and applications for which the relevant period for filing

competing applications has not expired will be held in abeyance until the conclusion of this proceeding. Upon the adoption of an order in this proceeding, the Commission will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

a. *Licensing of 931 MHz CCP Frequencies*

87. The Commission adopted new processing rules for 931 MHz CCP licenses in the *Part 22 Rewrite Order* based on channel-specific applications and use of competitive bidding to select licensees in the event of mutually exclusive applications. The Commission issued a temporary stay of the new Part 22 licensing rules for 931 MHz until it resolved certain pending applications. The Commission retains the existing stay of the new Part 22 licensing rules until competitive bidding procedures are established in this proceeding. The Commission will therefore continue processing 931 MHz CCP applications which were pending prior to the adoption date of this *Notice,* and for which the 60 day window for filing competing applications has expired, under the application procedures in effect prior to January 1, 1995. Consequently, pending 931 MHz CCP applications that are not mutually exclusive with other applications will be processed, while mutually exclusive 931 MHz applications will be held pending the outcome of this proceeding. Upon the adoption of an order in this proceeding, the Commission will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

b. *Licensing of Lower Band CCP Channels*

88. The Commission will process non-mutually exclusive lower band CCP applications under the existing rules, provided that the window for filing competing applications has closed as of the adoption date of this *Notice.* The Commission will continue to hold all mutually exclusive lower band CCP applications until competitive bidding rules are established.

c. *Licensing of 929 MHz PCP Exclusive Channels*

89. The Commission will continue to process non-mutually exclusive PCP applications that were filed before the adoption date of this *Notice,* pending the outcome of this proceeding. Because these applications are subject to coordination, they are generally not subject to mutually exclusive applications. Nonetheless, to the extent that pending mutually exclusive applications may exist, processing of such applications will be held in abeyance until the conclusion of the rulemaking.

90. Under the current PCP exclusivity rules, applicants are granted conditional exclusivity when they are licensed, and permanent exclusivity is awarded when the licensee demonstrates that it has constructed and is operating a qualified system. As a result, numerous requests for conditional and permanent exclusivity are pending before the Commission. Because of the proposed changes to the PCP rules in this proceeding, the Commission believes that consideration of such requests should be postponed while this proceeding is pending. In the event that the geographic area licensing proposals are adopted, all existing PCP facilities would receive full protection as incumbents, and such pending exclusivity requests would be moot. The Commission will therefore suspend action on all pending exclusivity requests until the conclusion of this rulemaking.

d. *Licensing of Non-Exclusive PCP Channels*

91. The Commission will continue to process pending applications for non-exclusive PCP channels pending the outcome of this proceeding. Applications will be processed through the frequency coordinator under existing procedures.

IV. Procedural Matters and Ordering Clauses

Final Regulatory Flexibility Analysis

Summary: This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Dates: Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **FEDERAL REGISTER.**

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington D.C., 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington D.C. 20503, or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *Notice,* contact Dorothy Conway at (202) 418–0217 or via the Internet at dconway@fcc.gov.

Supplementary Information:

Paperwork Reduction Act: This *Notice* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Notice,* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due on March 18, 1996, at the same time as the other comments in the *Notice*. OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Title Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Existing and prospective private paging and common carrier paging licensees.

Number of Respondents: Approximately 750 existing licensees; approximately 525 auction winners.

Estimated Time Per Response: Approximately 845 hours for list of existing transmitter sites; 1,221 hours for request for single authorization for multiple site licenses; 262.5 hours for demonstration of compliance with relocation notification requirements; 721 hours for ownership and gross

revenue information for small businesses; 262.5 hours for disclosure of terms of joint bidding agreements; 787.5 hours for transfer disclosure information.

Total Annual Burden: A one-time burden of approximately 4,099.5 hours.

Total Respondents Costs: $1,008,036.

Needs and Uses: On February 8, 1996, the Commission adopted a *Notice of Proposed Rule Making* that examines ways to establish a comprehensive and consistent regulatory scheme that will simplify and streamline licensing procedures and provide a flexible operating environment for both common carrier and private paging services. To this end, the *Notice* proposes to establish a geographic, rather than a site-based, licensing approach. The *Notice* also proposes to adopt auction rules for mutually exclusive paging applications so that available channels may be assigned rapidly to applicants, who will, in turn, expedite service to the public.

To ensure that the process of streamlining our paging regulations correctly gauges current usage of the applicable spectrum, it may be necessary for us to request that existing paging licensees notify the Commission of the location of their various transmitter sites. The *Notice* also proposes to require that licensees submit information that they meet applicable coverage requirements. Further, the *Notice* proposes that incumbent licensees operating at multiple sites may exchange their multiple site license for a single license after the completion of the auction for the spectrum blocks within which their frequencies are included provided they submit a showing that their authorized facilities have been constructed and placed in operation and the contours associated with these facilities are contiguous and overlapping. The *Notice* also proposes that auction winners submit proof of their notification to incumbents operating on frequencies included within the auction winners' spectrum blocks of their intention to relocate such incumbent.

In addition, the proposed auction procedures include (1) a requirement that auction winners claiming status as a small business submit detailed ownership and gross revenue information necessary to determine whether they qualify as a small business pursuant to Commission rules; (2) a requirement that auction winners disclose the terms of joint bidding agreements, if any, with other auction participants in order to ensure the integrity of the market structure; and (3) a requirement that licensees who transfer licenses within three years maintain a file of all documents and contracts pertaining to the transfer.

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

Ordering Clauses

It is ordered that the pending applications for paging licenses that are not mutually exclusive with other paging applications will be processed to the extent possible under our existing licensing rules.

It is further ordered that applications for PCP exclusivity and waiver requests received after the adoption date of this *Notice of Proposed Rulemaking* will be held in abeyance and not processed until further notice, except as otherwise indicated above with respect to Interim Licensing.

List of Subjects

47 CFR Part 22

Communications common carriers, Recordkeeping requirements.

47 CFR Part 90

Common carriers, Recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–3657 Filed 2–15–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 76

[MM Docket No. 92–260; FCC 95–503]

Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Further Notice of Proposed Rulemaking (''FNPRM'') requests comment on wiring issues concerning loop-through wiring and the right of persons other than the subscriber to purchase cable home wiring. The FNPRM will assist the Commission in devising additional regulations in this area.

DATES: Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Interested parties may file comments on or before March 18, 1996 and reply comments on or before April 17, 1996. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before April 16, 1996.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lynn Crakes or Rick Chessen, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained in this Order and FNPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

This is a synopsis of the Commission's Further Notice of Proposed Rulemaking in MM Docket No. 92–260, FCC No. 95–503, adopted December 15, 1995 and released January 26, 1996.

I. Further Notice of Proposed Rulemaking

A. Multiple Dwelling Unit Buildings with Loop-Through Wiring

1. We solicit comment on Liberty's request that the Commission require cable operators to allow a building owner to purchase loop-through wiring in the limited situation where all subscribers in a multiple dwelling unit building want to switch to a new service provider. We ask whether we should apply the same rules regarding compensation (i.e., wiring may be purchased at the per-foot replacement cost) and technical standards to loop-through wiring that we now apply to non-loop-through wiring. We solicit comment on the appropriate demarcation point for this limited application of the home wiring rules. We note, however, that we are concerned with allowing the multiple dwelling unit building owner to control the wiring since such control could arguably supersede subsequent subscribers' wishes. We therefore solicit comment on how to apportion control of a loop-through wiring system, including how to assure that subscribers have a choice of multichannel video programming service providers. We

further solicit comment on whether we should prohibit future installations of loop-through wiring configurations, and whether we have the statutory authority to do so.

B. Others' Rights to Cable Home Wiring

2. We solicit comment on several issues raised in this proceeding regarding the rights of persons other than the subscriber or the cable operator to cable home wiring. For instance, it has been asserted that the Commission's cable home wiring rules do not apply when the owner of a multiple dwelling unit building terminates cable service for the entire building in favor of an alternative multichannel video programming service provider. According to the record, at least one cable operator has contended that no ''voluntary termination by the subscriber,'' as provided in Section 76.802 of our rules, has occurred when it is the building owner or condominium association that terminates the service, or at least that the subscriber has not voluntarily terminated the cable service. In order to promote the goals of Section 16(d) and our rules thereunder, it may be appropriate for the subscriber (where there is a non-loop-through wire configuration) or the building owner (where there is a loop-through wire configuration) to be given the opportunity to purchase the cable home wiring under these circumstances. We request comment on this matter. In addition, we seek comment on whether this right of a building owner with a loop-through system should only apply if all of the individual subscribers want to terminate service and switch to a new video service provider, as described in Section III.A. above.

3. In addition, we ask for comment on the disposition of the cable home wiring in the event that a subscriber terminates cable service, elects not to purchase the wire and vacates the premises within the time period the operator has to remove the home wiring. Apparently some cable operators believe that our rule providing that the cable operator must remove the wire within 30 days (now seven business days) or make no subsequent attempt to remove it or to restrict its use does not apply if the subscriber vacates the premises before the 30-day (now seven-business-day) period elapses. We believe that, as long as the cable operator has been allowed access to the premises to remove its wiring if it so wishes, whether the subscriber vacates the premises has no bearing on the application of our rules, and that the cable operator must therefore remove the wire within seven business days of the subscriber's termination of service, or make no subsequent attempt to remove it or to restrict its use, regardless of who subsequently resides in the premises. We request comment on this matter. Furthermore, we seek comment on whether, when the subscriber voluntarily terminating cable service does not own the premises, the premises owner should have the right to purchase the cable home wiring if and only if the subscriber elects not to purchase the wire.

II. Initial Regulatory Flexibility Act Analysis for the Further Notice of Proposed Rulemaking

4. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the FNPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the FNPRM, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

5. Reason for Action. Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations regarding the disposition of cable wiring within the subscriber's premises after the subscriber terminates service. This FNPRM proposes to allow the multiple dwelling unit building owner to purchase the loop-through cable wiring in the situation where all subscribers on a loop in a multiple dwelling unit building want to simultaneously switch to the same alternative multichannel video programming service provider. This FNPRM also proposes: (a) to require that the subscriber (where there is a non-loop-through wire configuration) or the building owner (where there is a loop-through wire configuration) be provided with the opportunity to purchase the cable home wiring when the owner of a multiple dwelling unit building terminates cable service for the entire building in favor of an alternative multichannel video programming service provider; (b) to clarify that, as long as the cable operator has been allowed access to the premises to remove its wiring if it so wishes, the cable operator must remove the wire within seven business days of the subscriber's termination of service, or make no subsequent attempt to remove it or to restrict its use, regardless of when the subscriber vacates the premises and who subsequently resides in the premises; and (c) when the subscriber voluntarily terminating cable service does not own the premises, to give the premises owner the right to purchase the cable home wiring, if and only if the subscriber elects not to purchase the wire.

6. Objectives. To propose rules which implement Section 16(d) of the 1992 Cable Act and promote its goals of protecting subscribers from unnecessary disruption and expense caused by the removal of home wiring and to allow subscribers to use the wiring for an alternative multichannel video programming service provider.

7. Legal Basis. Action as proposed for this rulemaking is contained in Sections 1, 4(i), 4(j) and 624(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j) and 544(i).

8. Description, Potential Impact and Number of Small Entities Affected. The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

9. Reporting, Recordkeeping and Other Compliance Requirements. None.

10. Federal Rules which Overlap, Duplicate or Conflict with these Rules. None.

11. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

III. Ordering Clauses

12. It is ordered that, pursuant to Sections 4(i), 4(j) and 624(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 544(i), notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before March 18, 1996 and reply comments on or before April 17, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If

you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

13. It is further ordered that the Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–3127 Filed 2–15–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 90

[PR Docket No. 93–144; PP Docket No. 93–253; FCC 95–501]

Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Second Further Notice of Proposed Rule Making (*Second Further Notice*) in PR Docket No. 93–144, the Commission seeks comment on disaggregation of channel blocks and partitioning on the upper 200 channels of 800 MHz Specialized Mobile Radio (SMR) spectrum, certain aspects of mandatory relocation as adopted in the *First Report and Order* (*First R&O*) in PR Docket No. 93–144, and eligibility of Basic Exchange Telecommunications Radio Service (BETRS) operators for certain upper 200 channels. In addition, we propose to adopt service and competitive bidding rules for the lower 80 SMR channels and the General Category channels in the 800 MHz band. Further, we have redesignated the General Category channels for exclusive SMR use. The intended effect of this action is to facilitate future development of SMR systems in the 800 MHz band through implementation of streamlined licensing procedures and the use of competitive bidding.

DATES: Comments are to be filed on or before February 15, 1996, and Reply Comments are to be filed on or before March 1, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Furth, or David Kirschner at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Second Further Notice,* adopted December 15, 1995, and released December 15, 1995, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington, D.C. 20037 (telephone: (202) 857–3800).

I. Disaggregation of Channel Blocks on the Upper 200 Channels of 800 MHz SMR Spectrum

1. *Background.* In the *Further Notice of Proposed Rule Making* in PR Docket No. 93–144, 59 FR 60111 (November 22, 1994) (*Further Notice),* we asked commenters to address whether licensees should be allowed to sublicense portions of larger blocks instead of aggregating smaller blocks.

2. *Comments.* Total Com, AMTA, AMI and Motorola contend that licensees with service areas based on Economic Areas (EAs) established by the United States Department of Commerce, Bureau of Economic Analysis should be permitted to sublicense portions of their spectrum blocks. Motorola argues that allowing sublicensing on a spectrum basis would allow excess spectrum capacity to be made available for alternative uses and provide small SMR licensees with the opportunity to participate in the provision of wide-area service at levels commensurate with their business and customer interests and their financial resources. AMTA argues that such sublicensing should be permitted as long as construction and coverage requirements are satisfied, because such an approach would encourage development of bidding consortia of smaller operators, which otherwise might be incapable of participating in the competitive bidding process. Parkinson, *et al.* express concern that, by allowing sublicensing, an incumbent's operations unfairly and unreasonably would be restricted by the EA licensee.

3. *Discussion.* Given the extensive incumbent presence in the upper 10 MHz block of the 800 MHz SMR spectrum, we tentatively conclude that EA licensees should be permitted to disaggregate their spectrum blocks. We believe that this additional tool will enable EA licensees to manage their spectrum blocks more effectively and efficiently. We further believe that disaggregation not only will facilitate the coexistence of EA licensees and incumbents in the upper 200 channels, but also will result in the most efficient use of the 800 MHz SMR spectrum. We seek comment on this tentative conclusion.

4. As a general matter, we believe that any disaggregation agreements must comply with the Commission's pro-competitive policies. We propose that spectrum covered by an EA license may be sublicensed in either of two ways: (1) a group of licensees or entities may form bidding consortia to participate in auctions, and then disaggregate or partition the EA license(s) won among consortia participants; and (2) an EA licensee, through private negotiation and agreement before or after the auction, may elect to disaggregate or partition its spectrum block. We seek comment on this proposal.

5. Although we are interested in affording EA licensees optimal flexibility for spectrum management, we nonetheless do not want to undermine our goal to facilitate an effective and efficient wide-area licensing scheme. We ask commenters to discuss the conditions under which EA licensees should be permitted to disaggregate their spectrum blocks. Should EA licensees be required to retain a specified portion of their spectrum block, and if so, what is an appropriate amount? In addition, should there be a minimum amount of spectrum that EA licensees must disaggregate in order to utilize this spectrum management tool? Should geographic area licensees be permitted to disaggregate only after they have satisfied applicable construction and coverage requirements? We also ask commenters to discuss any other type of considerations applicable to disaggregation.

II. Partitioning on the Upper 200 Channels of 800 MHz SMR Spectrum

6. *Background.* In the *Eighth Report and Order* (*Competitive Bidding Eighth R&O*) in PP Docket No. 93–253 we adopted a partitioning option for rural telephone companies.

7. *Comments.* Nextel contends that smaller, local operators wishing to participate in wide-area service could become involved through arrangements with the EA licensee to partition its service area.

8. *Proposal.* We tentatively conclude that partitioning should be an option not only for rural telephone companies but also for incumbents and eligible SMR licensees generally. We tentatively conclude that extending the partitioning option will further the goal of Section 309(j) in the dissemination of licenses to a variety of licensees because small businesses will have additional flexibility and opportunities to serve areas in which they already provide service, while the remainder of the service area could be served by other providers.

9. We propose that SMR licensees be permitted to acquire partitioned EA licenses in either of two ways: (1) they may form bidding consortia to participate in auctions, and then partition the licenses won among consortia participants; or (2) they may acquire partitioned 800 MHz SMR licenses from other licensees through private negotiation and agreement either before or after the auction. Each member of a consortium would be required to file a long-form application, following the auction, for its respective mutually agreed-upon geographic area. We propose that partitioned areas be required to conform to established geo-political boundaries (such as county lines). We further propose that these entities be subject to the same interim coverage and channel use requirements as EA licensees with respect to the geographic areas covered by their partitioned authorizations. We seek comment on our proposals and tentative conclusions and any alternatives.

10. As a general matter, we believe that any partitioning agreement must comply with the Commission's pro-competitive policies. We ask commenters to discuss the conditions under which EA licensees should be permitted to partition their service areas to other SMR licensees. Should EA licensees be required to retain a specified portion of their service area, and if so, what is an appropriate amount? Should geographic area licensees be permitted to partition only after they have satisfied applicable construction and coverage requirements? We also ask commenters to discuss any other type of considerations applicable to partitioning.

III. Mandatory Relocation in the Upper 200 Channels

A. Distributing Relocation Costs Among EA Licensees

11. In the *First R&O,* we determined that EA licensees must notify incumbents operating on the upper 200 channels of their intention to relocate such incumbents within 90 days of the release of the Public Notice commencing the voluntary negotiation period. We also determined that any incumbent licensee who has been so notified may require all EA licensees in whose spectrum blocks it operates to negotiate collectively with the incumbent. Because an incumbent licensee can compel simultaneous negotiations with all affected EA licensees, we tentatively conclude that the elaborate cost-sharing plan proposed for broadband PCS is unnecessary for the 800 MHz SMR service. Therefore, we propose to require EA licensees to share the relocation costs on a pro rata basis (based on the actual number of the incumbent's channels located in the EA licensees' respective spectrum blocks), unless all such licensees agree to a different cost-sharing arrangement. We believe that this approach would enhance significantly the speed of relocation given that incumbent licensees most likely will elect to negotiate with EA licensees collectively rather than individually to accommodate system-wide relocation agreements. This would in turn result in faster delivery of wide-area SMR service to the public. We seek comment on our tentative conclusions and on the advantages and disadvantages of our cost-sharing proposal.

B. Relocation Costs

12. *Compensable Costs.* When relocation will benefit multiple licensees, the issue arises as to what relocation costs should be shared by the benefitting licensees. Relocation costs can be divided roughly into two categories: (1) the actual cost of relocating an incumbent licensee to comparable facilities, and (2) payments above the cost of providing comparable facilities, also referred to as ''premium payments.''

13. *Comments.* Louisville believes that relocation costs should include expenses for: engineering, equipment, labor, construction, testing, FCC application fees, local fees, additional recurring operating costs, pay for lost time, cost analysis, frequency coordination, and any other expenses incurred by the incumbent as long as the expenses were caused by the new facilities not being comparable with the old facilities and they occurred within one year after the incumbent took control of the new facilities. Clarus argues that expenses paid by the EA licensee should include administrative costs and any loss of goodwill that the incumbent might suffer. Nextel believes that all out-of-pocket costs associated with retuning should be borne by the auction winner, such costs include those covered by the Commission's Emerging Technologies relocation plan.

14. *Proposal.* We tentatively conclude that premium payments should not be reimbursable, because such payments are likely to be paid by EA licensees to accelerate relocation so that they can be the first licensee in the market area to implement wide-area SMR service. Because other EA licensees have not received the corresponding advantage of being first to market and did not actively participate in the relocation negotiations, we do not believe that such licensees should be required to contribute to premium payments. We therefore propose to limit the calculation of reimbursable costs for the 800 MHz SMR service to actual relocation costs, unless the EA licensees involved mutually and expressly agree to share any premium payments. We tentatively conclude that ''actual relocation costs'' would include, but not be limited to: SMR equipment; towers and/or modifications; back-up power equipment; engineering costs; installation; system testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment; spare equipment; project management; and site lease negotiation. We request comment on this proposal. We also ask commenters to address any additional costs they believe should be reimbursable and a supporting rationale for such treatment.

15. *Creation of Reimbursement Rights.* We tentatively conclude that an EA licensee who negotiates a relocation agreement that benefits one or more other EA licensees should obtain a right to reimbursement of a share of the relocation costs. We seek comment on how such rights should be created procedurally. We believe that some form of reimbursement rights should be conferred on EA licensees so that it will be possible to enforce the right to reimbursement and collect reimbursement from other EA licensees. We seek comment on these tentative conclusions and any alternatives.

16. *Payment.* We seek comment on when reimbursement payments should be due. Specifically, we ask commenters to address whether such payments should be due when the benefitting EA licensee begins to use the particular frequency or when the EA licensee commences testing of its wide-area system in the EA.

17. *Dispute Resolution Issues. Comments.* PCIA, AMI, and Motorola all argue that the Commission should establish a mediation mechanism to

resolve disputes. PCIA believes that the EA winner should pay for the mediation unless the mediator finds that the incumbent is not acting in good faith. If mediation is not successful, Motorola and PCIA believe that the Commission should resolve the dispute.

18. *Proposal.* We tentatively conclude that incumbents and EA licensees should attempt to resolve disputes arising over the amount of reimbursement required, in the first instance, amongst themselves. We encourage parties to use expedited alternative dispute resolution (''ADR'') procedures, such as binding arbitration or mediation. We seek comment on this proposal and on any other mechanisms that would expedite resolution of these disputes should they arise.

19. Similarly, to the extent that disputes arise between incumbents and EA licensees over relocation negotiations (including disputes over the comparability of facilities and the requirement to negotiate in good faith), we also encourage parties to use alternative dispute resolution techniques. We believe such techniques are an appropriate first step during both the voluntary and mandatory negotiation periods. We emphasize again that resolution of such disputes entirely by our adjudication processes would be time consuming and costly to all parties.

20. We also seek comment on whether either the industry trade associations or the FCC's Compliance and Information Bureau should be designated as arbiters for such disputes. We ask commenters to discuss the advantages and disadvantages of such designations as well as suggested dispute resolution procedures in the event that they were so designated. In addition, we seek comment on whether failure to comply with the relocation obligations or requirements should be taken into consideration by the Commission when deciding on renewal or transfer of control or assignment applications.

C. Comparable Facilities

21. *Background.* Under the mandatory relocation scheme we adopt in the *First R&O,* we require EA licensees to provide incumbents with ''comparable facilities'' as a condition for involuntary relocation. In the broadband PCS context, we also adopted a mandatory relocation scheme in which PCS licensees are required to provide microwave incumbents with comparable facilities as a condition for involuntary relocation. Although we have not adopted a definition of comparable facilities in the broadband PCS context, we have indicated that we generally require that comparable facilities be equal to or superior to existing facilities. We also indicated that we would consider, *inter alia,* system reliability, speed, bandwidth, throughput, overall efficiency, bands authorized for such services, and interference protection in making a determination regarding comparability. In the *Further Notice,* we asked commenters to discuss the meaning of comparable facilities in the 800 MHz SMR context.

22. *Comments.* Some commenters suggest, as a general matter, that a comparable system is one that is as good as or superior to the incumbent's existing system. The majority of commenters attempt to define comparable facilities by specifying what would need to be provided to the incumbent being relocated. These commenters argue that comparable facilities would include: (1) the same number of channels as are currently held by the incumbent; (2) the retuned frequencies being compatible in a multi-channel system at the incumbent's current location; (3) the retuned frequencies not having any co-channel licensees within the EA; (4) incumbents having 70-mile co-channel interference protection; (5) base station equipment being modified to operate on the retuned frequencies; (6) all user units and user control units being reprogrammed or recrystallized to the retuned frequencies (or, if modification of the incumbent's equipment is not possible, the EA licensee would be required to provide new equipment); (7) the incumbent's ''retuned'' system providing the same, if not superior, performance as the incumbent's existing system operating at the same antenna height, and with the same power and interference protection; and, (8) the same channel separation for the retuned frequencies.

23. Some commenters define ''comparable facilities'' on the basis of operational characteristics. For example, commenters contend that comparable facilities mean that the incumbent's retuned system should have the same or superior coverage as its existing system. Nextel argues that comparable facilities means having the same 40 dBu contour as the incumbent's current system. Several commenters argue that only other 800 MHz SMR channels could constitute comparable frequencies. In this connection, Spectrum believes that incumbents should be relocated elsewhere on the 800 MHz spectrum or to the 900 MHz spectrum, or the auction winner should buy-out the incumbent's system.

24. PCIA, supported by other commenters, proposes that retuned incumbents receive the following rights and privileges associated with mandatory relocation: (1) The ability to obtain geographic area licenses on retuned channels; (2) protection against being relocated more than once; (3) the right to demand one unified retuning plan from all EA license holders in whose spectrum blocks their frequencies are located; (4) a requirement of ''seamless'' transition, such that the EA holder would complete retuning before the incumbent moves; (5) no obligation to cease operations on the original channels unless alternative frequencies are identified and accepted; and, (6) the right to timely notification by the EA licensee that incumbents will be moved. PCIA also suggests that EA licensees be given one year in which to complete retuning, so that incumbents can make future business plans. Several commenters argue that there should be no selective retuning of incumbent channels; rather, all of an incumbent's channels within an EA spectrum block should be retuned. Moreover, several commenters argue that in terms of an EA licensee's relocation obligations, an incumbent system should be defined as all licenses issued to an entity or multiple entities participating in an integrated network. Nextel, on the other hand, contends that selective retuning should be allowed, so long as the channels are ''comparable.''

25. *Proposal.* Although we wish to provide parties with sufficient flexibility to negotiate mutually agreeable terms for determining comparability, based on our experience in the broadband PCS context, we tentatively conclude that comparable facilities, at a minimum, should provide the same level of service as the incumbents' existing facilities. We propose that by ''comparable facilities,'' a relocated incumbent would: (a) Receive the same number of channels with the same bandwidth; (b) have its entire system relocated, not just those frequencies desired by a particular EA licensee; and, (c) once relocated, have a 40 dBu service contour that encompasses all of the territory covered by the 40 dBu contour of its original system. We believe that this definition will ensure that incumbents' operations will not be adversely affected. We further believe that such definition would not preclude incumbents and EA licensees from negotiating to trade-off any of these system parameters for premium payments or other operational rights which are consistent with our rules. We believe that this flexibility in

designing replacement facilities will expedite relocation, given the many variables involved with the system design of each individual system. We seek comment on our proposed definition of and tentative conclusions regarding ''comparable facilities.'' We ask commenters to discuss whether the ''comparable facilities'' definition should include additional operational characteristics, if so, what characteristics should be specified.

26. With respect to old and new SMR equipment, we tentatively conclude that an EA licensee's relocation obligations to an incumbent will not require the EA licensee to replace existing analog equipment with digital equipment when there is an acceptable analog alternative that satisfies the comparable facilities definition. In the event that an incumbent still wishes to obtain digital equipment under these circumstances, we believe that the incumbent should be required to bear the additional costs associated with such an upgrade of its system. Consequently, we propose that under these circumstances, the cost obligation of the EA licensee would be the minimum cost the incumbent would incur if it sought to replace, but not upgrade, its system. However, if an analog alternative fails to meet any of the criteria included in the comparable facilities definition, the incumbent would not be required to accept such an alternative. In those instances in which an incumbent licensee is operating with digital equipment prior to relocation, we tentatively conclude that the incumbent's new system also must be digital, unless the EA licensee and incumbent mutually agree to different terms. We believe that the proposed definition of comparability would facilitate negotiations between incumbents and EA licensees during the voluntary period, because both parties would be better informed about the EA licensees' minimum obligation under our rules. We seek comment on our proposals and tentative conclusions and any alternatives.

D. Relocation Guidelines—Good Faith Requirement During Mandatory Negotiations

27. In the *First R&O,* we establish a mandatory relocation mechanism for the upper 10 MHz block. Under this mechanism, incumbents and EA licensees have a one-year voluntary negotiation period during which EA licensees are free to offer incumbents a variety of incentives to expedite relocation. If a relocation agreement is not reached during this period, the EA licensee may initiate a mandatory negotiation period during which the parties are required to negotiate in ''good faith.''

28. We believe that additional clarification of the term ''good faith'' will facilitate negotiations and help reduce the number of disputes that may arise over varying interpretations of what constitutes good faith. We tentatively conclude that, for purposes of the mandatory negotiation period, an offer by an EA licensee to replace an incumbent's system with comparable facilities constitutes a good faith offer. Likewise, an incumbent that accepts such an offer presumably would be acting in good faith; whereas, failure to accept an offer of comparable facilities would create a rebuttable presumption that the incumbent is not acting in good faith. Comparable facilities would be limited to actual costs associated with providing a replacement system and would exclude any expenses incurred by the incumbent without securing the approval, in advance, of the EA licensee. We believe that the time for expansive negotiation is during the voluntary negotiation period and that, by the time the parties have reached the mandatory negotiation period, only the bare essentials of comparability should be required. We seek comment on our proposal. We also seek comment on the appropriate penalty to impose on a licensee that fails to act in good faith.

IV. BETRS Eligibility on the Upper 200 Channels of 800 MHz SMR Spectrum

29. *Background.* Under Section 90.621(h) of the Commission's rules, Channel Numbers 401–410, 441–450, 481–490, 521–530, and 561–570 are available on co-primary basis to stations in Basic Exchange Telecommunications Radio Service (BETRS) as described in Part 22 of the Commission's rules.

30. *Proposal.* According to our licensing records, there are few BETRS facilities currently licensed on these frequencies. Based on the limited BETRS licensing on these frequencies and the goals of the wide-area licensing plan adopted in the *First R&O* (in which these channels are included), we propose that BETRS stations no longer be authorized on these frequencies. In addition, as of the adoption of this *Second Further Notice,* we will no longer accept applications for BETRS facilities on these channels.

V. Licensing of Lower 80 and General Category Channels

A. Geographic Area Licensing

31. *Background.* Under our current rules the lower 80 and General Category channels are licensed on a site-specific basis. In the *Further Notice,* we sought comment on whether to continue site-specific licensing or to adopt a form of geographic area licensing on these channels.

32. *Comments.* Several commenters advocate that we continue licensing channels designated for local SMR use based on the geographic separation and channelization criteria in our current SMR rules. These commenters argue that continued site-specific licensing would: (1) Allow local operators to define their own markets; (2) permit construction of niche systems designed to meet unique and customized needs; and, (3) minimize disruption to operations of existing licensees.

33. Other commenters advocate discontinuing site-specific licensing of the lower 80 and General Category channels and instead offering licenses for individual channels or small channel blocks covering defined geographic areas. Cumulous argues that market-area licensing would allow local SMR operators to grow and develop into geographic area licensees in the future. Dru Jenkinson, *et al.* contend that market-area licensing would permit more efficient service area coverage than site-specific authorizations. Total Com believes that market-area licensing will be advantageous to market development, with minimal regulation.

Some commenters expressly oppose market-area licensing on the basis that: (1) There is no reason to license these channels on a market-defined area basis given the scarcity of vacant channels; and, (2) it could create an artificial shortage of local channels simply because a licensee secures an authorization covering a particular geographic area. Pittencrief contends that such an approach, if adopted, should be used only in those areas where the spectrum currently is not being used.

35. Although AMTA does not expressly support this licensing approach, it notes that there are certain advantages associated with geographic area licensing, including facilitation of future integration of local systems into wide-area operations should additional spectrum be desired. Pittencrief contends that even if site-specific licensing is retained, geographic area licensing would not necessarily be foreclosed in the future. In this regard, Pittencrief recommends that in order to secure a market-based license, a local licensee would be required to demonstrate either that: (a) No other co-channel systems serve the geographic area; or, (b) it has secured the consent of all affected co-channel licensees. In either case, Pittencrief suggests that the local licensee should be required to

serve a certain percentage of the Commission-defined service area or face loss of the wide-area authorization.

36. *Proposal.* We tentatively conclude that the lower 80 and General Category channels should be converted to geographic area licensing. We believe that this new licensing approach will afford smaller SMR operators the flexibility to provide service to a defined geographic area on the same basis as licensees in the upper 10 MHz block. We further believe that geographic licensing would simplify system expansion and substantially reduce the administrative burden on both lower 80 and General Category licensees and the Commission. In fact, we expect that in many instances, existing licensees will seek to obtain market-area licenses for those areas in which they already operate, which would enable them to consolidate and expand their operations under a more flexible regulatory regime. We seek comment on our tentative conclusion.

B. Service Areas

37. *Background.* In the *Further Notice,* we indicated our belief that the Basic Trading Areas (BTAs), established by Rand McNally, could be an appropriate service area for geographic area licensing on the lower 80 channels. In the *First R&O,* we adopt EAs as the service area for licenses in the upper 10 MHz block.

38. *Comments.* AMTA recommends using EAs rather than BTAs, partly because EAs appear to approximate more closely the coverage range of existing systems. Pittencrief also supports use of EAs. DCL Associates and Telecellular support use of BTA service areas, because they believe that such licensing would permit substantially more operational flexibility than the traditional 35-mile radius licensing areas. E.F. Johnson believes use of BTAs is contrary to the public interest because it potentially would require operators to construct facilities where they did not anticipate providing service; and, it would limit the possibility that a co-channel licensee legitimately could reuse those channels to serve an adjacent area. CellCall favors licensing the lower 80 channels based on Rand McNally's Major Trading Areas (MTAs). Dru Jenkinson, *et al.* believe that uniformity and efficiency of administration suggest that the lower 80 channels be licensed on the same geographic area as the upper 200 channels. Similarly, AMTA contends that such uniformity will preserve the value of lower 80 channels.

39. *Proposal.* We tentatively conclude that EAs would be the most appropriate service areas for a geographic area licensing approach on the lower 80 and General Category channels. As discussed in the *First R&O,* EAs are based on urban, suburban, and rural traffic patterns that accurately reflect the coverage provided by most 800 MHz SMR operators other than the largest wide-area systems. We therefore believe that this is an appropriate service area definition for the smaller systems that we anticipate will occupy the lower 80 and General Category channels. We also believe that using the same service area definition for licenses on these channels as for licenses on the upper 200 channels will result in greater administrative efficiency. We seek comment on this tentative conclusion and on alternative area definitions.

C. Channel Assignments

40. *Background.* In the *Further Notice,* we indicated that by continuing to license the lower channels in five-channel blocks, as we do currently, we would enable existing licensees to expand local systems on the same channels they are using presently. We also indicated that licensing fewer channels in each block might be an option that would give SMR operators more flexibility in channel configuration.

41. *Comments.* CellCall, Telecellular, AMI, Dru Jenkinson, *et al.,* and Palmer support licensing the lower 80 channels in five-channel blocks. Palmer believes that such an approach would limit spectrum warehousing severely because channels would not be sitting idle while reserved for future service areas within a larger defined geographic region. Dru Jenkinson, *et al.* believes that a five-channel block is an appropriate grouping which would permit limited service application on a local basis, yet provide flexibility for system modification within the designated area.

42. *Proposal.* The five-channel blocks, which proved to be administratively convenient under a site-by-site licensing scheme, may also continue to be feasible under a geographic area licensing approach since incumbent licensees have established their systems based on such channelization. We anticipate that licensees operating on the lower 80 channels increasingly may become more interested in expanding the geographic areas served by their systems and preoccupied less with the number of frequencies utilized by such systems. We tentatively conclude that the lower 80 channels should be licensed in the same five-channel blocks under a geographic licensing approach in order to allow SMR operators to build upon the systems they have already established. Thus, we propose to license the lower 80 channels in five-channel blocks. We seek comment on this tentative conclusion and any alternatives.

43. For the General Category channels, we are not convinced that five-channel blocks would be the best licensing alternative. Unlike the lower 80 channels, the General Category channels are contiguous. As a result, licensees may be interested in establishing multiple-channel system networks. In addition, we are concerned that the competitive bidding process for these frequencies may be administratively unmanageable if they are licensed on a channel-by-channel basis, given the large number of channels involved. Thus, we tentatively conclude that the General Category channels should be licensed in channel blocks. We seek comment on our tentative conclusion. We also ask commenters to discuss what specific channel block size would be appropriate. One alternative is to license channel blocks of different sizes, *e.g.,* a 120-channel block, a 20-channel block, and a 10-channel block. Another alternative is to license channel blocks of the same size, *e.g.,* 25-channel or 10-channel blocks. We seek comment on these, as well as other, alternatives.

D. Operational and Eligibility Restrictions

Background. In the *Further Notice,* we proposed to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules. We also did not propose to restrict the ability of licensees on the lower 80 channels to aggregate channels or integrate local systems to provide service over a larger area.

45. *Comments.* The majority of commenters addressing this issue endorse the Commission's proposal to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules. Cumulous believes that the Commission should pursue licensing policies that allow the same use to be made of both the upper 10 MHz block of 800 MHz SMR spectrum and the lower 80 channels. OneComm believes that such a regime would make local channels more fungible in relocation negotiations and preserve the value of the lower 80 channels.

46. Some commenters, on the other hand, oppose allowing EA licensees to be able to obtain lower 80 channels. Ericsson believes that such channels should be reserved as a safe haven for any local licensees who currently operate in the upper 10 MHz block and

do not obtain the EA license if a mandatory relocation plan is adopted. UTC believes that, in order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding EA licenses and authorizations for the lower 80 channels in the same geographic area. Fisher urges the Commission to clarify that if an EA licensee also holds licenses for systems made up of frequencies from the lower 80 channels, it would be allowed to incorporate such frequencies into its wide-area system. Fisher believes that such use would further the Commission's goal of efficient and full utilization of spectrum.

47. *Proposal.* We tentatively conclude that lower 80 and General Category SMR licensees should be permitted to use these channels for any purpose which is technically consistent with our rules. In light of our designation of 10 MHz of 800 MHz spectrum for wide-area licensing, however, we wish to ensure that our rules do not inadvertently allow licensees in the upper 10 MHz to acquire large numbers of additional SMR channels primarily intended for other use. As discussed *infra,* 2we propose to adopt size restrictions on eligibility for the lower 80 and General Category channels by designating these channels as an entrepreneurs' block. As a result of the economic size limitations associated with such designation, the largest licensees in the upper 10 MHz block would likely be ineligible for the lower 80 and General Category channels. Aside from this proposed restriction, however, we tentatively conclude that limiting the potential uses of lower 80 and General Category licenses would not serve the public interest. We believe that operational restrictions ultimately may restrict the ability of smaller SMR operators to expand their service area and service offerings by such means as integrating their frequencies into a wide-area system or establishing a multiple-channel network. Thus, we do not propose any additional restrictions for these channels.

E. Channel Aggregation Limit

48. *Background.* In the *Further Notice,* we tentatively concluded that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area. We proposed to limit grants of the lower 80 channels to no more than five channels at one time, which is the applicable limit under our current rules.

49. *Comments.* All commenters addressing this issue agree that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area. CellCall proposes a five-channel limit in a particular area for the lower 80 frequencies. Russ Miller believes, however, that a five-channel limit is too restrictive over a geographic area as large as a BTA service area. It proposes a five-channel limit, per location, not per area, for requested frequencies not licensed to the applicant within its existing footprint. Russ Miller suggests that the limit apply to any of the 800 MHz frequencies, not just SMR channels. Telecellular believes that lower 80 licensees should be permitted to apply for additional channels only after construction has been completed for any frequencies covered by previously issued authorizations in a given area, with ''area'' defined as any location within 40 miles of the unbuilt site. Total Com suggests that any licensee must have 90 percent of its channels constructed in each market before additional channels are authorized.

50. *Proposal.* We propose not to limit the number of frequencies a single applicant can request at one time. Under our site-specific 800 MHz SMR licensing rules, we generally have restricted the number of channels for which an entity could apply in a particular area at one time, to deter spectrum warehousing. We believe that the risk of channel warehousing would be limited because these licenses will be subject to competitive bidding and we anticipate that licensees will not bid for more channels than they actually need or can use. We also believe that lower 80 and General Category licensees should have the flexibility to pursue plans to establish wide-area systems by aggregating the lower 80 and General Category frequencies. We note, however, that Commercial Mobile Radio Services (CMRS) spectrum holdings by these licensees still would be subject to the CMRS spectrum aggregation limit provided in Section 20.6 of our Rules. We seek comment on these proposals and any alternatives.

F. Construction Requirements

1. Construction Period

51. *Background.* In the *Third Report and Order* in GN Docket No. 93–252, 59 FR 59945 (November 21, 1994) (*CMRS Third R&O*), we established a uniform 12-month period for constructing a standard base station in all CMRS services that are licensed on a site specific basis. In the *Further Notice,* we indicated that licensees of SMR systems presumptively are subject to this 12-month construction period. In the *CMRS Third R&O,* we also indicated that CMRS providers would be required to commence service to subscribers by the end of their construction period, with ''service to subscribers'' defined to mean the provision of service to at least one party not affiliated with, controlled by, or related to the CMRS provider.

52. *Comments.* All commenters addressing this issue endorse the Commission's proposal of a 12-month construction period, coupled with a commencement of service to subscribers requirement.

53. *Proposal.* Consistent with our conclusions in the *CMRS Third R&O,* we propose that lower 80 and General Category licensees be subject to a 12-month construction period. We further propose that these licensees be required to construct their facilities and commence ''service to subscribers'' within twelve months from the grant of their licenses. We seek comment on this proposal and any alternatives.

2. Coverage Requirements

54. We seek comment on whether geographic area SMR licensees operating on the lower 80 and General Category frequencies should be subject to minimum coverage requirements as a condition of licensing. In the *First R&O,* we require EA licensees operating in the upper 200 channels to provide coverage to one-third of the population within their EA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. We propose to apply these same requirements to lower 80 and General Category geographic area licensees. We believe that these coverage requirements serve the public interest by deterring spectrum warehousing and ensuring the speedy delivery of SMR service to the public. We also propose that lower 80 and General Category licensees be able to satisfy their coverage requirements by meeting a ''substantial service'' standard, like that adopted in the broadband PCS 10 MHz blocks and 900 MHz SMR services. We ask commenters to address the advantages and disadvantages of imposing coverage requirements on lower 80 and General Category licensees, the specific coverage criteria proposed, and any alternative criteria that could be used.

55. We also tentatively conclude that the geographic area lower 80 and General Category licensees should be

responsible for meeting their coverage requirements, regardless of the extent to which their service areas are occupied by co-channel incumbents. We believe that incumbents that already provide substantial coverage in certain areas will have sufficient incentive to seek geographic area licenses for these areas. Thus, we propose to require the geographic area licensees for the lower 80 and General Category channels to satisfy their coverage requirements directly. This proposal is consistent with our approach for EA licensees on the upper 200 channels. We seek comment on these proposals and any alternatives, including the impact, if any, on the construction period for the lower 80 and General Category channels. Assuming a twelve-month construction period, we ask commenters to address whether the coverage requirements should be imposed earlier in the license term. If so, we ask commenters to discuss what would be the appropriate time frame.

56. If we adopt coverage requirements, we also must determine what penalty should be imposed if the geographic area licensee fails to comply with such requirements. We tentatively conclude that a geographic area licensee's failure to meet the coverage requirements should result in forfeiture of the market-area license. We also tentatively conclude that in the event that a licensee loses its geographic area license for failure to comply with coverage requirements, any authorizations that such licensee held in that area prior to the auction for facilities that are constructed and operating would be reinstated. This approach is consistent with the sanctions provided for in our rules for the upper 10 MHz block of 800 MHz SMR spectrum, 900 MHz SMR, and broadband PCS. We seek comment on our proposal and any alternatives.

G. Treatment of Incumbents

57. Given the extensive licensing of the 800 MHz SMR service, we remain concerned about the ramifications of implementing a market-area licensing approach where systems have been licensed already on a site-specific basis. In the *First R&O,* we adopt a mandatory relocation mechanism for the upper 10 MHz block. With respect to the lower 80 and General Category channels, however, we believe that there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents. We also believe that incumbent licensees relocated from the upper 200 channels should not be subject to relocation a second time. We therefore tentatively conclude that there should be no mandatory relocation mechanism for SMR operators operating on the lower 80 and General Category channels. We propose that incumbent SMR licensees on these frequencies be allowed to continue to operate under their existing site-specific authorizations, and geographic area licensees would be required to provide protection to all co-channel systems that are constructed and operating within their service areas. We further propose that no incumbent SMR licensee be allowed to expand beyond its existing service area (as discussed in further detail, *infra*) and into the geographic area licensee's territory without obtaining the prior consent of the geographic area licensee (unless, of course, the incumbent in question is itself the market-area licensee for the relevant channel). We seek comment on this proposal. In addition, we ask commenters to address how non-SMR licensees operating on the lower 80 and General Category channels should be treated. Should these licensees be relocated to non-SMR channels, and if so, under what circumstances and pursuant to what type of relocation plan?

58. Because incumbent licensees' ability to expand their service areas would be restricted as a result of our proposal, we believe that it is imperative that they be given the optimum amount of operational flexibility possible, without encroaching upon market-area licensees' operations. Consistent with our approach on the upper 200 channels, we propose that incumbent licensees on lower 80 and General Category channels be able to modify or add transmitters in their existing service area without prior notification to the Commission, so long as their 22 dBu interference contour is not expanded. As we note in the *First R&O,* we believe that by using the 22 dBu interference contour as the benchmark for defining an incumbent's service area, incumbents will be afforded significant operational flexibility without detracting from the market-area licensee' operational capabilities. We seek comment on this proposal. We ask commenters to address whether our proposal strikes the appropriate balance between the competing interests of market-area and incumbent licensees. We also ask commenters to discuss whether a basis other than the 22 dBu interference contour should be used to determine an incumbent's service area.

59. In addition, similar to our approach in the upper 200 channels and the 900 MHz SMR service, we propose to allow SMR incumbents operating on the lower 80 and General Category channels to have their licenses reissued if they are not the successful bidder for the geographic area license which includes the area in which they are currently operating. Under this procedure, which will be granted post-auction upon the request of the incumbent, an incumbent may convert its current multiple site licenses to a single license, authorizing operations throughout the contiguous and overlapping 22 dBu contours of the incumbent's previously authorized sites. We propose that incumbents seeking such reissued licenses be required to make a one-time filing identifying each of their external base station sites to assist the staff in updating the Commission's database after the close of the auction for the lower 80 and General Category channels. We also propose to require evidence that such facilities are constructed and placed in operation and that, by operation of our rules, no other licensee would be able to use these channels within this geographic area. We believe that facilities added or modified within the 22 dBu contour without prior approval or subsequent notification under this procedure will not receive interference, because they will be protected by the presence of surrounding stations of the same licensee on the same channel or channel block. We seek comment on this proposal.

H. Co-Channel Interference Protection

60. Under our market-area licensing proposal for the lower 80 and General Category channels, market-area licensees will be required to provide interference protection both to incumbent co-channel facilities and to co-channel licensees in neighboring market areas. With respect to incumbent co-channel facilities, we propose to retain the level of protection afforded under our existing rules. Thus, a market-area licensee would be required either to locate its stations at least 113 km (70 mi) from the facilities of any incumbent or to comply with the co-channel separation standards set forth in our short-spacing rule if it seeks to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities. With respect to adjacent market-area licensees, we propose that market-area licensees provide interference protection either by reducing the signal level at their service area boundary, or negotiating some other mutually acceptable agreement with all potentially affected adjacent licensees. We seek comment on these

proposals and we invite commenters to provide alternatives.

I. Licensing in Mexican and Canadian Border Areas

61. We recognize that a limited number of lower 80 channels are available for SMR licensing in the Mexican and Canadian border areas. In the *First R&O,* we have decided not to distinguish between border areas and non-border areas for licensing purposes. We propose the same approach for the lower 80 channels in the border areas, *i.e.,* all market areas should be licensed on a uniform basis without distinguishing border from non-border areas, even if some spectrum is unusable. We believe that lower 80 and General Category applicants, like those in the upper 10 MHz block and other services, will be able to assess the impact of more limited spectrum availability when valuing those market areas for competitive bidding purposes. Moreover, we believe that altering the size of particular market areas because they are located near an international border is likely to be administratively unworkable. Thus, we propose that market-area licensees be entitled to use any available border-area channels, subject to the relevant rules regarding international assignment and coordination of such channels. We seek comment on this proposal.

VI. Regulatory Classification of Lower 80 and General Category Channels

62. *Background.* In the *CMRS Third R&O,* we determined that SMR licensees would be classified as CMRS if they offered interconnected service and as Private Mobile Radio Service (PMRS) if they did not offer such service. In the *Further Notice,* we sought comment on whether the presumption of CMRS status should apply to licensees authorized for the lower 80 channels.

63. *Comments.* All of the commenters addressing this issue believe that there should not be a CMRS presumption for the lower 80 channels or any other channels designated primarily for local service. E.F. Johnson and Genesee opine that there is a significant difference between the type of services provided by local SMR systems and wide-area systems. AMTA opines that it is not persuaded that Congress intended to adopt a definition of CMRS so sweeping as to encompass even the smallest, most rural SMR system, irrespective of its practical ability to provide a service substantially similar to cellular or other CMRS systems.

64. *Proposal.* Based on our geographic area licensing proposal for the lower 80 and General Category channels, we believe that it is not evident that the operations of the licensees on these frequencies will be local in nature. In fact, some licensees may desire to establish regional networks on these frequencies. Furthermore, contrary to the suggestion by some commenters, the CMRS definition provided in the Communications Act does not distinguish mobile service providers based on their economic size. Instead, a service provider's regulatory classification is determined based on factors associated with the nature of its operations. In this connection, we believe that the operational opportunities for the lower 80 and General Category channels are not significantly different. Thus, we tentatively conclude that most if not all geographic area licensees on these channels will be classified as CMRS, because they are likely to provide interconnected service as part of their service offering. We therefore propose to classify all geographic area licensees on the lower 80 and General Category channels presumptively as CMRS. We also propose that market-area applicants or licensees who do not intend to provide CMRS service may overcome this presumption by demonstrating that their service does not fall within the CMRS definition. We also propose not to apply this presumption prior to August 10, 1996 in the case of any geographic area licensee who previously was licensed in the SMR service as of August 10, 1993. We seek comment on our tentative conclusion and proposals.

VII. Competitive Bidding Issues for Lower 80 and General Category Channels

A. Auctionability of Lower 80 and General Category Channels

65. In the *Competitive Bidding Eighth R&O,* we affirmed our previous determination that the 800 MHz SMR service is auctionable. In addition, we concluded that use of competitive bidding in the upper 200 channels of 800 MHz SMR spectrum is fully consistent with Section 309(j) of the Communications Act. Because the lower 80 frequencies are SMR channels, and thus a subset of the 800 MHz SMR service, we believe that they also are auctionable. Consistent with our approach regarding the upper 200 channels, we propose to employ competitive bidding as a licensing tool to select among mutually exclusive applicants on the lower 80 channels. We seek comment on this proposal.

66. We also seek comment on whether to adopt equivalent auction procedures for competing applications for General Category channels. In the *Competitive Bidding Eighth R&O,* we determine that in the future the General Category Channels will be licensed exclusively for SMR use. Consistent with our approach for other 800 MHz SMR spectrum, we tentatively conclude that if two or more entities file mutually exclusive initial applications, we intend to use competitive bidding to select from among competing applications.

67. We anticipate that a large number of applicants will file mutually exclusive geographic area applications for SMR operations on General Category frequencies. Competitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum, and who will provide valuable services rapidly to the public, will prevail in the selection process. Thus, we tentatively conclude that all potential conflicts among General Category applicants will not be eliminated by our proposed geographic area licensing scheme. Competitive bidding procedures will be necessary to select from among competing applicants for these channels. We seek comment on this tentative conclusion.

B. Competitive Bidding Design

1. Bidding Methodology

68. *Background.* In the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (May 4, 1994) (*Competitive Bidding Second R&O*) we established criteria to be used in selecting which auction design to use for particular auctionable services. Generally, we concluded that awarding licenses to parties who value them most highly will foster Congress's policy objectives of stimulating economic growth and enhancing access to telecommunications services. We further noted that, because a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum. In determining how best to promote this objective, we identified several auction design elements which, in combination, produce many different auction types. The two most important design elements are: (1) the number of auction rounds (single or multiple), and (2) the order in which licenses are auctioned (sequentially or simultaneously). These two elements can be combined to create four basic auction designs: sequential

single round, simultaneous single round, sequential multiple round, and simultaneous multiple round.

69. In the *Further Notice,* we noted that because of the non-contiguous nature of the lower 80 channels, there did not appear to be a high degree of interdependency among them. We further noted that the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the spectrum blocks for the upper 200 channels.

70. *Comments.* SBA supports use of single round sealed bidding. Genesee disagrees that one single round of auctions in sealed bidding would be fair, and suggests that at least two rounds be done with 30 day intervals. AMTA does not dispute the Commission's tentative conclusion regarding the appropriate competitive bidding methodology for local licenses. AMTA notes that it is reluctant to suggest an approach that might further complicate what would be an unjustifiably costly and complex process for those entities. AMTA contends that some grouping of frequency blocks and geographic areas might be necessary for this purpose, if the Commission determines to issue local licenses on a geographic, rather than site-specific basis. Morris proposes the use of multiple round auctions for local area licenses, limited to five rounds. Nextel proposes that after relocation is completed, the lower 80 channels and any other spectrum reallocated to exclusive SMR use, be auctioned on a single channel basis.

71. *Proposal.* We seek comment on which of the above auction methodologies should be used for the auction of the lower 80 and General Category licenses. In the *Competitive Bidding Second R&O,* we stated that simultaneous multiple round auctions would be the preferred method where licenses have strong value interdependencies. Accordingly, we have used this method in broadband and narrowband PCS services and the 900 MHz SMR service, and we will use the same methodology for the upper 200 channels in the 800 MHz SMR service.

72. Given our successful experience in conducting simultaneous multiple round auctions, we propose to use this competitive bidding methodology for the lower 80 and General Category channels as well. We seek comment on this proposal. We also note, however, that there is less interdependency between licenses for the lower 80 and General Category channels, both because channel aggregation is not required to provide SMR service and because channel selection may be largely dictated by which channels currently are licensed to incumbents in each license area. We therefore seek comment on alternatives to simultaneous multiple round bidding for these channels. One alternative would be to use the oral outcry method, *i.e.*, sequential multiple round bidding. This method may allow us to conduct auctions expeditiously and in a manner that is not burdensome to applicants.

2. License Grouping

73. *Background.* Depending upon the auction methodology chosen, several alternatives exist for grouping the lower 80 and General Category licenses. For example, the Commission determined in the *Competitive Bidding Second R&O* that in a multiple round auction, highly interdependent licenses should be grouped together and put up for bid at the same time, because such grouping provides bidders with the most information about the prices of complementary and substitutable licenses during the course of an auction. We also determined that the greater the degree of interdependence among the licenses, the greater the benefit of auctioning a group of licenses together in a simultaneous multiple round auction.

74. *Proposal.* We seek comment on how lower 80 and General Category licenses should be grouped for competitive bidding purposes. As noted above, it does not appear that licenses on these channels are likely to be highly interdependent. We therefore propose that lower 80 licenses be grouped in 16 five-channel blocks for each license area. We seek comment on this proposal. We also ask commenters to indicate if there are instances in which licenses on multiple channels should be grouped together for competitive bidding purposes.

75. Assuming that we group lower 80 licenses by 16 five-channel blocks, the issue remains whether all geographic area licenses for specific channel blocks should be grouped together for competitive bidding purposes. Given the large number of licenses, we believe that it would be administratively feasible to employ an additional means of grouping the five-channel blocks. We believe that some licensees may elect to pursue regional service plans. Thus, we propose to group the five-channel blocks on a regional basis. We seek comment on this proposal. We recognize that there are other sets of interdependencies which could form a basis for license grouping. In a simultaneous multiple round auction, for example, we could auction all of the market areas for a five-channel block simultaneously. Alternatively, we could begin with the largest (*i.e.,* most populated) markets and then move to smaller markets. We seek comment on these alternatives as well. Assuming that we group, the licenses on a regional basis, we ask commenters to discuss how the regions should be defined. For example, should the regions be defined by sequential groupings of EAs or some other basis? We also ask commenters to address whether there is a particular order in which the regions should be auctioned.

76. With respect to the General Category channels, which we propose to license in a 120-channel block, 20-channel block and 10-channel block, we believe that these licenses will be significantly interdependent, primarily due to their contiguity. Thus, we propose to auction the General Category geographic area licenses simultaneously. We seek comment on this proposal and any alternatives.

3. Bidding Procedures

77. *Background.* In the *Competitive Bidding Second R&O,* the Commission established general procedures for simultaneous multiple round auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. We further noted that these procedures could be modified on a service-specific basis. We seek comment on the bidding procedures that should be used for licensing of the lower 80 and General Category channels.

78. *Bid Increments.* If we use a multiple round auction, we propose to establish minimum bid increments for bidding in each round of the auction, based on the same considerations in the *Competitive Bidding Eighth R&O.* The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction closes within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule, because all markets remain open until there is no bidding on any license and a delay in closing one market will delay the closing of all markets. We seek comment on the appropriate minimum bid increments for the lower 80 and General Category channels.

79. For example, if simultaneous multiple round auctions are employed

for the lower 80 and General Category licenses, we believe that we should start such auctions with relatively large bid increments, and reduce the increments as the number of active bidders declines. We also propose to adopt a minimum bid increment of five percent of the high bid in the previous round or $0.01 per activity unit, whichever is greater. We believe that applying a $0.01 per activity unit minimum bid increment in addition to the percentage calculation is appropriate to provide flexibility for a wide range of different license values, and to ensure timely closure of auctions. In addition, we propose to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. We also propose to retain the discretion to keep an auction open if there is a round in which no bids or proactive waivers are submitted. We seek comment on these proposals.

80. *Stopping Rules.* If multiple round auctions are used, a stopping rule must be established for determining when the auction is over. Three types of stopping rules exist that could be employed in simultaneous multiple round auctions: markets may close individually, simultaneously, or a hybrid approach may be used. We believe a market-by-market stopping rule is most appropriate for the lower 80 channels given the lack of strong interdependencies among these licenses. We also believe that a market-by-market stopping rule would be the least complex approach from an administrative perspective. Under a market-by-market approach, bidding closes on each license after three rounds pass in which no new acceptable bids are submitted for that particular license. We tentatively conclude that a simultaneous stopping rule is not appropriate for these licenses, because market-by-market closure will provide bidders with sufficient flexibility to bid on the license of their choice. In addition, the complexity of implementation and the vulnerability to strategic delay by bidders seeking to impede closure of the auction outweigh the benefits of a simultaneous stopping rule given the nature of these SMR licenses. With a simultaneous stopping rule, bidding remains open on all licenses until there is no bidding on any license. Under this approach, all markets will close if three rounds pass in which no new acceptable bids are submitted for any license. We seek comment on our tentative conclusions. We also ask commenters to address the advantages and disadvantages of using a hybrid stopping rule. Under a hybrid approach, a simultaneous stopping rule, coupled with an activity rule designed to bring the markets to close within a reasonable period of time, could be used to close auctions with high value licenses. For lower value licenses, the simpler market-by-market closing could be employed. For the General Category licenses, we tentatively conclude that a simultaneous stopping rule is most appropriate, given the significant interdependencies between these licenses. We seek comment on this tentative conclusion. Regardless of which stopping rule we ultimately apply, we further propose to retain the discretion to declare when the auction will end, whether it be after one additional round or some other specified number of rounds. This proposal will ensure ultimate Commission control over the duration of the auction. We seek comment on this proposal.

81. *Activity Rules.* Based on our proposal to employ a market-by-market stopping rule for the lower 80 licenses, we tentatively conclude that it is unnecessary to implement an activity rule. We believe that an activity rule is less important when markets close one-by-one, because failure to participate in any given round may result in losing the opportunity to bid at all, if that round turns out to be the last. We seek comment on this tentative conclusion. We also ask commenters to address what activity rules, if any, would be appropriate if an alternative stopping rule is adopted. For example, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period, we believe that it may be necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all markets open as long as anyone wishes to bid, they also create incentives for bidders to hold back, until prices approach equilibrium, before making a bid and risking payment of a monetary assessment for withdrawing. We believe that this could lead to very long auctions.

82. Thus, in the *Competitive Bidding Second R&O*, we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used. We subsequently have adopted or proposed the Milgrom-Wilson rule in each of our simultaneous multiple round auctions. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of activity units, and make the required upfront payment. That is, bidders will be limited to bidding on licenses encompassing no more than the number of activity units covered by their upfront payment. Licenses on which a bidder is the high bidder from the previous round, as well as licenses on which a new valid bid is placed, count toward this activity unit limit. Under this approach, bidders have the flexibility to shift their bids among any licenses for which they have applied, so long as the total activity units encompassed by those licenses does not exceed the number for which they made an upfront payment. Moreover, bidders have the freedom to participate at whatever level they deem appropriate by making a sufficient upfront payment. To preserve their maximum eligibility, however, bidders are required to maintain some minimum activity level during each round of the auction. Accordingly, we propose to employ the Milgrom-Wilson activity rule for the General Category licenses. We seek comment on this proposal and any alternatives.

83. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the self-declared maximum eligibility, will increase during the course of the auction. For this purpose, Milgrom and Wilson divide the auction into three stages. During the first stage of the auction, a bidder is required to be active on licenses encompassing one-third of the activity units for which it is eligible. The penalty for falling below that activity level is a reduction in eligibility. At this stage, bidder would lose three activity units in maximum eligibility for each activity unit below the minimum required activity level. In other words, each bidder would retain eligibility for three times the activity units for which it is an active bidder, up to the activity units covered by the bidder's upfront payment. In the second stage, bidders are required to be active on two-thirds of the activity units for which they are eligible. The penalty for falling below that activity level would be a loss of 1.5 activity units in eligibility for each activity unit below the minimum required activity level. In the third stage, bidders are required to be active on licenses encompassing all of the activity units for which they are eligible. The penalty for falling below that activity level is a loss of one activity unit in eligibility for each

activity unit below the minimum required activity. Each bidder thus retains eligibility equal to its current activity level (1 times the activity units for which it is an active bidder). We seek comment on this alternative.

84. *Duration of Bidding Rounds.* We propose to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run two or more rounds per day rather than one), in order to close the auction more quickly. If this mechanism is used, we most likely would shorten the duration and/or intervals between bidding rounds where there are relatively few licenses to be auctioned, where the value of the licenses is relatively low, or in early rounds to speed the auction process. Where license values are expected to be high or where large numbers of licenses are being auctioned, we propose to increase the duration and/or intervals between bidding rounds. We would announce by Public Notice, and may vary by announcement during an auction, the duration and intervals between bidding rounds. We also propose to announce by Public Notice, before each auction, the stopping rule we adopt. We seek comment on these proposals.

4. Rules Prohibiting Collusion

85. *Background.* In the *Competitive Bidding Second R&O,* as modified on reconsideration, we adopted special rules prohibiting collusive conduct in the context of competitive bidding. In the *Further Notice,* we proposed to apply these rules prohibiting collusion to the 800 MHz SMR service. We want to prevent parties, especially large entities, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and/or disadvantage other bidders. Bidders will be required to (i) reveal all parties with whom they have entered into any agreement that relates to the competitive bidding process, and (ii) certify they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies, particular properties on which they will or will not bid or any similar agreement.

86. *Proposals.* We tentatively conclude that we should subject the lower 80 and General Category licenses to the reporting requirements and rules prohibiting collusion embodied in Sections 1.2105 and 1.2107 of the Commission's rules. Specifically, we propose to implement Section 1.2105(a) to require bidders to identify on their short-form applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. We propose to apply Section 1.2105(c) of our rules, which prohibits bidders from communicating with one another (if they have applied for any of the same markets) regarding the substance of their bids or bidding strategies after short-form applications (FCC Form 175) have been filed. Section 1.2105(c) also prohibits bidders from entering into consortium arrangements or joint bidding agreements after the deadline for short-form applications has passed. Prohibited communications between such bidders cannot take place directly or indirectly.

87. Further, in the *Fourth Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 53364 (October 24, 1994), we noted that communications among bidders concerning matters unrelated to the license auction would be permitted. In making this proposal, it is not our intent to discourage potential applicants from entering into consortia, joint ventures, or similar joint bidding arrangements for geographic area licenses prior to the short form filing deadline. To the contrary, we intend to provide parties with time to negotiate such arrangements before the start of the application process. To avoid compromising the auction process, however, such negotiations must end at the point that short forms are filed. As in other services, we also propose to require winning bidders to submit with their long-form application a detailed explanation of the terms, conditions and parties involved in any auction-related consortium, joint venture, partnership, or other agreement entered into prior to the close of bidding. We seek comment on these proposals.

C. Procedural and Payment Issues

1. Pre-Auction Application Procedures

88. *Background.* In the *Competitive Bidding Second R&O,* the Commission established general competitive bidding rules and procedures, which we noted may be modified on a service-specific basis. We also determined that we should require only a short-form application (FCC Form 175) prior to auction, and that only winning bidders should be required to submit a long-form license application (FCC Form 600) after the auction. In this connection, we determined that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest.

89. As discussed below, we propose to follow generally the processing and procedural rules established in the *Competitive Bidding Second R&O,* with certain modifications designed to address the particular characteristics of the lower 80 and General Category licenses. These proposed rules are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and offer service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these proposed rules will minimize the need to re-auction licenses and prevent delays in the provision of SMR services to the public.

90. Section 309(j)(5) of the Communications Act provides that no party may participate in an auction ''unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing.'' Moreover, ''[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to Section 309(a) and Section 308(b) and 310'' of the Communications Act. As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and we propose to dismiss applications not meeting those requirements prior to the competitive bidding.

91. Under this proposal, before the auction for the lower 80 and General Category channels, the Bureau would release an initial Public Notice announcing the auction. The initial Public Notice would specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice would specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. We would not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted after the deadline specified by the Public Notice would be dismissed, with prejudice, as untimely. We seek comment on these proposals.

92. Soon after the release of the initial Public Notice, a Bidder's Information Package will be made available to prospective bidders. The Bidder's Information Package will contain information on the incumbents occupying blocks on which bidding will be available. Incumbents will be expected to update information on file with the Commission, such as current address and phone number, so that such information will be of use to prospective bidders.

93. Under this proposal, all bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants would be encouraged to file Form 175 electronically. Detailed instructions regarding electronic filing would be contained in the Bidder Information Package. Those applicants filing manually would be required to submit one paper original and one microfiche original of their application, as well as two microfiche copies. The short form applications would require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant would be required to specify on its Form 175 application certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the license areas and frequency blocks for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf.

94. As we indicated in the *Competitive Bidding Second R&O,* if we receive only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, we propose to issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the procedures permitting petitions to deny. If no petitions to deny are filed, the application would be grantable after 30 days. We seek comment on the proposals discussed above.

2. Amendments and Modifications

95. *Background.* To encourage maximum bidder participation, we proposed in the *Competitive Bidding Second R&O* to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. We stated that applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided an opportunity to correct their applications prior to the auction. In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. In the *CMRS Third R&O,* we decided to adopt the same or similar definitions for initial applications and major and minor amendments and modifications for all CMRS in Part 22 and Part 90, in order to facilitate similar system proposals and modifications for equal treatment of substantially similar services.

96. On the date set for submission of corrected applications, applicants that discover minor errors in their own applications (*e.g.*, typographical errors, incorrect license designations, etc.) also would be permitted to file corrected applications. Recently, the Commission waived the *ex parte* rules as they applied to the submission of amended short-form applications for the A and B blocks of the broadband PCS auctions, to maximize applicants' opportunities to seek Commission staff advice on making such amendments. We propose to apply the same principles to the SMR auctions. Under this proposal, applicants would not be permitted to make any major modifications to their applications, including changes in license areas and changes in control of the applicant, or additions of other bidders into the bidding consortia, until after the auction. Applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In addition, applications that are not signed would be dismissed as unacceptable.

97. Upon our review of the short-form applications, we propose to issue a Public Notice listing all defective applications, and applicants with minor defects would be given an opportunity to cure errors and resubmit a corrected version. After reviewing the corrected applications, the Commission would release a second Public Notice announcing the names of all applicants whose applications have been accepted for filing. These applicants would be required to submit an upfront payment to the Commission, as discussed below, to the Commission's lock-box by the date specified in the Public Notice, which generally would be no later than 14 days before the scheduled auction. After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission would issue a third Public Notice announcing the names of all applicants that are determined qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned would not be identified on this Public Notice as a qualified bidder. Each applicant listed on this Public Notice would be issued a bidder identification number and further information and instructions regarding auction procedures. We seek comment on the proposals discussed above.

3. Upfront Payments

98. *Background.* In the *Competitive Bidding Second R&O,* we established a minimum upfront payment of $2,500 and stated that this amount could be modified on a service-specific basis. In the *Further Notice,* we proposed to require 800 MHz SMR auction participants to tender in advance to the Commission a substantial upfront payment, $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any round, as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty (discussed *infra*) in the event of bid withdrawal or default. We also sought comment on the upfront payment formula and minimum upfront payment most appropriate for the 800 MHz SMR service.

99. *Proposals.* As in the case of other auctionable services, we propose to require participants for the lower 80 and General Category auction to tender in advance to the Commission a substantial upfront payment as a condition of bidding, in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the additional monetary assessments in the event of bid withdrawal or default. For services that are licensed by simultaneous multiple round auction, we have established a standard upfront payment formula of $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any single round of bidding. We tentatively conclude that a minimum $2,500 upfront payment should be required, regardless of the bidding methodology we employ. We seek comment on our proposal regarding the appropriate minimum upfront payment for

applications for the lower 80 or General Category channels. In particular, we seek comment on whether a minimum upfront payment of $2,500 is sufficient to discourage frivolous or speculative bidders in the auction process.

100. We tentatively conclude that upfront payments should be due no later than 14 days before a scheduled auction. This period should be sufficient to allow the Commission to process upfront payment data and release a Public Notice listing all qualified bidders. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

4. Down Payment and Full Payment

101. *Background.* In the *Competitive Bidding Second R&O,* we generally required successful bidders to tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. We concluded that this requirement was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while not being so onerous as to hinder growth or diminish access. In the *Further Notice,* we proposed to require the winning bidders for 800 MHz SMR licenses to supplement their upfront payments with down payments sufficient to bring their total deposits up to 20 percent of their winning bid(s).

102. *Proposals.* We propose to apply the 20 percent down payment requirement to winning bidders for lower 80 and General Category licenses. Such a down payment would be due within five business days following the Public Notice announcing the winning bidders. We further propose that auction winners be required to pay the full balance of their winning bids within five business days following Public Notice that the Commission is prepared to award the license. We seek comment on this proposal.

103. To the extent that an auction winner is eligible to make payments through an installment plan (small businesses, as proposed *infra*), we propose to apply different down payment requirements. Such an entity would be required to bring its deposit with the Commission up to five percent of its winning bid after the bidding closes (this amount would include the upfront payment), and would have to pay an additional five percent of its winning bid to the Commission within five business days following Public Notice that the Commission is prepared to award the license. We seek comment on this proposal.

5. Bid Withdrawal, Default, and Disqualification

104. *Background.* In the *Further Notice,* we proposed to adopt bid withdrawal, default, and disqualification rules for the 800 MHz SMR service based on the procedures established in our general competitive bidding rules. In the *Competitive Bidding Second R&O,* we noted that it is critically important to the success of our competitive bidding process that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses, or default on payment of a balance due. If a bidder withdraws a high bid before the Commission closes bidding or defaults by failing to timely remit the required down payment, it would be required to reimburse the Commission for any differences between its high bid and the amount of the winning bid, if the winning bid is lower. A defaulting auction winner also would be assessed three percent of either the subsequent winning bid or the amount of the defaulting bid, whichever is less.

105. *Proposal.* We propose to adopt bid withdrawal, default, and disqualification rules for the lower 80 and General Category licenses based on the procedures in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the Commission. The bidder would be required to pay the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. A defaulting auction winner would be assessed an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The monetary assessment would be offset by the upfront payment. In the event that an auction winner defaults or is otherwise disqualified, we propose to re-auction the license either to existing or new applicants. The Commission would retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding. We seek comment on these proposed procedures.

6. Long-Form Applications

106. *Background.* In the *Competitive Bidding Second R&O,* we established rules that require a winning bidder to submit a long-form application. The long-form application is required to be filed by a specific date, generally within ten business days after the close of the auction. We stated that after we received the high bidder's down payment and the long-form application, we would review the long-form application to determine if it is acceptable for filing. Once the long-form application is accepted for filing, we stated that we would release a Public Notice announcing this fact, triggering the filing window for petitions to deny. We also stated that if, pursuant to Section 309(d), we deny or dismiss all petitions to deny, if any are filed, and we otherwise are satisfied that the applicant is qualified, we would grant the license(s) to the auction winner. In the *Further Notice,* we proposed to use application procedures similar to those used for licensing PCS. Consistent with our approach in PCS, we proposed to require only the winning bidder to file a long-form application (FCC Form 600).

107. *Proposal.* If the winning bidder makes the down payment in a timely manner, we propose the following procedures: A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten (10) business days after the close of bidding. After the Commission receives the winning bidder's down payment and long-form application, we will review the long-form application to determine if it is acceptable for filing. In addition to the information required in the Form 600, designated entities will be required to submit evidence to support their claim to any special provision available for designated entities described in this Order. This information may be included in an exhibit to FCC Form 600. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility for bidding credits, installment payment options, and other special provisions. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner. We seek comment on this proposal.

7. Petitions to Deny and Limitations on Settlements

108. *Background.* We determined in the *Competitive Bidding Second R&O* that the procedures concerning petitions to deny found in Section 309(j)(2) of the Communications Act, should apply to competitive bidding. We determined that we would adopt expedited procedures to resolve substantial and material issues of fact concerning qualifications. We stated that we would entertain petitions to deny the application of the auction winner if the petitions to deny otherwise are provided for under the Communications Act or our rules. We then determined that we would not conduct a hearing before denial if we determined that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination. We also stated that if we identified substantial and material issues of fact in need of resolution, Sections 309(j)(5) and 309(j)(2) of the Communications Act permit submission of all or part of evidence in written form, and also allow employees other than administrative law judges to preside at the taking of written evidence. Additionally, we previously have stated that our anti-collusion and settlement procedures were designed to avoid the problem of entities filing applications solely for the purpose of demanding payment from other bidders in exchange for settlement or withdrawal.

109. As we have determined, the petition to deny procedures in Section 90.163 of the Commission's rules, adopted in the *CMRS Third R&O,* will apply to the processing of applications for the 800 MHz SMR service. Thus, a party filing a petition to deny against an application for the lower 80 and General Category channels will be required to demonstrate standing and meet all other applicable filing requirements. We also have adopted restrictions in Section 90.162 to prevent the filing of applications and pleading (or threats of the same) designed to extract money from SMR applicants. Thus, we will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

110. With respect to petitions to deny, the Commission need not conduct a hearing before denying an application, if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. In the event the Commission identifies substantial and material issues of fact, Section 309(i)(2) of the Communications Act permits the submission of all or part of evidence in written form in any hearing and allows employees other than administrative law judges to preside over the taking of written evidence. We seek comment on these proposals.

8. Transfer Disclosure Requirements

111. In Section 309(j) of the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' In the *Competitive Bidding Second R&O,* the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied. We decided that it was important to monitor transfers of licenses awarded by competitive bidding to accumulate the necessary data to evaluate our auction designs and to judge whether ''licenses [have been] issued for bids that fall short of the true market value of the license.'' Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not.

112. We tentatively conclude that the transfer disclosure requirements of Section 1.2111(a) should apply to all lower 80 and General Category licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of their license. As we indicated in the *Competitive Bidding Second R&O,* we would give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, so that we may determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. We seek comment on these proposals.

9. Performance Requirements

113. Section 309(j)(4)(B) of the Communications Act requires the Commission to establish rules for auctionable services that ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' In the *Competitive Bidding Second R&O,* we decided that in most auctionable services, existing construction and coverage requirements provided in our service rules would be sufficient to meet this standard, and that it was unnecessary to impose additional performance requirements. We have proposed service rules for SMR that would require market-area licensees to meet minimum population coverage requirements in their licensing areas. We tentatively conclude that these proposed coverage requirements are sufficient to meet the requirements of Section 309(j)(4)(B). As discussed *supra,* we propose that failure to meet these requirements would result in automatic license cancellation. Accordingly, we do not propose to adopt additional performance requirements for the lower 80 and General Category licenses. We seek comment on this proposal.

D. Treatment of Designated Entities

1. Overview and Objectives

114. Section 309(j)(3)(B) of the Communications Act provides that in establishing auction eligibility criteria and bidding methodologies, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods.''

115. In the *Competitive Bidding Second R&O,* we established eligibility criteria and general rules regarding special measures for small businesses, rural telephone companies, and businesses owned by women and minorities (sometimes referred to collectively as ''designated entities''). We also identified several measures, including installment payments, spectrum set-asides, and bidding

credits, from which we could choose when establishing rules for auctionable services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

116. When deciding which provisions to adopt to encourage designated entity participation in particular services, we have closely examined the specific characteristics of the service and determined whether any particular barriers to accessing capital have stood in the way of designated entity opportunities. In accordance with our statutory directive, we have adopted measures designed both to enhance the ability of designated entities to acquire licenses and to increase the likelihood that designated entity licensees will become strong competitors in the provision of wireless services. In narrowband PCS, for instance, we provided installment payments for small businesses and bidding credits for minority-owned and women-owned businesses. In broadband PCS, we designated certain spectrum blocks as entrepreneurs' blocks, allowed entrepreneurs' block licensees to make installment payments, and provided bidding credits for designated entities. In 900 MHz SMR, we adopted bidding credits and installment payments for small businesses. In the 800 MHz SMR service, we did not adopt special provisions for designated entities, with respect to the upper 200 channels. We nonetheless indicated that such approach would meet the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by designated entities. As discussed in greater detail below, we seek comment on the type of designated entity provisions that should be incorporated into our competitive bidding procedures for the lower 80 and General Category channels.

2. Eligibility for Designated Entity Provisions

a. Small Businesses. i. Special Provisions. 117. *Proposal.* We tentatively conclude that it is appropriate to establish special provisions for small businesses in our competitive bidding rules for the lower 80 and General Category channels. We note that Congress specifically cited the needs of small businesses in enacting auction legislation. The House Report states that the statutory provisions related to installment payments were enacted to ''ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women.'' It also states that the provisions in Section 309(j)(4)(A) relating to installment payments were intended to promote economic opportunity by ensuring that competitive bidding inadvertently does not favor incumbents with ''deep pockets'' over new companies or start-ups.

118. In addition, Congress made specific findings with regard to access to capital in the Small Business Credit and Business Opportunity Enhancement Act of 1992: that ''small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit.'' As a result of these difficulties, Congress resolved to consider carefully legislation and regulations ''to ensure that small business concerns are not negatively impacted'' and to give priority to passage of ''legislation and regulations that enhance the viability of small business concerns.'' For these reasons, and as discussed in greater detail below, we tentatively conclude that small businesses applying for these licenses should be entitled to some form of bidding credit and should be allowed to pay their bids in installments. This is consistent with our approach in the 900 MHz SMR service. We seek comment on this tentative conclusion.

ii. Definition. 119. *Comments.* DCL Associates and Dru Jenkinson, *et al.* suggest that we adopt the SBA definition of small business initially adopted in the *Competitive Bidding Second Report and Order.* Under that definition, a ''small business'' is one which has a net worth not in excess of $6 million with average net income for the two preceding years not in excess of $2 million. Morris recommends using the small business definition utilized by the Internal Revenue Service. The SBA opines that a revenue test remains the best and least problematic guideline for determining whether a business is small. AMTA suggests that the better approach for the 800 MHz SMR service would be to incorporate preferential provisions for existing operators.

120. Several commenters offer other small business definitions. AMI suggests that small businesses be defined to have 30 channels licensed or managed and/or less than $540,000 in current system revenues. Genesee suggests using the U.S. Chamber of Commerce standard for retail/service companies of less than $5.5 million annually. Genesee and the SBA believe that the PCS small business definition, with a $40 million maximum would be inappropriate for the 800 MHz SMR service. The SBA believes that a smaller revenue figure, such as $15 million, would be more appropriate.

121. *Proposal.* We seek comment on the appropriate definition of ''small business'' to be applied for purposes of the bidding credits proposed above. We have stated previously that we would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. In broadband PCS and regional narrowband PCS, we defined small businesses based on a $40 million annual revenue threshold. In the 220 MHz service, we have proposed two small business definitions: (1) for purposes of bidding on a nationwide or regional license, small businesses would be defined as entities with $15 million in average gross revenues for the preceding three years; and (2) for purposes of bidding on EA licenses, small businesses be would be defined as entities with $6 million in average gross revenues for the preceding three years. After considering the record in the 900 MHz proceeding, we concluded that both $15 million and $3 million small business definitions were warranted, which would entitle applicants for MTA licenses to 10 percent and 15 percent bidding credits respectively.

122. In conjunction with our proposal to provide two levels of bidding credits, we propose to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to $15 million in average gross revenues for the previous three years; to obtain the 15 percent credit, the applicant would be limited to $3 million in gross revenues for the previous three years. In both cases, we would require the applicant to aggregate the gross and revenues of its affiliates and investors for the preceding three years for purposes of determining eligibility. These proposed thresholds are comparable to what we have adopted in 900 MHz SMR, and they reflect our tentative view of the capital requirements and potential barriers to entry in the 800 MHz SMR service. We seek comment on whether these thresholds, and the proposed bidding credit amounts associated with them, are sufficient for the lower 80 and General Category Channels in light of the build-out costs associated with

constructing an SMR system throughout a market area, or whether alternative definitions would be more suitable. We also seek comment on whether our proposed small business definitions are sufficiently restrictive to protect against businesses receiving bidding credits which in fact do not need them.

b. Minority- and Women-Owned Businesses. 123. *Background.* Prior to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña,* we concluded that in the licensing of broadband and narrowband PCS, minority and women-owned businesses might have difficulty accessing sufficient capital to be viable auction participants or service providers, in the absence of special provisions in our auction rules. We therefore adopted special provisions for minorities and women in these services. We further determined that such provisions were constitutional under the ''intermediate scrutiny'' standard used in *Metro Broadcasting, Inc.* v. *FCC.*

124. In *Adarand*, however, the Supreme Court ruled that racial classifications imposed by the federal government are subject to strict scrutiny. This holding will apply to any proposal to incorporate race-based measures into our rules; thus, it introduces an additional level of complexity to implementing Congress' mandate to ensure that businesses owned by minorities and women are provided ''the opportunity to participate in the provisions of spectrum-based services.'' We emphasize that we have not concluded that race or gender-based measures are unconstitutional or otherwise inappropriate for spectrum auctions we will hold in the future. At a minimum, however, we believe that *Adarand* requires us to build a thorough factual record concerning the participation of minorities and women in spectrum-based services to support race- and gender-based measures.

125. *Comments.* DCL Associates and Dru Jenkinson, *et al.*, the only commenters addressing this specific issue, propose that the PCS definitions of minority- and/or female-controlled firms should be utilized in the 800 MHz SMR service. Dru Jenkinson, *et al.* further suggest that there should be no difference in eligibility requirements for the wide-area and local licenses.

126. *Proposal.* We propose to adopt special provisions in the lower 80 and General Category competitive bidding rules for small businesses. We believe that such provisions can be structured in a way that would increase the likelihood of participation by women- and minority-owned businesses. In adopting designated entity measures for PCS, for example, we noted that such targeted provisions might not be necessary in services that are less capital intensive. We consider 800 MHz SMR to be significantly less capital-intensive than PCS and some other wireless services. In addition, we anticipate that our proposal to license each channel separately on an EA basis will mean lower entry costs for applicants. We also expect that the vast majority of minority and women-owned businesses will be able to qualify as small businesses under any definition we adopt. For example, U.S. Census Data shows that approximately 99 percent of all women-owned businesses and 99 percent of all minority-owned businesses generated net receipts of $1 million or less. Finally, in light of the statute's instruction to ''design and test multiple alternative methodologies'' we believe that it would be suitable to use more uniform measures for the lower 80 and General Category channels, because capital entry requirements are expected to be comparatively lower than other CMRS services. We seek comment on this proposal.

127. We also request comment on the possibility that in addition to small business provisions, separate provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels. To comply with the Supreme Court's ruling in *Adarand*, any race-based classification must be a narrowly tailored measure that furthers a compelling governmental interest. We also believe that gender-based provisions, although not addressed in *Adarand*, should be subject to the broadest possible comment. We therefore ask that commenters discuss whether the capital requirements of the 800 MHz SMR service pose a barrier to entry by minorities and women, and whether assisting women and minorities to overcome such a barrier, if it exists, would constitute a compelling government interest. In particular, we seek comment on the actual costs associated with acquisition, construction, and operation of an 800 MHz SMR system with a service area based on a pre-defined geographic area and the proportion of existing 800 MHz SMR businesses that are owned by women and minorities. We also seek comment on the analytical framework for establishing a history of past discrimination in the 800 MHz SMR industry and urge parties to submit evidence (statistical, documentary, anecdotal or otherwise) about patterns or actual cases of discrimination in this and related communications services. Assuming that a compelling government interest is established, we seek comment on whether separate provisions for women and minorities are necessary to further this interest, and whether such provisions can be narrowly tailored to satisfy the strict scrutiny standard.

c. Reduced Down Payment. 128. *Background.* In the *Competitive Bidding Second R&O*, we noted that reduced upfront payments particularly may be appropriate for auctions of spectrum specifically set aside for designated entities as a means of encouraging participation in the auction, particularly by all eligible designated entities. For broadband PCS, we reduced the upfront payment requirement for designated entities in the entrepreneurs—blocks, observing that requiring full compliance with the upfront payment could discourage auction participation by designated entities.

129. *Comments.* Several commenters support offering a reduced upfront payment option to designated entities. DCL Associates strongly supports availability of reduced upfront payments for minority- and/or women-owned businesses. Dru Jenkinson, Inc., *et al.,* on the other hand, support offering the reduced upfront payment option to all designated entities. To encourage the participation of designated entities in an auction for a geographic area licenses, Pittencrief does not oppose a reduced upfront payment. Southern opines, however, that if the Commission imposes a higher than usual upfront payment, as other commenters suggest, then a reduced upfront payment option will not do much to facilitate participation by designated entities in the auctions for wide-area licenses.

130. *Proposal.* We propose to adopt reduced upfront payments for small businesses for geographic licenses on the lower 80 and General Category channels. We believe that this special provision will encourage participation in the auction by eligible designated entities. We seek comment on this proposal and tentative conclusion.

3. Bidding Credits

131. *Background.* Bidding credits allow eligible designated entities to receive a payment discount (or credit) for their winning bid in an auction. In the *Competitive Bidding Second R&O,* we determined that competitive bidding rules applicable to individual services would specify the entities eligible for bidding credits and the bidding credit amounts for each particular service. As a result, we have adopted a variety of bidding credit provisions for small businesses and other designated entities

in auctionable services. In the nationwide narrowband PCS auction, for example, we established a 25 percent bidding credit for minority and women-controlled businesses, while a 40 percent credit was used in the regional narrowband PCS auction. In broadband PCS, our pre-*Adarand* entrepreneurs' block rules included a 10 percent bidding credit for small businesses, a 15 percent credit for businesses owned by minorities or women, and an aggregated 25 percent credit for small businesses owned by women and/or minorities. In the Multipoint Distribution Service (MDS), we allowed small businesses a 15 percent bidding credit. In the 900 MHz SMR service, we adopted a 15 percent bidding credit for small businesses with gross revenues that are not more than $3 million for the preceding three years and a 10 percent bidding credit for small businesses with gross revenues that are more than $3 million but not more than $15 million for the preceding three years. Finally, in the 220 MHz service, we proposed a 40 percent small business bidding credit for nationwide and regional licenses and a 10 percent bidding credit for smaller EA licenses.

132. *Comments.* Few commenters addressed whether special provisions should be provided for businesses owned by minorities and/or women in the 800 MHz SMR auctions. With respect to bidding credits, Morris, Pittencrief, DCL Associates, Dru Jenkinson, *et al.* and the SBA support the Commission's proposal to provide bidding credits for such entities. DCL Associates, Dru Jenkinson, *et al.*, and the SBA support a forty percent bidding credit for minority-and women-owned entities for wide-area licenses. The SBA further supports affording minority- and women-owned entities a twenty-five percent bidding credit for local SMR licenses. Other commenters, however, oppose giving such entities any type of bidding credit. AMI opines that a bidding credit would be inappropriate, based on the uncertainty of the value of wide-area licenses at auction. Dial Call opposes bidding credits, contending the questionable constitutionality of such provisions only would serve to delay the ultimate resolution of the proceeding.

133. *Proposal.* We seek comment on the appropriate level of bidding credit for the lower 80 and General Category channels, in comparison to the services discussed above. We also seek comment on the possibility of offering ''tiered'' bidding credits for different classes of small businesses. We note that small businesses may vary in their ability to raise capital, depending on their size and gross revenues. By offering levels of bidding credits which depend on the size of the small business, we could increase the likelihood that the full range of small businesses would be able to participate in an auction and potentially provide service. We therefore propose to establish two levels of bidding credits: a 10 percent bidding credit for all small businesses, and a 15 percent credit for small businesses that meet a more restrictive gross revenue threshold. We believe that tiered bidding credits can help achieve our statutory objective under Section 309(j)(3)(B), by providing varying sizes of small businesses with a meaningful opportunity to obtain SMR licenses. We seek comment on this proposal.

134. We also seek comment on the degree to which the revenues of affiliates and major investors should be considered in determining small business eligibility. For example, in determining whether a PCS applicant qualifies as a small business, we include the gross revenues of the applicant's affiliates and investors with ownership interests of twenty-five percent or more in the applicant, but we do not attribute the gross revenues of investors who hold less than a twenty-five percent interest in the applicant unless they are members of the applicant's control group. We seek comment on what attribution standard should be applied to 800 MHz SMR applicants seeking to qualify as small businesses. Would a smaller attribution standard be more appropriate?

135. We propose to make the small business bidding credit available on all lower 80 and General Category Channels that are licensed on a market-area basis. We recognize that this would be a departure from our 900 MHz SMR rules, in which we offered bidding credits to small businesses on any available channel block. Our proposal is consistent, however, with our PCS rules in which bidding credits are available only on designated channels. We seek comment on this proposal. We also seek comment on whether there is a reasonable basis for providing credits on some channels and not others.

4. Installment Payments

136. *Background.* We previously have indicated that in the future we would not necessarily limit the availability of installment payments to small businesses, but would consider offering the installment option (with varying rates and payment schedules) to other classes of designated entities.

137. *Comments.* AMI, CellCall, DCL Associates, Genesee, Pittencrief, and the SBA support the proposal that small businesses be eligible for installment payments. AMI opines that the availability of installment payments may prove useful in facilitating the participation of small operators in the 800 MHz SMR auctions. In addition, CellCall, DCL Associates, and Morris advocate that the Commission afford small businesses reduced upfront payments. Telecellular believes that the Commission should maximize the opportunities for small businesses by granting them bidding credits. Telecellular suggests adoption of the bidding credits provided under the Commission's broadband PCS designated entity provisions.

138. DCL Associates strongly supports the availability of installment payments for minority and/or women-owned businesses. Pittencrief does not object to offering installment payments as a means to encourage participation of designated entities in the auctions for wide-area licenses.

139. *Proposal.* We propose to adopt an installment payment option for small businesses that successfully bid for lower 80 and General Category licenses. As we noted in the *Competitive Bidding Second R&O,* allowing installment payments reduces the amount of private financing needed by prospective small business licensees and therefore mitigates the effect of limited access to capital by small businesses. Under this proposal, licensees who qualify for installment payments would be entitled to pay their winning bid amount in quarterly installments over the ten-year license term, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. In addition, we propose to tailor installment payments to reflect the needs of different size entities. Under our proposal, small businesses with $3 million or less in gross revenues would make interest-only payments for the first five years of the license term, while small businesses with $15 million or less in gross revenues would make interest-only payments during the first two years. We believe that this installment payment structure, which is consistent with our approach in 900 MHz SMR and the upper 200 channels, will enable entities with less immediate access to capital to increase their chances of obtaining licenses. Timely payment of all installments would be a condition of the license grant and failure to make timely payment would be grounds for revocation of the license. We seek comment on this proposal.

5. Set-Aside Spectrum

140. *Background.* In the *Competitive Bidding Eighth R&O,* we determined that designation of an entrepreneur's block for the upper 200 channels was not feasible. In the *Further Notice,* we indicated that an entrepreneurs' block could be feasible for the lower 80 channels which we contemplated would be used primarily by smaller SMR operators.

141. *Proposal.* We tentatively conclude that the lower 80 and the General Category Channels should be designated as an entrepreneurs' block. Such a designation would ensure that smaller SMR operators would have opportunities to maintain competitive and viable systems and also to pursue wide-area licensing strategies should they desire to do so. In our broadband PCS rules where we have authorized entrepreneurs' block licenses, we have required entrepreneurs to comply with financial caps based on gross revenues and total assets over a certain period of time. Because the 800 MHz SMR service is less capital-intensive than PCS, we believe that the entrepreneurs' block financial caps in the 800 MHz SMR service should be set at a lower level than those in broadband PCS. We seek comment on the feasibility of designating the lower 80 and General Category channels as an entrepreneurs' block. We also ask commenters to discuss what would be appropriate financial caps for such entrepreneurs' block.

6. Unjust Enrichment Provisions

142. *Background.* In the *Competitive Bidding Second R&O,* we indicated that licensees that received bidding credits and installment payments and also chose to transfer their licenses to entities not eligible for these benefit, were required to repay the amount of the bidding credit on a graduated basis. No repayment would be required six years after the license grant. In addition, the ineligible transferee would not have the benefit of installment payments, and principal and accrued interest would come due. For the 900 MHz SMR service, we adopted unjust enrichment provisions which required reimbursement of the benefit received by a small business through bidding credits and installment payments in the event that such small business transferred its license to an entity not qualifying as a small business. We previously adopted restrictions on the transfer or assignment of broadband PCS entrepreneurs' block licenses to ensure that designated entities do not take advantage of special provisions by immediately assigning or transferring control of their licenses.

143. *Proposal.* Permitting an immediate transfer of a discounted license to an entity that is not a small business could undermine our basis for offering special provisions to small businesses, but we note that in services with no entrepreneurs' block, we have limited unjust enrichment to repayment of bidding credits or installment payments. We therefore seek comment on whether we should use an approach similar to that adopted for the 900 MHz SMR service or that adopted for broadband PCS entrepreneurs' block licenses.

7. Partitioning

144. The Communications Act directs the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas. In other services, such as broadband PCS and 900 MHz SMR, we have acknowledged this fact by allowing rural telephone companies to partition their licenses on a geographic basis, thereby increasing the likelihood of rapid introduction of service into rural areas. We also afforded rural telephone companies this opportunity under our rules for the upper 200 channels of 800 MHz SMR spectrum. We seek comment on whether we should incorporate similar provisions into our rules for the lower 80 and General Category channels.

145. If we adopt geographic partitioning for rural telephone companies, geographic partitioning should be made available to them on the same basis as in PCS and the upper 200 channels. Such a partitioning scheme would provide rural telephone companies with the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. Under this proposal, rural telephone companies would be permitted to acquire partitioned SMR licenses in one of two ways: (1) By forming bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partitioning the licenses won among consortia participants, or (2) by acquiring partitioned paging licenses from other licensees through private negotiation and agreement either before or after the auction. We also would require that partitioned areas conform to established geo-political boundaries, include all portions of the wireline service area of the rural telephone company applicant, and be reasonably related to the rural telephone company's wireline service area. We also propose to use the definition for rural telephone companies implemented in broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. We seek comment on this proposal. We also seek comment on whether we should extend partitioning options to entities other than rural telephone companies, as we did in MDS and as we proposed for the upper 200 channels in this service.

VIII. Procedural Matters

A. Regulatory Flexibility Analysis

With respect to this *Second Further Notice,* pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* in PR Docket No. 93–144. Written comments on the IRFA were requested. The Commission's final analysis is as follows

147. *Need for and purpose of the action.* The rule making proceeding has implemented Sections 332 and 3(n), respectively, of the Communications Act of 1934, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent framework for all commercial mobile radio services (CMRS).

148. *Issues raised in response to the IRFA.* No comments were submitted in response to the IRFA.

149. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the *First Report and Order* in PR Docket No 93–144, the *Third Report and Order* in GN Docket No. 93–252, and the *Eighth Report and Order* in PP Docket No. 93–253.

B. Paperwork Reduction Act

150. Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 16, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554, or via Internet to dconway@fcc.gov; and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., NW., Washington, DC 20503, or via Internet to fain____t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dorothy Conway, (202) 418–0217, or via Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Title: Amendment to the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Type of Review: Revised collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,195.

Estimated Time Per Response: Approximately 1 to 5 hours.

Total Annual Burden: Approximately 17,254 hours.

Total Annual Cost: $6,468,260 this includes the costs for filing the information electronically or mailing submissions and hiring consultants that may be necessary to respond the requests.

Needs and Uses: The information will be used by the Commission for the following purposes: (a) To determine if the grant or retention of an extended implementation schedule is warranted; (b) to update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the upper 10 MHz block of 800 MHz SMR spectrum; (c) to ensure that incumbents are timely notified of possible relocation thus allowing relocation to occur in an orderly, efficient, and expedient manner; and (d) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz SMR service.

C. Ex Parte Rules—Non-Restricted Proceeding.

151. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

D. Authority.

152. The legal authority for this proposed information collection includes 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), 303(r), 309(j), and 332, as amended. The information collection would not affect any FCC forms. The proposed collection would increase minimally the burden on 800 MHz SMR service applicants.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–3511 Filed 2–13–96; 5:07 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 021296E]

Northeast Multispecies Fishery; Notice of Availability of Amendment 7

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public. This amendment contains a series of management measures designed to rebuild overfished stocks of groundfish, especially cod, haddock and yellowtail flounder. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments must be received on or before April 11, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope ''Comments on Amendment 7 to the Northeast Multispecies Plan.''

Copies of proposed Amendment 7, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis contained within the RIR, and the Final Supplemental Environmental Impact Statement are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C 1801 *et seq.*) requires each regional fishery management council to submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires the Secretary, upon receiving the plan or amendment, to immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Proposed measures in the amendment include: (1) A procedure for setting annual target total allowable catch levels for regulated species; (2) an acceleration of the current days-at-sea effort reduction program; (3) elimination of current exemptions to the effort control program; (4) new closed areas; (5) a restriction on large mesh fisheries with more than a minimal bycatch of regulated species in the Gulf of Maine/Georges Bank and Southern New England regulated mesh areas; (6) a cod, haddock and yellowtail flounder possession limit restriction for vessels less than 30 ft (9.14 m); (7) establishment of the current experimental Nantucket Shoals dogfish fishery on a permanent basis; (8) modification to permit categories and qualifying criteria; (9) restrictions on charter/party and recreational vessels; and (10) revision and expansion of the existing framework provisions. Many of the current provisions to the FMP will be retained as the basic structure for the regulatory program.

NMFS, on behalf of the Secretary, disapproved three measures in

Amendment 7 before publishing the notice of availability as authorized under section 304(a)(1)(A) of the Magnuson Act. These measures include: (1) The additional allowance of days-at-sea (DAS) for trawl vessels enrolled in the Individual DAS category that use 8–inch (20–cm) mesh, (2) the 300–lb (136–kg) possession allowance of regulated species for trawl vessels that use an 8–inch (20–cm) mesh in an exempted fishery, and (3) the establishment of a limited access category for vessels that fished in the Possession Limit Open Access category under Amendment 5.

Day 1 of this amendment is February 12, 1996. Proposed regulations to implement this amendment are scheduled to be published within 15 days of this date.

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

Dated: February 12, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–3552 Filed 2–13–96; 1:09 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 33
Friday, February 16, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 9, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Agricultural Marketing Service

Title: Regulations Governing the Grading of Shell Eggs.

Summary: The regulations provide a voluntary program for grading shell eggs on the basis of U.S. standards, grades, and weight classes.

Need and Use of the Information: The information will be used by the agency to administer and to provide the services of the voluntary program.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government

Number of Respondents: 753.

Frequency of Responses: On occasion, Monthly, Semi-annually, Annually, Daily

Total Burden Hours: 6,301.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–3514 Filed 2–15–96; 8:45 am]

BILLING CODE 3410–01–M

Advisory Committee on Agricultural Concentration

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish a Federal Advisory Committee.

SUMMARY: In response to the need for advice on concentration and vertical integration in the agricultural sector, the Secretary of Agriculture has decided to establish an advisory committee on agricultural concentration. The purpose of the committee is to provide advice regarding whether agricultural concentration exists and if so, the causes and effects of such concentration. Further, the committee is to provide advice related to the need for new legislation.

EFFECTIVE DATE: This notice is effective February 16, 1996.

NOTICE OF MEETING: The first meeting of this Committee will be Tuesday, February 27, 1996, from 9:30 a.m. to 4:30 p.m., in Room 104–A of the USDA Administration Building, 14th & Independence Avenue SW., Washington, D.C. The Committee will address business and organizational issues dealing with the committee, including approval for a second meeting time and place in March, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Claffey, Assistant Deputy Administrator, Agricultural Marketing Service, Room 3064–S, 14th and Independence Avenue SW., Washington, D.C. 20250–1400, (202) 720–4276.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture intends to establish the Advisory Committee on Agricultural Concentration. The purpose of the committee is to make findings and recommendations regarding the need for modification of laws to address any identified concentration or vertical integration in the agricultural sector, regarding the adequacy of price discovery or reporting in the livestock and poultry industries, regarding any necessary modification to departmental programs in order to address concentration, and regarding actions to take to ensure adequate rail car availability throughout the year.

The committee will consist of 21 members including: a Chairperson; two Vice Chairpersons; eight representatives of producers from the cattle, hog, lamb, poultry, and grain sectors; two representatives of packers and processors from the livestock, poultry, and grain sectors; two representatives of shippers, handlers, and transporters consisting of one each from grain elevator and railroad sectors; one representative of the retailing sector; two individuals with expertise in economics, competition, and/or finance; and three representatives of State government.

The committee is in the public interest in connection with the duties and responsibilities of the Department of Agriculture. Concentration in the agricultural sector is receiving increased attention in terms of its effect throughout the entire food industry.

All appointments to the committee will be made by the Secretary. Equal opportunity practices in line with Department policies will be followed in all appointments.

Dated: February 12, 1996.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 96–3589 Filed 2–14–96; 8:45 am]

BILLING CODE 3410–01–P

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agriculture Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Nu Way Flume and Equipment Company of Delta, Colorado, an exclusive license for U.S. Patent Number 5,156,489 (U.S. Patent application Serial No. 07/770,258) issued October 20, 1992 entitled ''Adjustable Flume.'' Notice of Availability for U.S. Patent application Serial No. 07/770,258 was published in the Federal Register on December 17, 1991.

DATES: Comments must be received on or before, April 16, 1996.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West,

Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Nu Way Flume and Equipment Company has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–3527 Filed 2–15–96; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112995E]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of scientific research permit (P278F).

SUMMARY: Notice is hereby given that Dr. Brent S. Stewart, Hubbs Sea World Research Institute, 2595 Ingraham St., San Diego, CA 92109, has been issued a permit to take two species of marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: On September 29, 1995, a document was published in the Federal Register (60 FR 50555) that a request for a scientific research permit had been submitted by the above-named individual. The request was to take two species of marine mammals over a 5-year period. Twenty common dolphins (*Delphinus delphis*) and 20 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) would be captured in southern California waters, fitted with satellite-linked radio transmitter tags, biologically sampled and scanned with an ultrasound device, released, and tracked. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 31, 1996.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–3521 Filed 2–15–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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 and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 18, 1996.

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 13, December 1 and 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 56987, 61685 and 67351) 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 and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c 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 and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for Fort Bragg, North Carolina)
Office and Miscellaneous Supplies
(Requirements for Fort Jackson, South Carolina)
Dispenser, Tape
7520–00–240–2417

Service

Assembly of Backpack Pump Outfit, General Services Administration, Region 7, Fort Worth, TX

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–3598 Filed 2–15–96; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 18, 1996.

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:

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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity 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 commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the 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 commodity 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 commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Stamp, Custom, Pre-inked
7520–01–381–8027
(Requirements for the GSA Customer Supply Centers)
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Services

Janitorial/Custodial, Building 151, Picatinny Arsenal, New Jersey
NPA: Occupational Training Center of Morris County, Cedar Knolls, New Jersey
Janitorial/Custodial, Serrenti Memorial USARC, Scranton, Pennsylvania
NPA: Allied Health Care Services, Scranton, Pennsylvania
Linen Management, Basewide, Fort Hood, Texas
NPA: Goodwill Contract Services, Inc., Waco, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–3597 Filed 2–15–96; 8:45 am]

BILLING CODE 6820–33–P

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: March 18, 1996.

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 October 20, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 5421) of proposed addition to the Procurement List.

Comments were received from a company which was the contractor for the service at the time it was proposed for addition to the Procurement List. This company's contract for the service, which lasted for five years, expired October 31, 1995. The company stated that a month previously it had unexpectedly lost another Government janitorial contract which represented the majority of the company's revenues at that time. As a result of losing these two contracts, the income of this family-owned company was substantially reduced and, in the opinion of the company's accountant, its ability to meet its financial obligations was severely impaired. The company, which claimed it had performed its contract well, also noted that Government janitorial business opportunities generally are declining, and the Committee's program has taken many of those remaining, such as the janitorial requirement for the rest of the installation where the contract at issue was performed. Accordingly, the company believes that addition of this service to the Procurement List would have a severe adverse impact on the company.

The service has been provided since the end of the commenting company's contract by the nonprofit agency which will perform the service under the Committee's program. The service has been performed under two small purchase contracts, for the periods November–December 1995 and January–February 1996, respectively. The current contract was awarded after the nonprofit agency won a competition with the commenting company and another bidder.

The Committee is required to consider impact of an addition to the Procurement List on the *current* contractor for the commodity or service being added. The commenting company is not the current contractor because it did not receive the contract, when it had the opportunity to do so through the most recent competitive bidding process.

Because no one is guaranteed a contract under the competitive bidding system, a company which is not the current contractor is only losing the opportunity to bid on future contracts because of an addition to the Procurement List. The Committee does not consider losing this opportunity to be severe adverse impact.

The Committee also does not agree with the company's assessment of its performance on its contract to perform this service. Contrary to what the company claimed, the Government contracting office for the service informed the Committee that the company's performance was bad enough that contracting personnel would not have recommended a subsequent contract award to the company for the service.

The originally proposed fair market price for the service under the Committee's program has been reduced to reflect the nonprofit agency's award price for the current contract. The nonprofit agency informed the Committee that one reason the reduced

fair market price is acceptable to the nonprofit agency is that the earlier price included a charge to restore the buildings from the condition the commenting company's poor performance had left them in. This restoration was completed during the nonprofit agency's first contract for the service.

Addition of this service to the Procurement List will guarantee the creation of jobs for people with severe disabilities, who have an unemployment rate far above people without severe disabilities. The Committee believes that this outweighs the possible loss of employment by the commenting company's owners and employees, as they are more likely to find other employment than people with severe disabilities would be, even considering the state of the market for janitorial 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 service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c 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 will not 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: Janitorial/Custodial DITCO Buildings 3600, 3178 and 3179 Scott Air Force Base, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–3596 Filed 2–15–96; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

El Paso Natural Gas Co.; Notice of Application

[Docket No. CP96–173–000]

February 12, 1996.

Take notice that on February 6, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–173–000 an application pursaunt to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Natural Gas Pipeline Company of America, which was authorized in Docket No. CP78–239, *et al.*, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso proposes to abandon the transportation service because it is no longer needed and has terminated on own its terms on May 1, 1989.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1996, 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 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 El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3532 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–165–000]

Florida Gas Transmission Co.; Notice of Request Under Blanket Authorization

February 12, 1996.

Take notice that on January 31, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed, in the above docket, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212), for authorization to construct and operate a new delivery point and realign natural gas volumes under its blanket authority issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct and operate a delivery point near its existing 20-inch and 26-inch mainlines in Indian River County, Florida to serve City Gas Company of Florida, a Division of NUI Corporation (City Gas) under two firm transportation service agreements pursuant to FGT's FERC Rate Schedules FTS–1 and FTS–2. FGT also proposes to realign Maximum Daily Quantities and Maximum Daily Transportation Quantities to the proposed delivery point from the Cutler Ridge and St. Lucie Divisions.

FGT states that its tariff allows additional delivery points and the realignment of gas volumes. FGT also states that its gas deliveries to City Gas would remain within the currently authorized levels and have no disadvantageous impact on FGT's other existing customers.

FGT states that City Gas would reimburse it for all costs directly and indirectly incurred by FGT for the

construction which is estimated to be $128,200 and includes federal income tax gross-up.

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 Rules of Practice and Procedure (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 is deemed to be authorized effective on 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. 96–3531 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–175–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

February 12, 1996

Take notice that on February 7, 1996, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP96–175–000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade an existing meter station at Geismar, Ascension Parish, Louisiana, under Koch's blanket certificate issued in Docket No. CP82–420–000 [1] 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.

Koch states that the replacement of existing regulators with larger regulators will better accommodate deliveries to the Borden Chemical & Plastics Plant (Borden) on behalf of Koch Gas Services (KGS). Koch states it will increase delivery capacity at the meter station from 40,000 to 82,000 MMBtu per day to Borden, under Koch's ITS Rate Schedule (ITS). Koch states that it currently provides interruptible service to KGS pursuant to Koch's blanket transportation certificate[2]; and that, the ITS agreement was filed with the Commission in Docket No. ST95–2504. Koch further states that the volumes proposed to be delivered for KGS will be within KGS's currently effective entitlement.

Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existed customers; and that its tariff does not prohibit the proposed modification of facilities. Koch states that the estimated cost is $4,866.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3533 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–164–000]

Tennessee Gas Pipeline Co.; Notice of Application and Site Visit

February 12, 1996.

Take notice that on January 31, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam St., Houston, Texas 77002, filed in Docket No. CP96–164–000 an application pursuant to Section 7 of the Natural Gas Act for authority to: (1) Transport up to 90,000 Dth of natural gas per day on a firm basis for Distrigas of Massachusetts Corporation (DOMAC); (2) construct and operate facilities to provide such service; and (3) abandon all or any part of the authorized facilities or service upon the expiration of the underlying contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to transport gas for DOMAC from DOMAC's LNG plant in Everett, Massachusetts to fifteen delivery points in Zone 6 on Tennessee's pipeline system, commencing on November 1, 1998, in the following quantities:

Date	Quantity (Dth/day)
November 1, 1998	55,000
November 1, 1999	70,000
November 1, 2000	80,000
November 1, 2001	90,000

To provide the service, Tennessee proposes to construct and operate 7.54 miles of 20-inch pipeline and related facilities from DOMAC's LNG plant to a point on Tennessee's Revere lateral in Saugus, Massachusetts at an estimated cost of $25,871,276.

Tennessee would charge DOMAC its Part 284 rate under Rate Schedule FT–A for the service, and requests a binding determination from the Commission that the costs of the facilities will not be rolled-in to Tennessee's systemwide cost of service for the 15-year term of the proposed service.

Take further notice that on March 4, 1996, the Office of Pipeline Regulation staff, accompanied by representatives of Tennessee, will conduct a site visit to the locations of facilities being proposed a Tennessee in the DOMAC Project. The proposed facilities are located in the cities of Revere, Malden and Everett, and the town of Saugus, Massachusetts. Those planning to attend must provide their own transportation. For further information, call Ms. Lauren O'Donnell, (202) 208–0325.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1996, file with the Federal Energy Regulatory Commission (888 First Street, NE., Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

[1] *See*, 20 FERC ¶ 62,416 (1982).

[2] *See*, 42 FERC ¶ 62,027 (1988).

filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and grant of certificate 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 Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3530 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–41–000, et al.]

Dominican Power Partners, LDC, et al.; Electric Rate and Corporate Regulation Filings

February 9, 1996.

Take notice that the following filings have been made with the Commission:

1. Dominican Power Partners, LDC

[Docket No. EG96–41–000]

On February 5, 1996, Dominican Power Partners (DPP) (c/o Jacquelyne M. Rocan, Akin, Gump, Strauss, Hauer & Feld, L.L.P., 711 Louisiana Street, Suite 1900, Houston, Texas 77022), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

DPP is a Cayman Island limited duration company that is engaged directly and exclusively in owning and operating the Los Mina electric generating facility (Los Mina facility) located in Santo Domingo, Dominican Republic. The Los Mina facility will consist of two gas turbine generators, rated at approximately 118 MW ISO each, a metering station, and associated transmission interconnection components.

Comment date: February 29, 1996, 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. IES Utilities Inc.

[Docket No. ER95–1244–000]

Take notice that on February 2, 1996, IES Utilities Inc. tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. American Biomass Corporation

[Docket No. ER96–639–000]

Take notice that on January 26, 1996, American Biomass Corporation tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER96–761–000]

Take notice that on January 18, 1996, Idaho Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER96–951–000]

Take notice that on January 29, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to the Negotiated Capacity and Energy service schedule of its Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 2. Wisconsin Electric proposes to offer additional kinds of wholesale transactions, including options, diversity exchanges, fixed rate per megawatthour sales, and fuel as compensation for energy sales. Wisconsin Electric has also added a section to its tariff regarding customer creditworthiness.

Wisconsin Electric respectfully requests an effective date of April 1, 1996.

Copies of the filing have been served on all customers under its tariff as well as the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER96–952–000]

Take notice that on January 29, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to enable the opportunity to sell electric capacity and/or energy to Eligible Entities for resale at negotiated rates, capped by ceilings justified under traditional cost of service methodologies.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company, Massachusetts Electric Company

[Docket No. ER96–953–000]

Take notice that on January 29, 1996, New England Power Company (NEP) and Massachusetts Electric Company (MECo) filed an Interconnection agreement among NEP, MECo, and the Massachusetts Water Resources Authority (MWRA). The Agreement memorializes a long-standing relationship among the parties under which MWRA has interconnected its MDC Cosgrove Project in Clinton, Massachusetts, with the systems of NEP and MECo. The project has interconnected with MECo's distribution system at a voltage level of 13.8 kV off of feeder numbers 216W1 and 216w2. NEP has requested an effective date of the day after the day of the filing.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96–954–000]

Take notice that on January 29, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which LG&E Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–955–000]

Take notice that on January 29, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreement under which Sonat Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER96–956–000]

Take notice that on January 29, 1996, the American Electric Power Service

Corporation (AEPSC), tendered for filing an amendment to the Station Agreement dated January 1, 1968, as amended, among Ohio Power Company, Buckeye Power, Inc. and Cardinal Operating Company.

The Amendment details the method for recovery of emission allowance costs associated with the Station Agreement dated January 1, 1968, as amended, by returned-in-kind allowances. AEPSC requests an effective date of January 1, 1995.

A copy of the filing was served upon Buckeye Power, Inc., Cardinal Operating Company and the Public Utilities Commission of Ohio.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER96–958–000]

Take notice that on January 22, 1996, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and Delhi Energy Services, and KU and Morgan Stanley Capitol Group, Inc. under its TS Tariff. KU requests an effective date of December 26, 1995.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Texas Utilities Electric Company

[Docket No. ER96–961–000]

Take notice that on January 26, 1996, Texas Utilities Electric Company (TU Electric), tendered for filing revisions to transmission service agreements (TSA's) previously filed herein.

TU Electric requests a January 1, 1996 effective date for the revisions. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on LG&E Power Marketing, Inc., Enron Power Marketing, Inc., and Electric Clearinghouse, Inc., as well as the Public Utility Commission of Texas.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Texas Utilities Electric Company

[Docket No. ER96–962–000]

Take notice that on January 26, 1996, Texas Utilities Electric Company (TU Electric), tendered for filing revisions to transmission service agreements (TSA's) previously filed herein.

TU Electric requests a January 1, 1996, effective date for the revisions. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Western Gas Resources Power Marketing, Inc. and Destec Power Services, Inc., as well as the Public Utility Commission of Texas.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Public Service Company

[Docket No. ER96–963–000]

Take notice that on January 29, 1996, Maine Public Service Company, tendered for filing a service agreement under its open access tariff.

Comment date: February 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER96–964–000]

Take notice that on January 29, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements between PGE and K N Marketing, Inc., and AIG Trading Corporation.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective February 1, 1996.

Copies of this filing were served upon the entities listed in the body of the filing letter.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER96–965–000]

Take notice that on January 29, 1996, Portland General Electric Company (PGE), tendered for filing a Revision No. 6 to Exhibit C and Revision No. 1 to Exhibit D of the General Transfer Agreement for Integration of Resources between the Bonneville Power Administration and PGE, Contract No. DE–MS79–89BP92273, (Portland General Electric Rate Schedule FERC No. 185).

Copies of the filing have been served on the Bonneville Power Administration.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER96–966–000]

Take notice that on January 29, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements, executed by AEPSC and the following parties, under the AEP Companies' Power Sales and/or Point-to-Point Transmission Service Tariffs: (1) AES Power, Inc., (2) American Municipal Power-Ohio, Inc., (3) Catex-Vitol Electric, L.L.C., (4) Citizens Lehman Power Sales, (5) CNG Power Services Corp., (6) Duke Power, (7) East Kentucky Power Cooperative, Inc. (8) Engelhard Power Marketing, Inc., (9) Enron Power Marketing, Inc., (10) Heartland Energy Services, Inc., (11) Indiana Municipal Power Agency, (12) Industrial Energy Applications, Inc. (13) Louis Dreyfus Electric Power, Inc. (14) Michigan Public Power Agency, (15) NorAm Energy Services, Inc., (16) PECO Energy Company, (17) Sonat Power Marketing, Inc., and (18) Wisconsin Electric Power Company (Parties).

The Power Sales Tariff has been designated as FERC Electric Tariff, Original Volume No. 2, effective October 1, 1995. AEPSC expects the Point-to-Point Transmission Tariff will be designated in Docket No. ER93–540–000 to supplement or replace AEPSC FERC Electric Tariff Original Volume No. 1. AEPSC requests waiver of notice to permit the Service Agreements to be made effective as of January 1, 1996.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER96–967–000]

Take notice that on January 29, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during January 1, 1996 through January 15, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER96–968–000]

Take notice that on January 30, 1996, Delmarva Power & Light Company (DPL), tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Public Service Electric and Gas Company (PSE&G) and DPL, dated January 31, 1996. This contract sets forth the terms under which DPL and PSE&G may purchase or exchange PJM installed capacity credits. In order to

optimize the economic advantages to both DPL and PSE&G, DPL requests the Commission to waive its customary notice period and allow this Agreement to become effective on January 31, 1996.

DPL states that a copy of this filing has been sent to PSE&G and will be furnished to the New Jersey Board of Public Utilities, the Delaware Public Service Commission, the Maryland Public Service commission, and the Virginia State Corporation Commission.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER96–969–000]

Take notice that on January 30, 1996, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies,'' tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers: Cenergy, Inc., Global Petroleum Corporation, Sonat Power Marketing, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–977–000]

Take notice that on January 30, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedules FERC No. 92 and FERC No. 96.

The proposed supplement No. 7 to Rate Schedule FERC No. 96 decreases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $2,462,000 annually based on the 12-month period ending March 31, 1997.

The proposed supplement No. 6 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 4 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), decrease the rates and charges for the service by $146,000 annually based on the 12-month period ending March 31, 1997.

The proposed decreases are a part of a Company-wide general electric rate change application which Con Edison filed to implement rates for the second year of a multi-year rate plan previously approved by the New York Public Service Commission (NYPSC) and which is pending before the NYPSC.

Although the proposed supplements bear a nominal effective date of April 1, 1996, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1996, of the rate changes, if any, authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: February 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street 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. 96–3529 Filed 2–15–96; 8:45 am]

BILLING CODE 3717–01–P

[Project No. 2232–303; North Carolina and South Carolina]

Duke Power Company; Notice of Availability of Environmental Assessment

February 12, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed Duke Power Company's Revised Shoreline Management Plan for the Catawba-Wateree Hydroelectric Project located on the Catawba-Wateree River in North and South Carolina. The Plan addresses 1,635 miles of shoreline area for 11 reservoirs, focusing primarily on land use classification, recreational shoreline uses, boating access, and shoreline aesthetics. The 11 reservoirs, in order from north to south, are:

North Carolina	South Carolina
1. Lake James	7. Lake Wylie.
2. Lake Rhodhiss	8. Fishing Creek Lake.
3. Lake Hickory	9. Great Falls Lake.
4. Lookout Shoals Lake.	10. Rocky Creek Lake.
5. Lake Norman	11. Lake Wateree.
6. Mountain Island Lake..	

In the Plan, the licensee proposes certain land uses at the 11 project reservoirs: commercial/non-residential; commercial/residential; residential; recreational; project operations; natural areas; and environmental areas.

In developing the Plan, the licensee evaluated and classified existing and future shoreline and lake use at the 11 reservoirs. The projected use levels are based on the classification of existing shoreline development and the results of a boating and lake use study.

The staff prepared an Environmental Assessment (EA) for the proposed plan and concluded that the effects on environmental resources would be nonsignificant if our recommendations are implemented, and the recreational opportunities at the project would be enhanced with additional facilities. On the basis of the independent environmental assessment, approval of the Plan would not constitute a major

federal action that would significantly affect the quality of the environment.

Copies of the EA are available for review in the Reference and Information Center, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3534 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8679–004 California]

Sequoia Land and Power, Inc.; Notice of Availability of Environmental Assessment

February 12, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an exemption surrender application for the Sequoia Ranch Project, No. 8679–004. The Sequoia Ranch Project is located on the Middle Fork of the Tule River in Tulare County, California. The exemptee is applying for a surrender of the exemption because the project is not economically viable. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 1C–1, 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 20 days from the date of this notice. Any comment, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 8679–004 to all comments. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3535 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11359–001 New Hampshire]

Northrop Engineering Corp.; Notice of Surrender of Preliminary Permit

February 12, 1996.

Take notice that the Northrop Engineering Corporation, permittee for the Murphy Project No. 11359, located on the Connecticut River in Coos County, New Hampshire, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 30, 1995, and would have expired on April 30, 1998. The permittee states that the project would be economically infeasible.

The permittee filed the request January 25, 1996, and the preliminary permit for Project No. 11359 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3536 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11479–001 New York]

Trenton Falls Hydroelectric Co.; Notice of Surrender of Preliminary Permit

February 12, 1996.

Take notice that the Trenton Falls Hydroelectric Company, permittee for the Hawkinsville Project No. 11479, located on the Black River in Oneida County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 30, 1994, and would have expired on October 31, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on January 24, 1996, and the preliminary permit for Project No. 11479 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3534 Filed 2–15–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5423–7]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The EPA has made two proposed determinations that reductions in expenditures of non-Federal funds for the Bay Area Air Quality Management District (BAAQMD) in San Francisco, California are a result of non-selective reductions in expenditures. These determinations, when final, will permit the BAAQMD to keep the financial assistance awarded to it by EPA for FY–95 and to be awarded financial assistance for FY–96 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 18, 1996.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Valerie Cooper, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1072.

FOR FURTHER INFORMATION CONTACT: Valerie Cooper, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1294.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the BAAQMD, whose jurisdiction includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and part of Solano and Sonoma Counties in California, to aid in the operation of its air pollution control programs. In FY'94, EPA awarded the BAAQMD $1,608,900 which represented approximately 5% of the BAAQMD's budget, and in FY'95

$1,320,885 which represented approximately 5% of the BAAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–95 section 105 application, which EPA reviewed in July 1994, the BAAQMD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $26,757,937. This MOE would have been sufficient to meet the MOE requirements of the CAA. In January of 1996, however, the BAAQMD submitted to EPA documentation which shows that its actual FY–95 MOE was $26,471,610. This amount represents a shortfall of $286,327 from the MOE of the preceding fiscal year. In addition, the projected FY–96 MOE of $24,778,132 represents a shortfall of $1,693,478 from the FY–95 MOE of $26,471,610. In order for the BAAQMD to be eligible to keep its FY–95 grant and to be awarded an FY–96 grant, EPA must make a determination under section 105(c)(2).

In FY–95, the BAAQMD determined that its MOE would decrease because revenues from property taxes and permit fees decreased. For FY–96 the BAAQMD once again determined that there would be continued reductions in these revenue sources. The reductions resulted in the loss of two permanent positions and the furlough of fifteen long-term temporary staff. In addition to the reduction in revenues, a general reserve and fund balance account were no longer available (because they had been depleted) to make up for shortages as they had in previous years. These were the contributing factors to a reduction in BAAQMD's FY–95 and FY–96 MOE level.

The BAAQMD's MOE reductions resulted from a loss of revenue from property taxes and permit fees. This loss of revenue and MOE reduction resulted from circumstances beyond the District's control. EPA proposes to determine that the BAAQMD's lower FY–95 and FY–96 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the BAAQMD to keep the funds received from EPA for FY–95 and to be eligible for an FY–96 award.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 18, 1996 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 18, 1996. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: February 6, 1996.

David P. Howekamp,

Director, Air and Toxics Division.

[FR Doc. 96–3585 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5422–3]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Pima County, Arizona, Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the Pima County, Arizona, Department of Environmental Quality (PDEQ) in Tucson, Arizona is a result of a non-selective reduction in expenditures. This determination, when final, will permit the PDEQ to be awarded financial assistance for FY–96 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 18, 1996.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1246.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the PDEQ to aid in the operation of its air pollution control programs. In FY–95, EPA awarded the PDEQ $331,207, which represented approximately 25.4% of the PDEQ's air pollution control program budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In January of 1996, the PDEQ submitted to EPA final documentation which shows that its actual FY–95 expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) were $973,959. In its FY–96 § 105 grant application the PDEQ projected MOE of $537,821. This amount represents a shortfall of $436,138 from the MOE for the preceding fiscal year (FY–95). In order for the PDEQ to be eligible to be awarded its FY–96 grant, EPA must make a determination under section 105(c)(2).

In December 1995, the PDEQ submitted documentation to EPA establishing that its reduced expenditures for FY–96 result from a loss of permit revenue, due to changes to Pima County's air quality rules mandated by new Arizona state law which required Arizona localities to amend their air quality rules that were more stringent than state rules. Rule changes adopted on November 14, 1995

by the Pima County Board of Supervisors included both raising permit thresholds and lowering fee schedules to make them identical in structure to the state program. Due to these changes, there will be a severe decline in permit revenue in FY–96.

The PDEQ's MOE reduction resulted from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the PDEQ's lower FY–96 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR section 35.210, this determination will allow the PDEQ to be awarded § 105 grant funds for FY–96.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 18, 1996 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 18, 1996.

If no written request for a hearing is received, EPA will proceed to a final determination. While notice of the final determination will not be published in the Federal Register, a copy of the determination can be obtained by sending a written request to Douglas McDaniel at the above address.

Dated: February 3, 1996.

David P. Howekamp,

Director, Air and Toxics Division, U.S. EPA, Region 9.

[FR Doc. 96–3582 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5422–2]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Phase II, IIb, and V for the State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved State Public Water System Supervision (PWSS) Program. Nebraska has adopted regulations for the (1) synthetic organic chemicals and inorganic chemicals (Phase II), that correspond to the National Primary Drinking Water Regulations published by EPA on January 30, 1991 (56 FR 3526); (2) volatile organic chemicals (Phase IIb), that correspond to the National Primary Drinking Water Regulations published by EPA on July 1, 1991, (56 FR 32112); and (3) synthetic organic chemicals and inorganic chemicals (Phase V), that correspond to the National Primary Drinking Water Regulations published by EPA on July 17, 1992 (57 FR 31776).

The EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon an evaluation of Nebraska's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Robert Morby, Chief; Drinking Water/Groundwater Management Branch; U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101–2798.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Nebraska. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Nebraska. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water/Groundwater Management Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, and the Nebraska Department of Health, 301 Centennial Mall South, 3rd Floor, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: David Horak, EPA Region VII, Drinking Water/Groundwater Management Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, telephone (913) 551–7970.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: December 18, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 96–3282 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5413–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed February 5, 1996 Through February 9, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960059, Draft EIS, MMS, AL, CA, DE, LA, NJ, AK, CT, FL, MS, NY, NC, RI, VA, OR, TX, WA, Gulf of Mexico and Offshore Alaska Outer Continental Shelf (OCS) Oil and Gas Leasing Program 1997 to 2002 for 16 Lease Sales on Five-Year Leasing Program, Due: May 09, 1996, Contact: Richard Wildermann (703) 787–1674.

EIS No. 960060, Final EIS, DOE, WY, CO, NM, UT, AZ, Salt Lake City Area

Integrated Hydroelectric Power Plants Projects, Implementation, WY, CO, NM, UT and AZ, Due: March 18, 1996, Contact: David Sabo (801) 524–5392.

EIS No. 960061, Draft EIS, FRC, MI, Thunder Bay River Hydroelectric Project (FERC No. 2404) and Hillman Dam Project (FERC. No. 2419) Application for New License, Alpena, Montmorency, Alcona, Preque Isle and Oscada Counties, MI, Due: April 16, 1996, Contact: Patrick K. Murphy (202) 219–2659.

EIS No. 960062, Draft EIS, DOA, MI, IN, Programmatic EIS—La Grange County Sewer District Sanitary Sewer Collection System and a Wastewater Treatment System, Construction and Operation, MI and IN, Due: April 01, 1996, Contact: Mark S. Plank (202) 720–1649.

EIS No. 960063, Final EIS, FHW, CA, Alameda Railroad Corridor Consolidated Project, Construction from Downtown Los Angeles to the Badger Avenue Bridge/CA–91, Funding, COE Section 404 Permit and ICC Approval, Los Angeles County, CA, Due: March 18, 1996, Contact: Glenn Clinton (916) 551–1310.

EIS No. 960064, Final EIS, AFS, ID, Fish Bate Timber Sale, Implementation, North Fork Clearwater River, Clearwater National Forest, North Fork Ranger District, Clearwater County, ID, Due: March 18, 1996, Contact: Jennefer L. Sunberg (208) 476–3775.

EIS No. 960065, Draft EIS, FHW, MO, MO–21 Corridor Transportation Improvement, between Otto to DeSoto, COE Section 404 Permit and NPDES Permit, Jefferson County, MO, Due: April 12, 1996, Contact: Don Neumann (573) 636–7104.

EIS No. 960066, Draft EIS, FHW, CA, U.S. Highway 101 Transportation Improvement Project, between Vineyard Avenue to Johnson Drive, Funding, in the Cities of Oxnard and San Buenaventura, Ventura County, CA, Due: April 01, 1996, Contact: C. Glenn Clinton (916) 498–5037.

EIS No. 960067, Draft EIS, AFS, CO, Routt National Forest Land and Resource Management Plan, Implementation, Grand, Routt, Rio Blanco, Jackson, Moffat and Garfield Counties, CO, Due: May 16, 1996, Contact: Jerry E. Schmidt (970) 879–1722.

EIS No. 960068, Final EIS, BLM, NV, Round Mountain Mine Mill and Tailings Facility, Construction and Operation for the Smoke Valley Operation, Plan of Operations Amendment Approval, Nye County, NV, Due: March 18, 1996, Contact: Christopher Stubbs (702) 635–4000.

EIS No. 960069, Final EIS, BLM, OR, Tucker Hill Perlite Quarry Project, Implementation, Mining Plan of Operation Approval, Town of Lakeview, Lake County, OR, Due: March 18, 1996, Contact: Ted Davis (503) 947–2177.

EIS No. 960070, Draft EIS, GSA, GA, Savannah Federal Building—United States Courthouse, Site Selection and Construction of Annex within the existing Federal Building Courthouse, Savannah, GA, Due: April 01, 1996, Contact: Phil Youngberg (404) 331–1831.

EIS No. 960071, Final EIS, FHA, WV, Spring Hills Subdivision Housing Project, Construction, Funding, Charlestown, WV, Due: March 18, 1996, Contact: Robert D. Lewis (304) 291–4248.

EIS No. 960072, Draft EIS, USN, CA, Port Hueneme Naval Civil Engineering Laboratory (NCEL) Disposal and Reuse, Implementation, Ventura County, CA, Due: April 01, 1996, Contact: Mary Doyle (415) 244–3024.

EIS No. 960073, Final EIS, FAA, WA, Seattle-Tacoma (Sea-Tac) International Airport Master Plan Update for Development Actions, Funding, Airport Layout Plan Approval and COE Section 404 Permit, King County, WA, Due: March 18, 1996, Contact: Dennis Ossenkop (206) 227–2611.

EIS No. 960074, Draft EIS, COE, MS, Jackson Metropolitan Area Flood Control Project, In Portions of Pearl River Basin, Implementation, Madison, Hinds and Rankin Counties, MS, Due: April 01, 1996, Contact: Greg Ruff (601) 631–5456.

EIS No. 960075, Draft EIS, FHW, OH, Putnam Street Bridge Replacement across the Muskingum River, Construction and Funding, Marietta, Washington County, OH, Due: April 01, 1996, Contact: William Jones (614) 469–5877.

Amended Notices

EIS No. 950593, Draft EIS, AFS, CA, Dinkey Allotment Livestock Grazing Strategies, Implementation, Sierra National Forest, Fresno County, CA, Due: March 12, 1996, Contact: Terry Elliott (209) 297–0706. Published FR 01–26–96—Review Period Extended.

EIS No. 960019, Draft Supplement, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvements, Updated Information, I–95 from the Telegraph Road/Capital Beltway Interchange in Alexandria, VA to the MD–210 Capital Beltway Interchange in Oxon Hill, MD, Funding, COE Section 10 and 404 Permits and CGD Bridge Permit, Fairfax County, VA; Prince George's County, MD and DC, Due: March 26, 1996, Contact: David C. Lawton (410) 962–2542. Published FR 01–26–96—Review Period Extended.

EIS No. 960030, Final EIS, DOE, CA, NV, Adoption—Alturas 345 Kilovolt (kv) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Contact: Richard Stone (503) 230–3797. Published FR-02–02–96—This EIS was Adopted by the Bonneville Power Administration (BPA). BPA was a Cooperating Agency on this Project. Recirculation of the Document was not necessary. Therefore there is no Comment Period for this EIS.

Dated: February 13, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–3658 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00427; FRL–5351–2]

Worker Protection Standard; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: EPA intends to hold public meetings to solicit feedback from workers, owners, and all other interested individuals and groups on regulations designed to protect the health of 3.5 million agricultural workers from pesticide exposure. The meetings will be held at the following locations: California, the District of Columbia, Florida, Indiana, Mississippi, Missouri, Pennsylvania, Puerto Rico, Texas, and Washington. The first meeting is scheduled for February 22, 1996, in Winter Haven, Florida. The meetings will serve as one of the initial steps taken by EPA as part of its stated commitment to continually monitor and evaluate the impact and performance of the Worker Protection Standard (WPS) program. The public meetings are designed to provide an opportunity for agricultural workers and owners and all of those directly affected by WPS to relay their actual experiences and give their perceptions concerning its first full year of implementation. By reaching out to those on the frontlines and for whom

these regulations are intended to provide public health protection, EPA will better understand how the program is working and where meaningful improvements should be made.

DATES: The first meeting will be held on February 22, 1996.

ADDRESSES: The first meeting will be held at the Florida Citrus Building, Nora Mayo Hall, 500 3rd St., NW., Winter Haven, Florida. Registration will begin at 5 p.m. and the public meeting will begin at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Jeanne Heying, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–7164 or your EPA WPS contact in regions hosting public meetings.

Puerto Rico meeting: Fred Kozak, EPA Region 2, (908) 321–6769.

Pennsylvania and Washington, DC meetings: Magda Hunt, EPA Region 3, (215) 597–0442.

Florida and Mississippi meetings: Jane Horton, EPA Region 4, (404) 347–3555.

Indiana meeting: Don Baumgartner, EPA Region 5, (312) 886–7835.

Texas meeting: Jerry Oglesby, EPA Region 6, (214) 665–7563.

Missouri meeting: Kathleen Fenton, EPA Region 7, (913) 551–7874.

California meeting: Don Wood, EPA Region 9, (415) 744–1114.

Washington meeting: Allan Welch, EPA Region 10, (206) 553–1980.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, EPA issued final regulations governing the protection of employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides. The WPS covers both workers in areas treated with pesticides, and employees who handle (mix, load, apply, etc.) pesticides. More specifically, the provisions of the Standard are intended to:

Inform employees about the hazards of pesticides:

- By requiring provisions for basic safety training, posting and distribution of information about the pesticides; and

Eliminate exposure to pesticides:

- By prohibiting against the application of pesticides in a way that would cause exposure to people,
- By requiring time-limited restrictions for workers to return to areas following the application of pesticides, and
- By requiring provisions for workers and handlers to wear proper protective clothing/equipment; and

Mitigate exposures that occur:

- By requiring arrangements for the supply of soap, water, and towels in the case of pesticide exposure, and
- By requiring provisions for emergency assistance.

II. Information Sought by EPA

EPA believes that agricultural workers, handlers and growers are best able to provide unique insights on the effects of the WPS requirements. Their input will be supplemented by data generated from other sources during the course of EPA's longer-term evaluation effort. As a follow-up to the public meetings, EPA will develop a summary of information gained. These tools will be used to develop strategies for improving the administration of the WPS. The Agency is specifically interested in hearing public comment, or receiving written comment, on the following topics.

1. Available assistance from regulatory partners and others involved with the WPS.
2. Usefulness of available assistance.
3. Understanding WPS requirements.
4. Success in implementing the requirements.
5. Difficulties in implementing the requirements.
6. Suggestions to improve implementation.

III. Registration to Make Comments

Persons who wish to speak at the public meeting are encouraged to register at the meeting location. The Agency encourages parties to submit data to substantiate comments whenever possible. All comments, as well as information gathered at the public meetings will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday (except legal holidays) at the Public Response and Program Resource Branch, Field Operations Division, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the 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 the Agency without prior notice to the submitter. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meetings will be considered public information and cannot be declared CBI.

IV. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered to present their comments. EPA anticipates that each speaker will be permitted 5 minutes to make comments. After each speaker, Agency and state representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending on the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation.

Any information may be delivered to Jeanne Heying at the address stated earlier in this Notice.

Dated: February 9, 1996.

William L. Jordan,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96–3725 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5423–6]

Notice of Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given that the United States Environmental Protection Agency (''EPA''), the State of Oregon Department of Environmental Quality (''DEQ'') and Winmar Pacific, Inc. (''WPI'') have negotiated a proposed Administrative Order on Consent (''Consent Order'') pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), as amended, and applicable Oregon state law, to be issued jointly by EPA and DEQ to WPI, with respect to the East Multnomah County Groundwater Contamination Site in Oregon (''Site'').

WPI owns undeveloped property in the South Shore Business Park area of the cities of Portland and Gresham, Oregon. This property is down gradient from known sources of hazardous substance groundwater contamination that are part of the Site. Groundwater contamination from these sources flows beneath the WPI property. Based on

certifications and disclosures by WPI, EPA and DEQ have concluded that WPI has not disposed of or arranged for the disposal of hazardous substances at the Site, and has not caused or contributed to a release of hazardous substances at the Site. EPA and DEQ have a Memorandum of Agreement to coordinate their activities to require parties responsible for the contamination to cleanup the Site.

The major provisions of the Consent Order require a cash payment from WPI to DEQ, which is the lead Agency managing the cleanup of the Site, to help defray past and future response costs at or in connection with the Site, including costs incurred in connection with negotiation and entry of this Consent Order, and in order to facilitate community relations regarding response activities at the Site, and a grant of access by WPI to DEQ and EPA to the property for all response activities to be taken at the Site; in exchange for legal protection for WPI and its successors in interest for cleanup liability at the Site in the form of a covenant not to sue from EPA and DEQ.

EPA will receive comments relating to the proposed Consent Order for a period of thirty (30) days from the date of this publication. Comments should be addressed to Alan Goodman, Oregon Operations Office, 811 SW 6th Avenue, 3rd Floor, Portland, OR 97204, and refer to In the Matter of East Multnomah County Groundwater Contamination Site, Proposed Administrative Order on Consent for Winmar Pacific, Inc.

Copies of the proposed Consent Order may be examined at the Oregon Operations Office, 811 SW 6th Avenue, 3rd Floor, Portland, OR 97204. A copy of the proposed Consent Order may be obtained by mail or in person from the Oregon Operations Office.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–3586 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 1996–7]

Computerized Magnetic Media Requirements for Presidential Committees

AGENCY: Federal Election Commission.

ACTION: Announcement of Changes to the Computerized Magnetic Media Requirements for Presidential Primary and General Election Committees.

SUMMARY: The Commission has revised its document entitled ''Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding'' (''CMMR''). The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process and mandatory audits of these publicly-funded campaign committees.

EFFECTIVE DATE: January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph F. Stoltz, Deputy Assistant Staff Director; or Paul L. Laramee, Supervisory Computer Systems Analyst, Data Systems Development Division; 999 E Street N.W., Washington, D.C. 20463; (202) 219–3720 (Mr. Stoltz), (202) 219–3730 (Mr. Laramee), or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 21, 1990, the Federal Election Commission adopted a document entitled ''Computerized Magnetic Media Requirements for Title 26 Candidates/ Committees Receiving Federal Funding'' (''CMMR''). The CMMR was revised on January 30, 1992 to reflect technological advances during the intervening period (see 57 FR 4453 (Feb. 5, 1992)), and again on January 11, 1996. This Notice summarizes the most recent revisions, which apply to all publicly-funded committees that participate in the 1996 presidential election.

The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process and the mandatory audits of publicly-funded presidential campaign committees. Each presidential candidate must agree to maintain and provide computerized magnetic media in the format prescribed by the CMMR, if the committee maintains or uses computerized information containing any specified categories of data. See 11 CFR 9003.1(b)(4) and 9033.1(b)(5). The technical standards in the CMMR include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank accounts and check files.

In 1995, the Commission amended its public funding rules at 11 CFR 9036.2(a)(1)(vi) to give presidential committees the option of submitting contributions for matching funds through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. The Commission has added Digital Image Specifications to the CMMR to provide guidance to those committees that utilize this new option, as well as conforming amendments throughout the document.

The revised public funding rules require presidential campaign committee reports that contain schedules generated from computerized files to list in alphabetical order the sources of the receipts, the payees and the creditors. See 11 CFR 9006.3, 9037.4. The CMMR has accordingly been revised to include guidance on how to record these names.

Finally, the CMMR has been revised to reflect technological advances in computer software since the 1992 revisions. It thus provides campaigns with more options than the previous version of the CMMR. The Commission continues to encourage committees to provide samples of their magnetic tape or magnetic diskettes, so that the Commission may determine whether the samples comply with the specifications established.

The CMMR is included as Appendix 2 to the Commission's Finance Control and Compliance Manual For Presidential Primary Candidates Receiving Public Funding (Jan. 1996). This ensures distribution to the committees covered by these requirements. It is also available from the Commission's Public Records Office or the Audit Division.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees are expected to present this financial information to the Commission in the format specified in the CMMR.

Dated: February 13, 1996.

Lee Ann Elliott,

Chairman , Federal Election Commission.

[FR Doc. 96–3570 Filed 2–15–96; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of information collection to be submitted to OMB for review and

approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Board of Governors of the Federal Reserve System (Board) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for approval of the information collection system described below. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 18, 1996.

ADDRESSES: Comments, which should refer to the OMB control number, should be addressed to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Comments should also be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that have been submitted to OMB for review and approval may be requested from the agency clearance officer, whose name appears below.Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to request approval from OMB of the extension, with revision, of the following report:

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Agency form number: FFIEC 002
OMB control number: 7100-0032
Frequency: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 48,653
Estimated average hours per response: 22.40
Number of respondents: 543
Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

General description of report: This information collection is mandatory [12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b)]. Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)).

Abstract: On December 11, 1995, the three agencies jointly published a notice in the Federal Register (60 FR 63526) describing in detail and inviting comment on the proposed changes to this collection of information. All comments received by the agencies in response to that notice, including a change to the proposed revisions that the agencies made in response to those comments, were addressed in supporting statements that were developed to justify the proposed changes. This notice provides the public with the opportunity to obtain, review, and comment on, the Board's supporting statement.

Board of Governors of the Federal Reserve System, February 12, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-3548 Filed 2-15-96; 8:45AM]
Billing Code 6210-01-F

Forrest Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 11, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Forrest Bancshares, Inc., Forrest, Illinois; to merge with Erie Bancorp, Inc., Erie, Illinois, and thereby indirectly acquire Erie State Bank, Erie, Illinois.

Board of Governors of the Federal Reserve System, February 12, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–3547 Filed 2–15–96; 8:45 am]
BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Notice of Transmittal of the United States General Accounting Office Compliance Report to the President and the Congress Covering Reports and Presidential Orders Issued During the Session of Congress Ending on January 3, 1996, Reporting and Recording Requirements

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: The United States General Accounting Office has submitted its compliance report covering reports and presidential orders issued during the session of Congress ending on January 3, 1996, to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

SUPPLEMENTARY INFORMATION: Under the Omnibus Budget Reconciliation Act of 1990, as amended, 2 U.S.C. sec. 904(b), one day following issuance of its compliance report, the General Accounting Office must announce a notice of the report in the Federal Register.

Susan J. Irving,
Associate Director, Budget Issues, Accounting and Information Management Division.
[FR Doc. 96–3502 Filed 2–15–96; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 287; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Treating Autoimmune Diseases and Transplantation Rejection

Singer, D.S., Kohn, L.D., Mozes, E., Saji, M. (NCI)

Serial No. 08/503,525 filed 21 Aug 95 (CIP of 08/480,525) and Serial No. 08/464,130 filed 7 Jun 95 (DIV of 08/073,830)

Methods for treating autoimmune diseases in mammals and for preventing or treating transplantation rejection in a transplant recipient are described in this invention. The invention relates to methods for treating and preventing these diseases, using drugs capable of suppressing expression of the major histocompatability complex (MHC) Class I molecules. The invention further includes method for in vivo and in vitro assays, for the development and assessment of drugs capable of suppressing expression of MHC Class I molecules. Furthermore, the invention provides a method for preventing rejection of cells containing a recombinant gene transplanted into a mammal in need of a gene therapy. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Methods for Treating Autoimmune Diseases and Transplantation Rejection

Singer, D.S., Kohn, L.D., Mozes, E., Saji, M. (NCI)

Filed 7 Jun 95

Serial No. 08/480,525 (FWC of 08/073,830)

Methods for treating autoimmune diseases by suppressing the expression of the major histocompatibility complex (MHC) class I molecules by administering either methimazole, methimazole derivatives, carbimazole, propylthiouracil, thionamides, thiourelylenes, thioureas, and thiourea derivatives. These compounds can be used to treat diseases such as rheumatoid arthritis, psoriasis, juvenile diabetes, primary idiopathic myxedema, myasthenia gravis, scleroderma, De Quervains thyroiditis, systemic lupus erythematosus dermatomyositis, polyarteritis nodosa, and polymyositis. This invention also provides the means for inhibiting transplantation rejection in humans. Also provided are in vivo and in vitro means for assessing and developing drugs capable of suppressing the MHC class I molecules. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Mutants Having a Deficit of Functional Steroid Hormone Receptors

Korach, K.S. (NIEHS)

Filed 7 June 95

Serial Number 08/480,854

This invention concerns ''knockout'' animals, including mice, which have a deficit of functional steroid hormone receptors, DNA constructs containing the mutations, and methods for producing the animals. The mutation is introduced into the animal or its ancestors at an embryonic stage. These knockout animals provide a model system for studying the biological role of hormones, including steroid hormones and sex steroids, in growth, development, morphological differentiation, and sexual and reproductive behavior and cycles, etc. More specifically, the animals may serve as models for testing sex hormones and synthetics that mimic or antagonize sex hormones for use in birth control methods or as hormone replacement therapies. In addition, they provide a system for the characterization of materials suspected of precipitating or conferring protection against osteoporosis, cardiovascular disease, breast cancer, endometrial cancer, and other cancers. (portfolio: Internal Medicine—Miscellaneous)

Nitroxides as Protectors Against Oxidative Stress

Mitchell, J.B., Samui, A., DeGraff, W., Hahn, S. (NCI)

Filed 7 Jun 95

Serial No. 08/473,960 (CIP of 07/859,622, U.S. Patent 5,462,946 issued 31 Oct 95; CON of 07/494,532)

New metal-independent nitroxide compounds are antioxidants capable of protecting cells, tissues, and organs against the harmful effects of toxic oxygen-related species (hydroxyl radical, hydrogen peroxide, superoxide). These toxic oxygen-related species have been implicated in tissue damage from ionizing radiation, reperfusion injury, adult respiratory distress syndrome, inflammation, and agents involved in such processes as carcinogenesis and aging. These mimetic agents have several advantages over natural antioxidants such as superoxide dismutase in that they can exert protection inside the cell since they are small and uncharged. Additionally, long-term administration of these agents to animals induces weight reduction without untoward effects. (portfolio: Internal Medicine—Miscellaneous)

Heparin—and Sulfatide-Binding Peptides From the Type I Repeats of Human Thrombospondin

Roberts, D.D., Browing, P.J., Bryant, J., Inman, J.K., Krutzsch, H.C., Guo, N. (NCI)

Filed 21 Mar 94

Serial No. 08/215,085 (CIP of 07/801,812, U.S. Patent 5,357,041 issued 18 Oct 94)

This invention describes a new family of related peptides that bind with high affinity to heparin or to heparin sulfate proteoglycans and inhibit specific functions of these molecules. The peptides thus are antagonists of basic fibroblast growth factor. Some of the peptides contain a second sequence that mediates activation of transforming growth factor-β. Stable analogs of these peptides have been prepared that resist proteolysis and retain activity *in vivo*. The ability of these peptides to modulate tumor growth and angiogenesis has been demonstrated, and suggest that they might be useful as cancer therapeutic agents. Furthermore, the peptides may be useful for promoting adhesion to substrates coated with the peptides. The novel compounds, which are derived from the adhesive protein thrombospondin, have binding constants 10 to 100 times greater than those of currently available inhibitors; in addition, the heparin-binding sequence does not require an ionic charge, thus making them suitable

for pharmaceutical preparations. It is expected that the high potency of these agents will lower the effective dose needed, and, subsequently, will reduce the immunological response against the peptides and the risks of toxicity. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Peptide Derivatives of Cytochrome b558 and Their Use as Medicaments [as Anti-Inflammatory Agents]

Malech, H., Rotrosen, D. (NIAID)
Filed 24 May 90
Serial No. 07/527,767 (CIP of 07/331,652)
Licensing Contact: Carol Lavrich, 301/496–7735 ext 287

A new anti-inflammatory agent based on two c-terminal amino acid sequences of cytochrome b558 has been shown to inhibit the production of toxic oxygen products (superoxide, peroxide) by human phagocytic cells. Because of its specificity for phagocytic cells, it is expected that these peptide derivatives would not have the side effects of other anti-inflammatory agents in general use. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Dated: February 5, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–3517 Filed 2–15–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: February 28, 1996.

Time: 1:00–2:30 p.m.

Place: Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (telephone conference call).

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 12, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–3516 Filed 2–15–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Dental Research Special Grants Review Committee.

Date: March 26–28, 1996.

Time: 8:30 a.m. to Adjournment.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

Contact Person: Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: February 12, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–3515 Filed 2–15–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–72]

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.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, 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 24 CFR part 581 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 Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, 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, 24 CFR part 581.

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 Mark Johnson 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 (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Veterans Affairs: Steve Koenig, Management Analyst, Department of Veterans Affairs, 811 Vermont Avenue, NW, Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5424; (Those are not toll-free numbers).

Dated: February 9, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program
Federal Register Report for 02/16/96

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure

California

Bldg. 20—VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines.

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: Portion of 66,165 sq. ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 156, VAMC
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: Portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions.

Pennsylvania

Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements.

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 979240001
Status: Underutilized
Comment: 4 acres; landslide area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use—parking lot.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA

Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding: Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Florida

Bldg. 36, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding: Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: Portion of 15,984 sq. ft., 1 story concrete frame bldg. needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding: Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding: Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: Portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding: Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Minnesota

Bldg. 227
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding: Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

New York

Bldg. 144, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding: Agency: VA
Property Number: 979210004
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.

Bldg. 143, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding: Agency: VA
Property Number: 979210005
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.

Bldgs. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding: Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence with 380 sq. ft. attached garage, needs rehab, potential utilities.

Pennsylvania

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding: Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: Portion of 16,360 sq. ft. 3-story structure, most recent use—storage.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding: Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: Portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage.

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding: Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: Portion of 1215 sq. ft. 2-story stone farm house, needs repair.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding: Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding: Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

Florida

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding: Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: Approx. 7 acres, storage compound, partially wooded.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Landholding: Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64 T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road

Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 41.97 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—34.16 acres
VA Medical Center
1400 Block Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 979340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer.

Suitable/To Be Excessed

Land (by State)

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Unsuitable Properties

Buildings (by State

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230001
Status: Underutilized
Reason: Extensive deterioration.

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230002
Status: Underutilized
Reason: Extensive deterioration.

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230003
Status: Underutilized
Reason: Extensive deterioration.

Mississippi

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410001
Status: Unutilized
Reason: Floodway.

Bldg. 67
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 68
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410009
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Extensive deterioration.

Texas

Bldg. 24
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 25
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010051
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Strucuture 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Bldg. 97, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410011
Status: Unutilized
Reason: Other
Comment: Sewage disposal plant.

Structure 98, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410012
Status: Unutilized
Reason: Other
Comment: Sludge bed/sewage disposal plant.

Land (by State)

California

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other
Comment: 750,000 gallon water reservoir.

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Other
Comment: Inaccessible.

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–

Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011
Status: Unutilized
Reason: Secured Area.

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012
Status: Underutilized
Reason: Secured Area.

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010013
Status: Underutilized
Reason: Secured Area.

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010014
Status: Unutilized
Reason: Secured Area.

[FR Doc. 96–3348 Filed 2–14–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–300–1310–00–24 1A]

Green River Basin Advisory Committee; Establishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Green River Basin Advisory Committee—Notice of establishment and notice of first meeting.

SUMMARY: This notice announces that the Secretary of the Interior has established the Green River Basin Advisory Committee (GRBAC). The first meeting of the Committee will be held in Rock Springs, Wyoming, on March 7–8, 1996, and will be open to the public. The purpose of the Committee is to advise the Secretary of the Interior, through the Director, Bureau of Land Management (BLM), on matters pertinent to the BLM's management responsibilities for the natural resources, other than grazing, as defined in the Federal Land Policy and Management Act of 1976, with special focus on natural gas and oil in the greater Green River Basin of southwest Wyoming and northwest Colorado.

DATES: March 7–8, 1996, at 8:00 a.m.

ADDRESSES: Holiday Inn, 1675 Sunset Drive, Rock Springs, Wyoming 82901, Telephone: (307) 382–9200.

FOR FURTHER INFORMATION CONTACT: Robert Bennett, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone number (307) 775–6148; or Frank Salwerowicz, Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215, telephone number (303) 239–3745.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Secretary of the Interior has established the Green River Basin Advisory Committee following consultation with the General Services Administration. This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463).

The Committee will provide advice on data generated and analyzed in Phases I and II of the Southwest Wyoming Resource Evaluation Project (SWREP) and options/recommendations for agency implementation that would ensure continuedreasonable development of the natural gas and oil resources underlying Federal public lands while protecting environmental values.

Committee members are appointed by the Secretary of the Interior. Membership includes individuals who have expertise, through education or practical experience, in natural gas and oil activities; natural resources management/conservation; regional social and economic conditions; and similar disciplines.

The first meeting will address the following topics:

a. Organizational issues
b. Status of SWREP
c. BLM-identified issues that relate to natural gas and oil activities in southwest Wyoming/Colorado
d. GRBAC-identified issues

The certification of establishment is published below.

CERTIFICATION: I hereby certify that the establishment of the Green River Basin Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the BLM.

Dated: February 14, 1996.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 96–3687 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–84–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–810834

Applicant: Dr. Francesca Cuthbert, University of Minnesota, St. Paul, Minnesota.

The applicant requests a permit to take (capture and release, handle, temporarily hold, salvage abandoned eggs and chicks) Piping Plover (*Charadrius melodus*) in Michigan. The permit is sought for banding of adults and juveniles, habitat use study, salvage of abandoned eggs and chicks for captive propagation, rearing of chicks, and release into the wild. Proposed activities will aid in recovery of the species by providing demographic, dispersal, and site fidelity data that will assist in recovery efforts for this population. Salvaging of eggs and chicks may increase recruitment to the Great Lakes nesting population.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: February 8, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–3526 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of recovery permits issued.

SUMMARY: Notice is hereby given that Region 1 of the U.S. Fish and Wildlife Service (Service) has issued the following recovery permits for take or interstate commerce of endangered species under section 10 of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*), between January 1, and December 31, 1995. These permits were issued in response to applications submitted to the Service under section 10(c) of the Act. Each permit was issued only after it was determined to be applied for in good faith, and to be consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Branchiopod Research Group	787037	1/23/95
Monk & Associates	776608	1/23/95
Earth Technology	787917	1/23/95
Hydrozoology	796280	1/23/95
Biosystems Analysis	796282	1/23/95
Chris D. Rogers	796284	1/23/95
The Nature Conservancy	796286	1/23/95
California Department of Transportation	796288	1/23/95
Chris Wilcox	797259	2/6/95
KAS Consultants	797232	2/6/95
Strange Aquatic Resources	797266	2/6/95
Richard L. Bottorff	797231	2/6/95
Martin Brittan	797228	2/6/95
Thomas E. Kucera	796835	2/9/95
Entomological Consulting Services	797233	2/13/95
Jeffrey A. Halstead	769304	2/14/95
Baxter Consulting Services	751345	2/17/95
Western Ecological Services Company, Inc.	677215	2/17/95
Gibson & Sordal Wetland Consultants	795935	2/23/95
Sugnet & Associates	795933	2/23/95
EIP Associates	795938	2/23/95
Foster Wheeler Environmental Corporation	796012	2/23/95
Simpson Environmental	795929	2/23/95
Brent P. Helm	795930	2/23/95
Charles J. Striplen	795288	2/24/95
Michael Baad	797251	3/2/95
LSA Associates, Incorporated	797234	3/2/95
Amadeo M. Rea	795286	3/2/95
Michael W. Skenfield	798015	3/2/95
Tracy Erwin	797262	3/2/95
Douglas Alexander	797266	3/2/95
Coastal Resources Institute	787371	3/13/95
Harland Bartholomew & Associates	797265	3/15/95
H.T. Harvey & Associates	797267	3/15/95
San Joaquin County Mosquito Vector Control	797229	3/15/95
Biota Biological Consulting	795931	3/16/95
Michael L. Morrison	797315	3/17/95
California Desert Studies Consortium	798025	3/17/95
Kootenai Tribe of Idaho	798744	3/27/95
Wetlands Research Associates, Incorporated	795928	4/1/95
North State Resources, Incorporated	798003	4/12/95
Romona Swenson	793638	4/18/95
Jones and Stokes Associates	795934	4/20/95
Annamarie S. Jacobs	790722	4/21/95
Idaho Power Company	799558	4/28/95
Dana C. Bland	798017	4/28/95
Renee Y. Owens	799569	4/28/95
Janet A. Randall	799486	5/9/95
Sacramento-Yolo Mosquito and Vector Control District	797230	5/15/95
Frances R. Taylor	799489	5/31/95
Santa Barbara Museum of Natural History	799679	5/31/95
California Department of Transportation, District 8	800926	5/31/95
Aqua Farms, LLC	801019	6/1/95
John G. Coy	799566	6/12/95
Wymer and Associates	799546	6/14/95
Roger D. Gambs	799495	6/14/95
William G. Butler, Jr	801985	6/16/95
San Bernardino County Museum	787392	6/19/95
Ibis Environmental Services	800291	6/19/95
Prunuske Chatham, Incorporated	798011	6/20/95
Sycamore Environmental Consultants	799564	6/22/95
Entrix Incorporated	799561	6/22/95
Carol W. Witham	799570	6/22/95

Name	Permit No.	Issuance date
Ray Griffiths	800793	6/22/95
Zentner and Zentner, Incorporated	800794	6/22/95
James Deacon	794782	6/27/95
Patricia Ann Hobell	789266	6/27/95
San Marino Environmental Consultants	781377	7/3/95
Louis Courtois	802446	7/20/95
Elaine Harding-Smith	802445	8/4/95
Biosearch Wildlife Surveys	768251	8/9/95
Jepson Prairie Reserve	800777	8/9/95
Donald L. Davis	800797	8/9/95
Carl J. Page	802094	8/11/95
Patricia Baird	802107	8/11/95
Manomet Observatory for Conservation Sciences	800922	8/11/95
John E. Moeur	802092	8/13/95
Stephen J. Myers	804203	8/13/95
A.G. Crook Company	802456	8/18/95
California Department of Water Resources	801821	9/5/95
Regional Environmental Consultants	797665	9/5/95
Lisa Webber	802086	9/5/95
Thomas Roberts	802103	9/5/95
Carolee Caffrey	802104	9/5/95
Robert A. Aramayo	804207	9/20/95
Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service	702631	10/19/95
Arthur Davenport	802450	10/30/95
Patrice Ashfield	807056	11/3/95
Enterprise Advisory Services, Incorporated	806723	11/10/95
Janet Randall	799486	12/4/95
Becky Yeager	804076	12/6/95

FOR FURTHER INFORMATION CONTACT: Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, Ecological Services, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (tel: 503–231–2063; fax: 503–231–6243).

Dated: February 9, 1996.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–3565 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application Submitted by Ms. Suzanne Gasque and Ms. Jewel Felkel for an Incidental Take Permit for Red-cockaded Woodpeckers in Association With Timber Harvesting Activities on Their Property in Orangeburg County, South Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Ms. Suzanne Gasque and Ms. Jewel Felkel (Applicants) have applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The proposed permit would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker *Picoides borealis* (RCW) known to occur on property owned by the Applicants in Orangeburg County, South Carolina. The Applicants propose to harvest 106 acres of timber on their 446-acre property located approximately 3.5 miles south of Elloree. The proposed permit would authorize incidental take of RCWs on this property in exchange for mitigation elsewhere as described further in the Supplementary Information Section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. Requests must be submitted in writing to be processed. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be sent to the Regional Permit Coordinator in Atlanta, Georgia, at the address below and should be received on or before March 18, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office; or the Asheville, North Carolina or Charleston, South Carolina Field Offices. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–810934 in such comments.

U.S. Fish and Wildlife Service (AES/TE), 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, Telephone: 404/679–7110, Fax: 404/679–7081

Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801, Telephone: 704/258–3939

Field Supervisor, U.S. Fish and Wildlife Service, 217 Fort Johnson Road, Charleston, South Carolina 29422–2559, Telephone: 803/727–4707.

FOR FURTHER INFORMATION CONTACT: Janice Nicholls at the Asheville, North Carolina Field Office, or Lori Duncan at the Charleston, South Carolina, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in

that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest populations occur on federally owned lands such as military installations and national forests.

In South Carolina, there are an estimated 681 active RCW clusters as of 1994; 67 percent are on Federal lands, 6 percent are on State lands, and 27 percent are on private lands. The populations on public lands are generally stable, and in some cases are increasing. The overall population trend on private lands in South Carolina, on the other hand, is downward. Most RCW populations on private lands are relatively small and isolated.

The Applicant's land in Orangeburg County hosts a small and isolated population of RCWs. As of 1995, there were 2 active RCW clusters; 1 breeding group and 1 solitary adult male. The nearest known RCW group occurs on private lands approximately 2.5 miles to the north of the Gasque/Felkel tract near Elloree. The nearest known RCW concentration (greater than 5 groups) occurs over 10–15 miles away on the Manchester State Forest/Shaw Air Force Base to the north in Sumter County, and on the privately-owned Norfolk Southern property located south of the Gasque/Felkel tract in Dorchester County. The Applicants propose to harvest timber on their property for supplemental income. Timber harvesting activities may result in death of, or harm to, any remaining RCWs through the loss of nesting and foraging habitat.

The EA considers the environmental consequences of three alternatives, including the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicants. The HCP will provide for the provisioning of 4 clusters with artificial starts and cavities on suitable habitat on the Sandhills State Forest in Chesterfield County. The Sandhills State Forest is part of a designated recovery population for the RCW in the South Carolina Sandhills Physiographic Province. The State Forest has a total of 46,000 acres of which 40,000 acres are manageable pine lands (predominately longleaf pine). The State Forest currently has 55 active RCW groups with a long-term goal of increasing the population to assist with the recovery of the South Carolina Sandhills population. The HCP will also involve the translocation of any juveniles produced by the breeding pair on the Gasque/Felkel property to the provisioned sites at the Sandhills State Forest. Finally, the HCP will involve monitoring the provisioned sites for a specified time period at the State Forest to determine success of the provisioning efforts. The HCP provides a funding source for the mitigation measures.

Dated: January 9, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–3566 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–55–P

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the dates and locations of the 1996 Federal Duck Stamp Contest; the public is invited to attend.

DATES: 1. The 1996 contest opens for submission July 1, 1996.

2. The public may view the 1996 Federal Duck Stamp Contest entries on Tuesday, October 15, 1996, from 10:00 a.m. to 2:00 p.m., in the Department of the Interior Auditorium.

3. This year's judging will be held from October 16–17, 1996, beginning at 10:30 a.m. on Wednesday, October 16, and continuing at 9:00 a.m. on Thursday, October 17.

4. Persons wishing to enter this year's contest may submit entries anytime after Monday, July 1, but *all* must be postmarked no later than midnight Sunday, September 15, 1996.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participation agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street NW., Suite 2058, Washington, DC 20240.

Location of Contest: Department of the Interior Building, Auditorium (C Street entrance), 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, Telephone (202) 208–4354 or Fax (202) 208–6296.

SUPPLEMENTARY INFORMATION: The following *five* eligible species for the 1996–97 duck stamp contest are as follows:

(1) Canada Goose
(2) Greater Scaup
(3) Green-Winged Teal
(4) Northern Pintail
(5) Black Duck

The primary author of this document is Mrs. Lita F. Edwards, U.S. Fish and Wildlife Service.

Dated: February 6, 1996.

John G. Rogers, Jr.,

Director.

[FR Doc. 96–3562 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CACA 35919]

California; Classification of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, CA–35919.

SUMMARY: The following described lands have been examined and found suitable for classification for recreation and public purposes under the provisions of the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 et. seq.). The Bureau of Land Management will reclassify 160 acres of public land in San Bernardino County to facilitate the Colorado River Law Enforcement Shooting Range Project.

DATE: Comments must be received by April 1, 1996. Adverse comments will be reviewed by the State Director.

ADDRESS: Bureau of Land Management, Area Manager, Needles Resource Area, 101 W. Spikes Road, Needles, California, 92363.

FOR FURTHER INFORMATION CONTACT: George R. Meckfessel, Planning & Environmental Coordinator, (619) 326–3896.

SUPPLEMENTARY INFORMATION: On February 9, 1996 a decision was made

to lease the following lands to the Colorado River Law Enforcement Range Association to develop and operate a shooting range for the training of law enforcement officers.

San Bernardino Meridian, California

T8N, R23E, E½ NE¼ Section 19, and W½ NW¼ Section 20

The lease/patent when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

Publication of this notice in the Federal Register segregates the public lands from appropriation under any other public land law, including location under the mining laws. The segregative effect will end either upon issuance of patent or with the termination of this lease.

In the absence of any adverse comments the classification will become effective 60 days from the publication of this notice.

Phil Damon,

Acting Area Manager.

[FR Doc. 96–3558 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–40–P

[MT–027–1320–00, MTM 83859]

Notice of Amended Planning Area and Extension of Public Scoping Period, Coal Lease Application, MTM 83859, Spring Creek Coal Company

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice.

SUMMARY: Notice of the initial Intent to Plan was published in the Federal Register (61FR1394) on Friday, January 19, 1996. This Notice amends the planning area and extends the public scoping comment period.

On November 9, 1995, Spring Creek Coal Company filed an amended lease application, MTM 83859, for federal coal resources within the Powder River Coal Region. The land included in the application is located in Big Horn County, Montana and is described as follows:

T. 8 S., R. 39 E., P.M.M.

Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26 S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½N½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼;

T. 8 S., R. 40 E., P.M.M.

Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.

The 320.00 acre tract contains an estimated 37.8 million tons of recoverable coal reserves.

An environmental analysis will be prepared to analyze the proposed lease of the federal coal resource and the reasonably foreseeable consequences of this action as well as the impacts of development of the coal. The planning area has been amended and encompasses the Lease Application area and includes portions of the following described lands:

T. 8 S., R39 E., P.M.M.
Sections 11 through 16, 21 through 28, and 34 through 36.
T. 9 S., R. 39 E., P.M.M.
Sections 1, 2, and 12.
T. 8 S., R. 40 E., P.M.M.
Sections 19, 20, and 30 through 32.
T. 9 S., R. 40 E., P.M.M.
Sections 5 through 8.

This document will amend the Powder River Resource Area Resource Management Plan. It will be based on the existing statutory requirements and will meet the requirements of the Federal Land Policy Management Act of 1976.

SUPPLEMENTARY INFORMATION: All interested parties including federal, state and local agencies are invited to participate in the environmental analysis scoping process. The scoping period which began January 19, 1996 has been extended and will end March 29, 1996.

The following issues and concerns have been identified:

—Possible impacts to the hydrologic resources;
—Potential for social and economic impacts to the area;
—Potential redesignation of crucial winter range for deer and antelope from unsuitable for mining to suitable for mining with stipulations;
—Cultural resources and traditional lifeway values;
—The level of environmental documentation necessary (EA or EIS).

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in the preparation of the environmental analysis.

The scoping process used to collect issues and concerns will involve one public meeting and a written comment period. The written comment period will begin immediately and will close on March 29, 1996. The public meeting will be held February 29, 1996, at 7:00 P.M. at the Sheridan County Fulmer Public Library, 335 West Alger Street, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: All comments and requests for further information should be addressed to Todd Christensen, Area Manager, Bureau of Land Management, Powder River Resource Area, 111 Garryowen Road, Miles City, Montana 59301, telephone number (406) 232–4331.

Dated: February 9, 1996.

Glenn A. Carpenter,

District Manager.

[FR Doc. 96–3545 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–DN–P

[OR–050–1220–00:GP6–0068]

Grant County, OR; Visitor Restrictions

February 8, 1996.

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI), Prineville District.

ACTION: Notice is hereby given that two BLM administered access roads located in Grant County, Oregon, one within Township 13 South, Range 26 East, Sections 3, 4, 9, 17, 20 and 28 and another within Township 13 South, Range 26 East, Section 24, NW¼ are closed seasonally to motorized vehicles from December 1 to April 50.

The aforementioned lands located in Grant County, Oregon, near the town of Dayville, Oregon, are seasonally closed to motor vehicles from December 1 to April 30 each year. The purpose of this closure is to protect the road surface from vehicle damage during periods of muddy conditions, to protect soil and watershed resources from off-road vehicle damage, and to minimize harassment and poaching of wildlife.

Exemptions to this closure will apply to administrative and law enforcement personnel of the BLM or Oregon Department of Fish and Wildlife, and personnel performing law enforcement, firefighting, or other emergency duties.

The authority for this closure comes from 43 CFR 8364.1(a): Closure and restriction orders. Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

A more specific location of public lands under this closure can be obtained at the BLM Prineville District Office.

FOR FURTHER INFORMATION CONTACT:

Heidi Mottl, Recreation Planner, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone number (541) 416–6700.

Dated: February 8, 1996.

Harry R. Cosgriffe,

Area Manager, Central Oregon Resource Area.

[FR Doc. 96–3542 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–33–M

[AZ–040–7122–00–5567; AZA 29361]

Notice of Realty Action; Proposed Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management, Safford District, Arizona, Interior.

ACTION: Notice.

SUMMARY: The following lands in Cochise County, Arizona have been found suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713). The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 23 S., R. 24 E.,
Sec. 10, all remaining public lands;
Sec. 11, all remaining public lands in the W½.

The area described contains 496 acres, more or less.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register the lands described above are hereby segregated from appropriation 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.

The land is being offered for direct sale to Phelps Dodge Corporation at not less than the appraised fair market value. If a determination is reached that the subject parcels contain no known mineral values, the mineral interests may be conveyed simultaneously under section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757, 43 USC 1719). Detailed information concerning the sale will be available to interested parties from the Safford District Office, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546.

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 District Manager, Safford District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: February 8, 1996.

Frank L. Rowley,

Associate District Manager.

[FR Doc. 96–3544 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–32–M

[CA–930–5410–00–B072; CACA 35625]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 141.00 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 979–2858.

Mount Diablo Meridian

T. 4 S., R. 16E.,
Sec. 24, E½SW¼ and W½SE¼.

County—Mariposa

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the Federal Register as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated: February 8, 1996.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 96–3546 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–40–M

[ID–040–1430–00, IDI–31541]

Notice of Realty Action for the Lease of Public Lands for Airport Purposes for the Challis Resource Area in Lemhi County, Idaho

SUMMARY: The following public lands in Lemhi County, Idaho have been found suitable for lease to Idaho Department of Aeronautics for airport purposes under the Act of May 24, 1928, as amended.

Boise Meridian

T. 15 N., R. 22 E.,
Sec. 19: SE¼SW¼, S½N½SW¼SE¼, S½SW¼SE¼, S½SE¼SE¼;
Sec. 20: S½S½SW¼SW¼;
Sec. 29: N½NE¼NW¼, N½SE¼NE¼NW¼.

Containing approximately 125 acres.

Lease of the lands is consistent with applicable Federal and County land use plans and will help meet the needs of Lemhi and Custer County residents for air transportation.

In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

ADDRESSES: For a period of 45 days from the date of this publication, interested parties may submit comments to the Challis Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, Challis Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 or telephone (208) 756–5400. Documents relevant to this issue will be maintained in the Challis Resource Area Office at the above address and are available for public viewing during normal office hours.

This notice segregates the above described public lands from operation of the public land laws, including mining laws. The segregative effect will end upon issuance of the lease or one year from the date of this publication, whichever occurs first.

Dated: February 6, 1996.

Mark E. Johnson,

Area Manager.

[FR Doc. 96–3543 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–1430–01; N–56806]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The below listed public land in Lund, White Pine County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

DATES: On or before April 1, 1996, interested parties may submit comments to the Manager, Egan Resource Area.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Manager Egan Resource Area, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Michael McGinty, Realty Specialist, at the above address or telephone (702) 289–1882.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in White Pine County is being offered as a direct sale to Mr. William McLeod.

Mount Diablo Meridian, Nevada

T. 12 N., R. 62 E.,
Section 30: Lot 3.

Containing 36.62 acres, more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittee, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees. Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

On or before April 1, 1996, interested parties may submit comments regarding this action to the Area Manager, Egan Resource Area at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: February 1, 1996.

Gene A. Kolkman,

District Manager.

[FR Doc. 96–3541 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–HC–U

[NV–930–1430–01; N–58561 et al.]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public lands in Las Vegas and Henderson, Clark County, Nevada have been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Clark County School District proposes to use the land for school sites.

MOUNT DIABLO MERIDIAN, NEVADA

	Legal description	Acreage	Purpose
T. 22 S., R. 63 E.:			
Serial No.:			
N–58561	Sec. 22, SE¼SE¼SW¼, SW¼SW¼SE¼	10	Junior high school.
N–58976	Sec. 16, SW¼NW¼NE¼	10	Elementary school.
T. 23 S., R. 62 E.:			
Serial No. N–58975	Sec. 6, Lot 5	37.980	Middle school.
T. 22 S., R. 61 E.:			
Serial No. N–41566–20/42	Sec. 22, NW¼SE¼SE¼	10	Elementary school.
T. 21 S., R. 60 E.:			
Serial No..			
N–41565–13/32	Sec. 9, NW¼SW¼NE¼	10	Elementary school.
T. 20 S., R. 59 E.:			

MOUNT DIABLO MERIDIAN, NEVADA—Continued

	Legal description	Acreage	Purpose
Serial No.:			
N–59348	Sec. 12, S½NE¼SE¼, N½SE¼SE¼	40	Senior high school.
N–59347	Sec. 12, W½NE¼SW¼SW¼, NW¼SW¼SW¼.	15	Elementary school.

The lands are not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for these areas and would be in the public interest. Each lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. Easements in favor of Clark County/City of Las Vegas/City of Henderson in accordance with the transportation plan for roads, public utilities and flood control purposes.

2. All valid and existing rights.

Detailed information concerning each action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for school sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for school sites.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 5, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV

[FR Doc. 96–3539 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–06–1430–01; N–19754]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: Eureka County has made application to purchase 80 acres of Bureau administered lands which are currently under an R&PP lease for use as a sewage treatment facility. The original 40 acres in the application were classified for lease or sale in 1979. The lease was amended in 1982 to include an additional 40 acres, which were classified for lease only. To avoid confusion as to which parcel needs to be classified for sale, the entire 80 acres are being classified for conveyance under the R&PP Act. The lease classification remains in effect. The following described land has been examined and found suitable for conveyance under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Mount Diablo Meridian, Nevada

T. 20 N., R. 53 E.,

Sec. 35, E½NE¼.

Containing 80 acres, more or less.

The lands are not required for Federal purposes. Conveyance is consistent with the Bureau's land use plan for the area and is in the public's interest.

FOR FURTHER INFORMATION, CONTACT: Mary Craggett, Realty Specialist, Bureau of Land Management, 50 Bastian Way, Box 1420, Battle Mountain, NV 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: The lands are being offered to Eureka County for a sewage treatment facility.

The patent, when issued, will be subject to the provisions of the Recreation And Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

and will be subject to:

1. A 25′ right-of-way for a pipeline to Eureka County, N-19823;

2. A 10′ foot right of way for a phoneline to Nevada Bell, Nev-067106;

3. An oil and gas lease, N–53479, to Yates Petroleum Corporation;

4. All other valid existing rights.

Detailed information concerning this action is available for review at the office of the BLM, Battle Mountain District, 50 Bastian Road, Battle Mountain, NV 89820. Upon publication of this notice in the Federal Register, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed conveyance or classification to

the District Manager, Battle Mountain District, 50 Bastian Way, Box 1420, Battle Mountain, NV 89820.

Classification Comments: Comments may be made regarding the suitability of the land for the sewage treatment facility. Comments on the classification are restricted to whether the land is physically suitable for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the conveyance application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sewage treatment facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register. The lands will not be conveyed until after the classification is effective.

Dated: February 5, 1996.

Gerald M. Smith,

District Manager.

[FR Doc. 96–3563 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–942–06–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on October 27, 1995:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 20 and 29, Township 13 South, Range 71 East, Mount Diablo Meridian, Nevada, under Group No. 744, was accepted October 20, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on November 29, 1995.

The plat showing amended lottings in section 3, T. 34 N., R. 57 E., Mount Diablo Meridian, Nevada, was accepted November 29, 1995.

This plat was prepared at the request of Western Resource Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 6, 1995:

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and a portion of the meanders of Lake Tahoe, the subdivision of sections 11, 12, 13, 14, 23, 24, 25, 27, 34, and 35, the metes-and-bounds survey along a portion of Hwy. 28, in section 11, and the survey of Lot 5, in section 22, Township 15 North, Range 18 East, Mount Diablo Meridian, Nevada, under Group No. 700, was accepted November 29, 1995.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 7, 1995:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 9, 15, 16, and 27, Township 13 North, Range 23 East, Mount Diablo Meridian, Nevada, under Group No. 726, was accepted December 5, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 14, 1995:

The plat representing the retracement of portions of the 1872 survey of the Eastern Boundary of California, between mile corners 320+25 and 330+26, and the 1893–1899 U.S. Coast and Geodetic Survey California-Nevada Oblique Boundary Line between Point Numbers 58, 59 and 59½, and the dependent resurvey of a portion of Mount Diablo Base Line through Range 32 East and a portion of the subdivisional lines of Township 1 North, Range 32 East, Mount Diablo Meridian, California and Nevada, under Group No. 1213, California and Group No. 749, Nevada, was accepted December 12, 1995.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

6. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on March 27, 1996:

The plat, in five sheets, representing the survey of a portion of the subdivisional lines of Township 27 North, Range 47 East, Mount Diablo Meridian, Nevada, under Group No. 747, was accepted February 8, 1996.

The plat, in five sheets, representing the dependent resurvey of a portion of the east boundary of Township 28 North, Range 46 East; a portion of the south boundary and a portion of the subdivisional lines of Township 28 North, Range 47 East; and a portion of Mineral Survey No. 4763 in Township 28 North, Ranges 46 and 47 East, Mount Diablo Meridian, Nevada, under Group No. 747, was accepted February 8, 1996.

These surveys were executed to meet certain administrative needs of Placer Dome U.S. Inc.

7. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those portions of the lands listed under item 6 that are original surveys are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to March 27, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

8. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: February 8, 1996.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 96–3540 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meetings of the Golden Gate

National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for the remainder of calendar year 1996 (with the exception of August and December) to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following at San Francisco and at Point Reyes Station, California:

Wednesday, February 28—San Francisco, CA
Wednesday, March 20—San Francisco, CA
Saturday, April 13—Point Reyes Station, CA
Wednesday, April 17—San Francisco, CA
Wednesday, May 15—San Francisco, CA
Wednesday, June 19—San Francisco, CA
Wednesday, July 17—San Francisco, CA
Wednesday, September 18—San Francisco, CA or
Saturday, September 21—Point Reyes Station, CA
Wednesday, October 16—San Francisco, CA
Wednesday, November 20—San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, unless otherwise noticed. The time for the meetings at Point Reyes Station will be noticed to the public at least 15 days prior to these meetings. Information confirming the time and location of all Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 556–4484.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaños
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Anticipated agenda items at meetings this year will include:

- Presidio Lobos Creek plans.
- update reports on the Presidio Trust legislation.
- presentation of the GGNRA Presidio Stewardship Program.
- review of Army environmental remediation at the Presidio.
- reports on work of the Golden Gate National Park Association.
- reports on programs and projects of GGNRA ''Park Partners''.
- status reports on the proposed Bay Area Ridge Trail.
- reports on GGNRA education programs.
- report on activities and operations of the GGNRA Special Use Permit office.
- presentation on plans for the northern waterfront at Crissy Field.
- report on Joint NPS/GG Bridge Museum at Bridge Toll Plaza.
- Cliff House Restoration Plan.
- report on the transition and long-range planning for East Fort Baker.
- GGNPA annual briefing.
- update on former Mill Valley AFS (Mount Tamalpais) cleanup.
- San Mateo issues: update on Phleger estate, status of Thornton Beach, SF Watershed issues.
- update on VA/Fort Miley park entrance issue.
- presentation of exotic removal in Olema Valley.
- joint operations agreement between State of California and NPS.
- Alcatraz After Hours Program.
- Fort Mason Reuse.
- updates on issues concerning management and planning at Point Reyes NS.

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: January 9, 1996.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 96–3567 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

San Diego County Water Authority and City of San Diego's Water Repurification Project

AGENCY: Bureau of Reclamation, Interior and San Diego County Water Authority as Joints Leads for the Proposed Action.

ACTION: Notice of intent to prepare a draft environmental impact statement and notice of scoping meeting(s) for San Diego County Water Authority and City of San Diego's water repurification project.

SUMMARY: San Diego's Water Repurification Project involves the further treatment of about 20 million gallons per day of tertiary treated reclaimed water and transportation of this water to the City of San Diego's San Vicente Reservoir. Treatment of this water would occur at the North City Water Reclamation Plant (currently under construction), which upon completion, will treat waste water to tertiary levels. It is proposed to construct advanced water purification facilities at the North City Plant, which would treat the tertiary water from that plant to a level of purity which would allow the water to be stored in San Vicente Reservoir. At present, two potential alternatives pipeline routes from the North City Water Reclamation Plant to the reservoir have been identified: a northern route and a southern route. Specific locations for these potential routes have not as yet been determined. They, along with other reasonable routes, will be specified in the Draft Environmental Impact Statement. The repurified water would be stored in San Vicente Reservoir where it would mix with other water for eventual potable use. When needed, water from this reservoir would be pumped to the Alvarado Water Filtration Plant where the water would be treated prior to being distributed for potable water use.

DATE AND ADDRESSES: Scoping meetings are proposed for the project. However, the schedule and location of these scoping meetings have not as yet been determined. There will be ample notice given in the local papers of the times and locations of all scoping meetings.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be

addressed to Mr. Del Kidd, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8698.

SUPPLEMENTARY INFORMATION: The City and County of San Diego depend upon imported water for about 90 percent of their needs. Most of this water comes from the State Water Project and the Colorado River. It is estimated that by 2010 the demand for potable water will reach 900,000 acre-feet per year. Imported water currently accounts for 690,000 acre-feet with another 60,000 acre-feet from local supplies. This means that in the near future there will be a short fall of 150,000 acre-feet of demand over supply. Federal, State, and local entities are actively investigating and planning other potential water sources for the southern California region, such as other water reclamation projects, groundwater development, seawater desalination, and water conservation. Some of these will be implemented in the future; others are infeasible at this time. This proposed project is one of the more feasible options for meeting future water demands.

The Bureau of Reclamation is authorized to participate in this proposed project by Section 1612 of Public Law 102–575.

Dated: February 9, 1996.

Thomas Shrader,

Deputy Office Director, Resource Management and Technical Services.

[FR Doc. 96–3564 Filed 2–15–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–62]

James W. Shore, M.D., Denial of Application

On July 6, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James W. Shore, M.D., (Respondent) of Martin, Tennessee, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for registration as a practitioner, under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged, among other things, that (1) in May of 1991, the Respondent's medical license was placed on probation for two years, and his authority to handle Schedule II and III controlled substances was suspended for one year, as a result of his prescribing Schedule II controlled substances and anabolic steroids in a manner which violated State law; and (2) on October 25, 1991, the Respondent entered a guilty plea in the U.S. District Court for the Western District of Tennessee, to three felony counts of unlawfully prescribing a controlled substance, and he was sentenced to eighteen months probation and ordered to surrender his controlled substances registration.

On July 21, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Memphis, Tennessee, on January 11, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On July 10, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's application for DEA registration be denied. Neither party filed exceptions to her decision, and on August 28, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based uppon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that on June 16, 1993, the Respondent signed a DEA Application for Registration as a practitioner, seeking registration to handle Schedules II through V controlled substances. On that application, the Respondent disclosed that he had had restrictions placed upon his practice of medicine and his prescribing of controlled substances. The parties do not contest the facts concerning the Respondent's past misconduct in prescribing controlled substances. Also, the parties have stipulated that (1) Biphetamine is a brand name for a product containing amphetamine, a Schedule II controlled substance pursuant to 21 CFR 1308.12(d); (2) Percodan and Percocet are brand names for products containing oxycodone, a Schedule II narcotic controlled substance pursuant to 21 CFR 1308.12(b); (3) Fastin is a brand name for a product containing phentermine hydrochloride, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(e); (4) Tylox is a brand name for a product containing oxycodone, a Schedule II narcotic controlled substance pursuant to 21 CFR 1308.12(b); and (5) anabolic steroids are Schedule III controlled substances pursuant to 21 CFR 1308.13(f).

The Deputy Administrator specifically finds that on May 8, 1986, an undercover agent for the Tennessee Bureau of Investigation (TBI), received two prescriptions for Biphetamine from the Respondent for no legitimate medical purpose and not in the usual course of his professional practice, for the Respondent had failed to take a medical history, to conduct a physical examination of the agent and to diagnose a condition requiring such medication. On July 10, 1986, a second TBI agent received two prescriptions for Biphetamine from the Respondent for no legitimate medical purpose and not in the usual course of his professional practice, for again the Respondent had failed to conduct a physical examination or any other clinical tests, and he had failed to identify a medical condition requiring such a prescription. In the same manner, on June 16, 1986, an undercover police officer acquired from the Respondent two prescriptions for the controlled substance Fastin for no legitimate medical purpose and not in the usual course of professional practice. Tape recordings were made of the conversations between these law enforcement officials and the Respondent, and transcripts of these tape recordings were made a part of the record.

As part of its investigation of the Respondent's conduct, the Tennessee Board of Pharmacy conducted a prescription audit of prescriptions issued by the Respondent in Weakley County, Tennessee, from February of 1984 through February of 1987. This prescription audit was sent to Dr. Harbison, a research scientist, pharmacist, and teacher at the University of Arkansas, for his review and comment. Dr. Harbison wrote that the Respondent had prescribed controlled substances not in the usual course of medical practice to more than a dozen patients, concluding that ''it is my opinion that after reviewing the prescription records, [the Respondent] did not prescribe [] Biphetamine, Tylox, Percocet, Percodan [,] and Mepergan Fortis in a manner consistent with the usual course of medical practice.''

In May of 1991, as a result of this conduct, the Respondent entered an agreed order with the State of Tennessee State Board of Medical Examiners (Medical Board), resulting in his medical license being placed on probation for two years, and his Schedule II and III controlled substances privileges being suspended for one year. The Medical Board found that the Respondent had prescribed Schedule II drugs ''on a routine, chronic, long term basis with little or no documented medical reasoning for such continued prescribing,'' and that the Respondent had engaged in conduct which violated State law, to include State laws governing prescribing of controlled substances. Also, on October 25, 1991, the Respondent entered a guilty plea in the U.S. District Court for the Western District of Tennessee for three felony counts of unlawfully prescribing a controlled substance. As part of his plea agreement, the Respondent agreed to surrender his DEA registration in Schedules II through IV, which he did on November 26, 1991. He was also sentenced to eighteen months of supervised probation, which was successfully completed by the Respondent on April 9, 1993. In May of 1993, the Medical Board terminated the probation of the Respondent's medical license, renewing it without restrictions.

During the hearing before Judge Bittner, one of the Respondent's current employers, the business manager of the Martin Medical Center in Martin, Tennessee, testified that he was familiar with the criminal and administrative proceedings involving the Respondent. He opined that the Respondent would not engage in similar misconduct in the future, and that he was aware that the Respondent had received remedial training at the Vanderbilt University School of Medicine. He also testified about the professional limitations caused by the Respondent's lack of a DEA Certificate of Registration, including his suspension from practicing in a preferred provider organization, and his difficulties in participating in TennCare, Tennessee's Medicaid program. Also, the Respondent's patients had problems getting mail order prescription drug suppliers to fill the Respondent's prescriptions.

The Respondent testified that he had attended a two-day course at Vanderbilt University primarily for ''impaired physicians.'' Specifically, the course focused on the philosophy of prescribing, giving the Respondent the ability to recognize drug-seeking behavior. The Respondent testified that the course ''also made me look in my soul and my heart and try to identify my feelings toward why these people were able to manipulate me like they did.'' However, the course did not provide training in pharmacology or the therapeutics of pharmacology with regard to specific substances, and when questioned by the Government's counsel, the Respondent had difficulty discussing such concepts as ''benzodiazepam loading'', and in identifying the dangers of chronic use of sedative hypnotics. Finally, the Respondent testified about his need for a DEA Certificate of Registration in his current medical practice.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors one through four are relevant in determining whether granting the Respondent's application would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Medical Board found that the Respondent had prescribed Schedule II controlled substances in a manner which violated State law. Accordingly, that Board took disciplinary action against the Respondent.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' it is undisputed that the Respondent prescribed controlled substances without a legitimate medical purpose and outside the usual course of medical practice in violation of both State and Federal law. Specifically, his conduct of prescribing controlled substances without taking a medical history, conducting a medical examination or clinical tests, or identifying a medical condition warranting the medications, violated the legal requirements for prescribing controlled substances.

As to factor three, the Respondent's conviction record under Federal laws, the Respondent was convicted in Federal court of three felony counts of unlawfully prescribing a controlled substance as a result of the previously described unlawful conduct.

Further, the Deputy Administrator notes that the Respondent has taken some responsibility for his misconduct, as evidenced by his entering an agreed order with the Medical Board, and his entry of a guilty plea in Federal court. Further, he has successfully completed his probation and a course at the Vanderbilt University on prescribing practices. He has also stated remorse for his past misconduct.

However, the remedial course taken by the Respondent did not provide training in pharmacology or the therapeutics of pharmacology, and the Respondent's testimony before Judge Bittner disclosed the Respondent's deficiencies in this area. Further, the Deputy Administrator finds compelling Judge Bittner's observations:

> [The] Respondent's only explanation for his prescribing practices was that he was manipulated by his patients * * * Respondent did not, however, explain how he would avoid being manipulated in the future or why he prescribed controlled substances upon request in the first place. In any event, purported manipulation cannot justify prescribing thousands of dosage units of controlled substances over a period of several years.
>
> In addition, the transcripts of Respondent's conversations with the under cover officers show that Respondent initiated the discussion of stimulants * * *. Neither of these 'patients' manipulated [the] Respondent into issuing him prescriptions, and [the] Respondent does not contend otherwise * * *. In addition, [the] Respondent told the Medical Board that he believed that the Schedule II drugs he prescribed did no harm and presented only minimal risks to the patients, comments evidencing an extremely cavalier attitude toward controlled substances.

Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at this time. The Deputy Administrator realizes that the Respondent's misconduct occurred

almost ten years ago, but evidence of the Respondent's ''cavalier attitude'' occurred in 1991 before the Medical Board, and in 1994 in the hearing before Judge Bittner. As Judge Bittner noted, the DEA has previously determined that ''[t]he paramount issue is not how much time has elapsed since [the Respondent's] unlawful conduct, but rather, whether during that time [the] Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a DEA registration.'' Leonardo V. Lopez, M.D., 54 FR 36915 (1989). Here, the Deputy Administrator is currently not convinced that the Respondent would properly handle controlled substances if his registration is granted.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending DEA Certificate of Registration application of James W. Shore, M.D., be, and it hereby is, denied. This order is effective March 18, 1996.

Dated: February 12, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–3508 Filed 2–15–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

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 interested 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 Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume III

FL9550099 (Feb. 16, 1996)
FL9550100 (Feb. 16, 1996)
FL9550101 (Feb. 16, 1996)

Volume IV

Michigan
MI1950064 (Feb. 16, 1996)

Volume VI

California
CA950031 (Feb. 16, 1996)
CA950032 (Feb. 16, 1996)
CA950033 (Feb. 16, 1996)
CA950034 (Feb. 16, 1996)
CA950035 (Feb. 16, 1996)
CA950036 (Feb. 16, 1996)
CA950037 (Feb. 16, 1996)
CA950038 (Feb. 16, 1996)
CA950039 (Feb. 16, 1996)
CA950040 (Feb. 16, 1996)

Modifications to General Wage Determination 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

New Hampshire
NH950003 (Feb. 10, 1995)
New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
New York
NY950008 (Feb. 10, 1995)
NY950010 (Feb. 10, 1995)
NY950018 (Feb. 10, 1995)
NY950021 (Feb. 10, 1995)
NY950026 (Feb. 10, 1995)
NY950031 (Feb. 10, 1995)
NY950034 (Feb. 10, 1995)
NY950037 (Feb. 10, 1995)
NY950044 (Feb. 10, 1995)

Volume II

None

Volume III

Florida
FL950010 (Feb. 10, 1995)
FL950015 (Feb. 10, 1995)
FL950034 (Feb. 10, 1995)
FL950055 (Feb. 10, 1995)
FL950060 (Feb. 10, 1995)
Georgia
GA950022 (Feb. 10, 1995)

GA950031 (Feb. 10, 1995)
GA950032 (Feb. 10, 1995)
GA950073 (Feb. 10, 1995)
GA950086 (Feb. 10, 1995)
GA950087 (Feb. 10, 1995)
GA950088 (Feb. 10, 1995)
Kentucky
KY950001 (Feb. 10, 1995)
KY950002 (Feb. 10, 1995)
KY950003 (Feb. 10, 1995)
KY950004 (Feb. 10, 1995)
KY950007 (Feb. 10, 1995)
KY950025 (Feb. 10, 1995)
KY950026 (Feb. 10, 1995)
KY950027 (Feb. 10, 1995)
KY950028 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950034 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)
KY950044 (Feb. 10, 1995)
Mississippi
MS950054 (Feb. 10, 1995)

Volume IV

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IL950014 (Feb. 10, 1995)
Indiana
IN950002 (Feb. 10, 1995)
IN950003 (Feb. 10, 1995)
IN950004 (Feb. 10, 1995)
IN950006 (Feb. 10, 1995)
Michigan
MI950002 (Feb. 10, 1995)
MI950004 (Feb. 10, 1995)
MI950030 (Nov. 03, 1995)
MI950041 (Feb. 10, 1995)
MI950049 (Feb. 10, 1995)
MI950051 (Feb. 10, 1995)
MI950057 (Feb. 10, 1995)
MI950060 (Feb. 10, 1995)
MI950063 (Feb. 02, 1996)
Minnesota
MN950005 (Feb. 10, 1995)
MN950007 (Feb. 10, 1995)
MN950008 (Feb. 10, 1995)
MN950015 (Feb. 10, 1995)
MN950027 (Feb. 10, 1995)
MN950031 (Feb. 10, 1995)
MN950035 (Feb. 10, 1995)
MN950039 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950061 (Feb. 10, 1995)

Volume V

Arkansas
AR950001 (Feb. 10, 1995)
AR950008 (Feb. 10, 1995)
Iowa
IA950001 (Feb. 10, 1995)
IA950002 (Feb. 10, 1995)
Missouri
MO950001 (Feb. 10, 1995)
MO950002 (Feb. 10, 1995)
MO950006 (Feb. 10, 1995)
MO950009 (Feb. 10, 1995)
MO950011 (Feb. 10, 1995)
MO950013 (Feb. 10, 1995)
MO950050 (Feb. 10, 1995)
MO950058 (Feb. 10, 1995)
MO950067 (Feb. 10, 1995)

Volume VI

California
CA950001 (Feb. 10, 1995)
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
CA950029 (Jul. 21, 1995)
CA950030 (Jul. 21, 1995)
Colorado
CO950003 (Feb. 10, 1995)
CO950004 (Feb. 10, 1995)
CO950005 (Feb. 10, 1995)
CO950006 (Feb. 10, 1995)
CO950007 (Feb. 10, 1995)
CO950008 (Feb. 10, 1995)
CO950009 (Feb. 10, 1995)
CO950010 (Feb. 10, 1995)
CO950014 (Feb. 10, 1995)
Idaho
ID950001 (Feb. 10, 1995)
ID950003 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
Washington
WA950002 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)

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.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy 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 includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 9th day of February 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–3337 Filed 2–15–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL TRANSPORTATION SAFETY BOARD

Integrated Bridge Systems: A Public Forum

A public forum on integrated bridge systems—latest in ship control technology, design standards, and human interaction—sponsored by the National Transportation Safety Board will be held March 6–7, 1996, at the Sheraton Premiere (Tysons Corner) Hotel, 8661 Leesburg Pike, Vienna, Virginia. For more information, contact the Marine Division, telephone (202) 382–6860/6863, fax (202) 382–0692 or Pat Cariseo, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: February 12, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–3523 Filed 2–15–96; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Unit Nos. 1 and 2; 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 Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (the licensee), for operation of Zion Nuclear Power Station, Unit Nos. 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing Technical Specifications (TS) in its entirety and incorporate the guidance provided in NUREG–1431 (September 1992), ''Standard Technical Specifications, Westinghouse Plants.'' The proposed action is in accordance with the licensee's amendment request dated November 3, 1995, as supplemented on November 22, 1995.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors,'' (52 FR 3788) contained proposed criteria for defining the scope of technical

specifications. Later, the ''NRC Final Policy Statement on TS Improvement for Nuclear Power Reactors,'' (58 FR 39132) incorporated lessons learned since publication of the interim policy statement and formed the basis for recent revisions to 10 CFR 50.36. The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of technical specifications. To facilitate the development of standard TS, each reactor vendor owners' group (OG) and the NRC staff developed standard TS. For Westinghouse plants, the Standard Technical Specifications (STS) are NUREG–1431 (September 1992), ''Standard Technical Specifications, Westinghouse Plants.'' This document formed the basis for the Zion Improved Standard TS (ISTS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS, made note of its safety merits, and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1431 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the existing TS were also used as the basis for the development of the Zion ISTS. Plant specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee and generic matters with Westinghouse and other OGs.

The proposed changes from the existing TS can be grouped into four general categories. These groupings are characterized as relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes; and are as follows:

1. Relocated requirements are items which are in the existing Zion TS, but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in TS. Relocation of requirements to documents with an established control program allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the Zion TS to the Updated Final Safety Analysis Report (UFSAR), appropriate plant specific programs, procedures and ISTS Bases follows the guidance of NUREG–1431. Once these items have been relocated to other licensee controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff approved control mechanisms which provide appropriate procedural means to control changes.

2. Administrative changes involve the reformatting and rewording of requirements, consistent with the style of the Westinghouse STS in NUREG–1431, to make the TS more readily understandable to plant operators and other users. These changes are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS were made unless they were identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the existing specifications which provide information that is descriptive in nature regarding the equipment, systems, actions or surveillances, provide little or no safety benefit, and place an unnecessary burden on the licensee. This information is proposed to be deleted from the specifications and, in some instances, moved to the proposed Bases, Updated Final Safety Analysis Report (UFSAR), or procedures. The removal of descriptive information to the Bases of the TS, UFSAR or procedures is permissible, because the Bases, UFSAR or procedures will be controlled through a process which utilizes 10 CFR 50.59. The relaxations of requirements were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for Zion Nuclear Power Station as described in the Safety Evaluation to be issued with the license amendments.

4. More restrictive requirements are proposed to be implemented in some areas to impose more stringent requirements than presently exist. These more restrictive requirements are being imposed to be consistent with the Westinghouse STS. Such changes have been made after ensuring the previously evaluated safety analysis was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the specification. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on the technical content of the TS and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of the plant in normal and accident conditions.

Relocation of requirements to other licensee controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1431 and the Final Policy Statement, and are, therefore, acceptable.

Changes involving more restrictive requirements have been found to enhance plant safety and to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant specific basis were the result of a generic action, or of agreements reached during discussions with the OG and found to be acceptable for Zion. Generic relaxations contained in NUREG–1431 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendments.

With regard to potential nonradiological impacts, the proposed amendments involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the amendment request. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on January 5, 1996, the NRC staff consulted with the Illinois State Official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing 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 amendments.

For further details with respect to this action, see the licensee's letter dated November 3, 1995, as supplemented on November 22, 1995, which 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 Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 9th day of February 1996.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–3550 Filed 2–15–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8964]

Rio Algom Mining Corp.; Final Finding of No Significant Impact Notice of Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1548 to allow the licensee, Rio Algom Mining Corp. (Rio Algom), to employ deep well disposal of process waste waters at its Smith Ranch in-situ leach facility as an alternate disposal option for these wastes. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1992, the NRC issued to Rio Algom an NRC Source Material License, SUA–1548, for commercial-scale uranium recovery operations at Rio Algom's Smith Ranch in-situ leach (ISL) facility in Converse County, Wyoming.

The NRC review of Rio Algom's license application is documented in an Environmental Assessment (EA), issued on January 10, 1992.

Since the issuance of SUA–1548, Rio Algom has deferred commercial-scale operations at the Smith Ranch facility due to the depressed market for uranium. However, Rio Algom has indicated that it plans to commence such operations in the Fall of 1997.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment to SUA–1548 to allow Rio Algom to employ deep well injection as an alternate disposal option for process waste waters to be generated at its Smith Ranch ISL facility. The NRC staff's review was conducted in accordance with the requirements of 10 CFR 40.32 and 10 CFR 40.45.

Need for the Proposed Action

Rio Algom requested NRC approval of the proposed action to allow it to employ deep well injection in the disposal of process solutions from various waste streams that would be produced at the Smith Ranch facility. Currently, Rio Algom is required by NRC license to return all liquid effluents from commercial operations to the uranium recovery process circuit or to discharge them to solution evaporation ponds.

Environmental Impacts of the Proposed Action

By this proposed action, Rio Algom is seeking to employ deep well injection to dispose of a variety of process waste streams. These process wastes would be injected at an average of 150 gallons per minute from an injection well drilled to a total depth of 10,100 feet below surface. The wastes would be injected into permeable portions of the Parkman, Teapot, and Teckla formations, at depths below surface ranging from 8700 to 9600 feet. Due to high levels of total dissolved solids, groundwater in these formations has been designated by the State of Wyoming, Department of Environmental Quality (WDEQ), as Class VI water (unsuitable for use).

The Smith Ranch facility is not currently operating. As a result, Rio Algom provided anticipated ranges in concentration of the principal chemical species to be contained in the composite solution. The ranges in concentration of constituents identified by Rio Algom are comparable to concentrations allowed by the NRC at other ISL facilities employing deep well disposal of process fluids.

The NRC staff limited its analysis to a review of the radiological aspects of

the proposed action, in accordance with 10 CFR 20.2002. To avoid duplication of review efforts with the State of Wyoming, the NRC staff relied on the State's analysis of the suitability of the proposed aquifers as injection zones. The WDEQ, on September 29, 1995, granted an Underground Injection Control (UIC) permit to Rio Algom for the construction and operation of a Class I injection well at the Smith Ranch ISL facility.

Based on the nature of the proposed action, the NRC staff considers the potential impacts to the general environment and offsite individuals to be negligible for the following reasons:

(1) Under the State of Wyoming's groundwater classification system, the groundwater in the formations to be impacted is considered to be Class VI (unsuitable for use);

(2) The risk of exposure to the general public from the injected fluids is negligible due to the depth below surface at which process fluids will be injected (approximately 8700 to 9600 feet);

(3) Rio Algom will be continuously monitoring the disposal well to detect and minimize a potential spill on the surface and thereby preclude the release of effluent to the unrestricted environment;

(4) Rio Algom's radiation protection program in place at the Smith Ranch facility will adequately minimize potential exposures to as low as is reasonably achievable (ALARA); and

(5) At the end of the disposal well's useful life, the disposal well system will be abandoned in accordance with the requirements of Rio Algom's Class I injection well permit with the WDEQ.

Conclusion

The NRC staff concludes that approval of Rio Algom's amendment request to employ deep well disposal as an alternate waste disposal option at its ISL facility will not cause significant environmental impacts. The NRC staff also finds that the proposed action is in accordance with 10 CFR 20.2002 and with the NRC ''Staff Technical Position on Effluent Disposal at Licensed Uranium Recovery Facilities'' (60 FR 27993; May 26, 1995).

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Since the environmental impacts of the proposed action and this no-action alternative are similar, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

The NRC staff consulted with the State of Wyoming, Department of Environmental Quality, in the development of the Environmental Assessment. In a telephone conversation on February 5, 1996, Mr. Robert Lucht, UIC Program Supervisor, Water Quality Division of the WDEQ, stated that the WDEQ had no objections to the conclusions reached in the Environmental Assessment.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1548. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2'' (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this Federal Register notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Rio Algom Mining Corp., 6305 Waterford Boulevard, Suite 325, Oklahoma City, OK, 73118;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 8th day of February 1996.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–3551 Filed 2–15–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, Old Dominion Electric Cooperative; North Anna Power Station, Units 1 and 2 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 Nos. 50–338 and 50–339, issued to Virginia Electric and Power Company et al., (the licensee), for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change references to the National Pollutant Discharge Elimination System (NPDES) to reflect the correct permit title, Virginia Pollutant Discharge Elimination System (VPDES), eliminate references to vegetation and aquatic biota studies that were previously completed, correct a reference to 10 CFR 51.60(b)(2), replace the existing reporting requirements for unusual or important environmental events with the reporting requirements currently identified in 10 CFR 50.72(b)(2)(vi), replace the reference to the current Environmental Protection Plan (EPP) audit program with a reference to the Audit Program established in accordance with 10 CFR 50, Appendix B, revise the two year records retention requirement for erosion control inspection field logs to five years, change the reference to the State Water Control Board which is now the Department of Environmental Quality, identify the licensee's obligation to comply with Virginia regulations concerning erosion and sediment control within the transmission corridor rights-of-way to eliminate redundancy with previous EPP commitments, and recognize the Virginia Soil and Water Conservation Board as the regulatory authority concerning erosion within the transmission corridor rights-of-way.

The proposed action is in accordance with the licensee's application for amendment dated November 29, 1994.

The Need for the Proposed Action

The proposed action is needed to update each EPP to reflect current requirements, eliminate inconsistencies, and identify the proper regulatory agencies for certain environmental issues.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the amendment will correct inconsistencies, identify current requirements, and identify the proper regulatory agencies within the North Anna Units 1 and 2 EPPs. The majority of the changes are administrative in nature and only serve to update or clarify the information currently contained in the EPPs. The change to increase the annual inspection interval for the transmission line corridor rights-of-way from once every 12 months to once every 3 to 5 years is being made to ensure uniformity with the licensee's other transmission corridor rights-of-way. In addition, the change is being made to identify current requirements imposed by the Virginia Soil and Water Conservation Board, which is responsible for reviewing and approving utility erosion and sediment control specifications.

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 there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located outside the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents. There is the possibility of a potential environmental impact associated with the change to increase the annual inspection interval for the transmission corridor rights-of-way. There is the potential for erosion to undermine the bases of a transmission tower if left unchecked. However, the licensee has noted that the erosion identified to date has not been severe. In addition, severe erosion occurs over a period of time and would allow the licensee to take action to prevent any environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action are of a very low likelihood and therefore insignificant.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the North Anna Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on December 20, 1995, the staff consulted with the Virginia State official, L. Foldese, of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

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 the proposed action, see the licensee's letter dated November 29, 1994, which is 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 Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 9th day of February 1996.

For the Nuclear Regulatory Commission

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–3549 Filed 2–15–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 21744; 812–9726]

AIM Equity Funds, Inc., et al.; Notice of Application

February 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: AIM Equity Funds, Inc., AIM Funds Group, AIM International Funds, Inc., AIM Investment Securities Funds, AIM Strategic Income Fund, Inc., AIM Summit Fund, Inc., AIM Tax-Exempt Funds, Inc., AIM Variable Insurance Funds, Inc., Short-Term Investments Co., Short-Term Investments Trust, Tax-Free Investments Co. (collectively the ''Funds''); each investment portfolio of the Funds; and each other registered investment company or investment portfolio for which AIM Advisors, Inc. (''AIM Advisors'') or AIM Capital Management, Inc. (''AIM Capital

Management'') (collectively, the ''Advisers'') serves in the future as an investment adviser (collectively, with the Funds, the ''U.S. Portfolios''); Global Strategy Canada Growth Fund, Global Strategy U.S. Equity Fund, Short-Term Investments Company (Global Series) PLC (collectively, the ''Non-U.S. Registered Funds''); and each investment portfolio of the Non-U.S. Registered Funds; each other pooled investment fund advised or in the future advised by either of the Advisers not engaged in a public offering of their shares in the United States (collectively with the Non-U.S. Registered Funds, the ''Non-U.S. Registered Portfolios''); all existing private accounts, investment companies and other pooled investment funds and investment portfolios thereof that are exempt from registration as an investment company under the Act advised or in the future advised by either of the Advisers (the ''Private Accounts'') (the Non-U.S. Registered Portfolios and the Private Accounts are collectively referred to as the ''Additional Participants''); and the Advisers.

REVELANT ACT SECTION: Exemption requested under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek to amend an existing order that permits applicants to participate in joint accounts for the purpose of investing in repurchase agreements with remaining maturities not to exceed 60 days, and certain other short-term money market instruments with remaining maturities not to exceed 90 days. The amended order would extend such prior order's applicability to include additional participants.

FILING DATE: The application was filed on August 22, 1995, and amended on December 14, 1995 and February 12, 1996.

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 March 8, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Eleven Greenway Plaza, Suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office 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. Each of the Funds is a registered management investment company for which AIM Advisors, a registered investment adviser, serves as investment adviser. AIM Capital Management, a wholly-owned subsidiary of AIM Advisors, also is a registered investment adviser and serves as subadviser to several portfolios of AIM Equity Funds, Inc., and as adviser to the Private Accounts.

2. Pursuant to a prior order (the ''Prior Order''),[1] the U.S. Portfolios and the Advisers were given the authority to establish joint trading accounts (''Joint Accounts''). The Prior Order permits the U.S. Portfolios to pool some or all of their cash balances into Joint Accounts for the purpose of investing in: (a) Repurchase agreements with remaining maturities not to exceed 60 days; and (b) other short-term money market instruments, including tax-exempt money market instruments, that constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act with remaining maturities or deemed maturities (pursuant to rule 2a–7) not to exceed 90 days.

3. The requested order would amend the Prior Order and extend its applicability to the Additional Participants. The Joint Accounts would invest in any ''Investment'' as defined in condition 2 below. All Funds that currently intend to rely on the requested order are named as applicants.

4. A U.S. Portfolio or an Additional Participant would only purchase a security through the use of a Joint Account if such security was consistent with its investment objectives, policies and restrictions.[2] Subject to differences in investment objectives, the Board of Trustees/Directors of each Fund has established the same systems and standards for evaluating and acquiring Investments through the Joint Accounts. The Additional Participants will use the same systems and standards employed by the Funds.

5. Applicants contend that, if the requested order is granted, the U.S. Portfolios and the Additional Participants will be able to realize trading and administrative efficiencies in the management of their uninvested cash balances. By pooling these balances in the Joint Accounts, higher yields may be obtained and administrative costs may be saved, because a larger position can be purchased by a Joint Account than by any U.S. Portfolio or Additional Participant (each a ''Portfolio'' and, collectively, the ''Portfolios'') individually.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Portfolio may be deemed an ''affiliated person'' of each other Portfolio under the definition set forth in section 2(a)(3) of the Act. Each Portfolio participating in the proposed Joint Account and each of the Advisers could be deemed to be ''a joint participant'' in a transaction within the meaning of section 17(d). In addition, the Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

2. The Board of Directors/Trustees of each Fund has determined that the Joint Account will not result in any conflicts of interest among the joint participants. Although the Advisers can gain some benefit through administrative convenience and possible reduction in clerical costs, the primary beneficiaries will be the participating Portfolios because the Joint Accounts may earn higher returns for the Portfolios and will be a more efficient means of administering investment transactions. The Boards of the Funds have determined that the operation of the Joint Accounts will be free of any inherent bias favoring one Portfolio over another. Prior to the participation by any Additional Participant in the Joint Accounts, the responsible persons of such Additional Participant must make findings similar to those made by the Boards of the Funds.

[1] Investment Company Act Release Nos. 20761 (Dec. 9, 1994) (notice) and 20821 (Jan. 4, 1995) (order).

[2] Currently, neither Global Strategy Canada Growth Fund nor Global Strategy U.S. Equity Fund may invest in repurchase agreements. Until they are permitted to invest in repurchase agreements, neither fund will participate in any Joint Account that invests in repurchase agreements in reliance on the requested order.

3. In passing upon applications under section 17(d) and rule 17d–1, the SEC considers whether participation in the proposed joint transaction by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and not on a basis less advantageous than that of other participants. Applicants believe that the granting of the requested order is consistent with this standard.

Applicants' Conditions

Applicants consent to the following as express conditions to any order issued by the SEC in connection with this application:

1. Each Portfolio will transfer into one or more of the Joint Accounts the cash it wishes to invest through such Joint Accounts after the calculation of its daily cash available for investment and will specifically indicate whether the cash is to be used to purchase investments. The Joint Accounts will not be distinguishable from any other accounts maintained buy a Portfolio with its custodian bank except that monies from a Portfolio will be deposited on a commingled basis. The Joint Accounts will not have any separate existence and will not have indicia of separate legal entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Portfolio of its uninvested cash balances.

2. Cash in the Joint Accounts would be invested in one or more of the following, as directed by the Portfolio: (i) Repurchase agreements collateralized fully as defined in rule 2a–7 under the Act by: (a) U.S. Government obligations; (b) obligations issued or guaranteed as to principal and interest or otherwise backed by any of the agencies or instrumentalities of the U.S. Government; (c) certain obligations of the U.S. Government in the form of separately traded principal and interest components of securities issued or guaranteed by the U.S. Treasury; and (d) certain U.S. government agency securities such as mortgage-backed certificates issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, representing ownership interests in mortgage pools; (ii) interest bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (iii) in any other short-term money market instruments, including tax-exempt money market instruments, that constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act (collectively, the ''Investments''). No Portfolio would be permitted to invest in a Joint Account unless the Investments in such Joint Account satisfied the investment policies and guidelines of that Portfolio. Investments that are joint repurchase transactions would have a remaining maturity or deemed maturity of 60 days or less and other Investments would have a remaining maturity of 90 days or less, each as determined pursuant to rule 2a–7 under the Act.

3. All assets held by a Joint Account would be valued on an amortized cost basis to the extent permitted by applicable SEC release, rule, or order.

4. Each participating Portfolio valuing its assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the Joint Account in which such Portfolio has an interest (determined on a dollar weighted basis) for the purpose of computing that Portfolio's average portfolio maturity with respect to the portion of its assets held in such Joint Account on that day.

5. In order to assure that there would be no opportunity for one Portfolio to use any part of a balance of a Joint Account credited to another Portfolio, no Portfolio will be allowed to create a negative balance in a Joint Account for any reason, although it would be permitted to draw down its entire balance at any time. Each Portfolio's decision to invest in a Joint Account would be solely at its option, and no Portfolio will be obligated either to invest in a Joint Account or to maintain any minimum balance in a Joint account. In addition, each Portfolio would retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in such Joint Account.

6. The Advisers would administer the investment of the cash balances in and operation of the Joint Accounts as part of their duties under the general terms of each Portfolio's existing or any future investment advisory contract or sub-advisory contract (the ''Advisory Contracts'') and would not collect any additional or separate fees for advising any Joint Account. The operation of the Joint Accounts is not provided for specifically under each Portfolio's Advisory Contract, but rather is covered under the general terms of each such Contract. The Advisers would collect their fees based upon the assets of each separate Portfolio as provided in each respective Advisory Contract.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Boards of Trustees/Directors of the Funds, the Corporate Trustee of the Non-U.S. Registered Funds and the responsible person of the Private Accounts (each a ''Board'' and collectively the ''Boards'') will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each of the Boards will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Boards of each Portfolio will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with such procedures and will only permit a Portfolio to continue to participate therein if it determines that there is a reasonable likelihood that the Portfolio and its shareholders (or beneficiaries, as applicable) will benefit from the Portfolio's continued participation.

9. Any Investment made by a Portfolio or Portfolios through the Joint Accounts will satisfy the investment criteria of all Portfolios participating in that Investment.

10. The Advisers and the custodian of each Portfolio will maintain records documenting, for any given day, each Portfolio's aggregate investment in a Joint Account and each Portfolio's *pro rata* share of each Investment made through such Joint Account. The records maintained for each Portfolio that is a Fund or an investment portfolio thereof shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder. Each Portfolio that is not a registered investment company under the Act or an investment portfolio thereof shall make available to the SEC, upon request, books and records containing information related to its participation in the Joint Accounts.

11. Not every Portfolio participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Portfolio's cash is applied to a particular Joint Account, the Portfolio will participate in and own a proportionate share of the Investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such Investment in such Joint Account purchased with monies contributed by the Portfolio.

12. Investments held in a Joint Account generally will not be sold prior to maturity except: (a) If the Advisers believe that the Investment no longer presents minimal credit risk; (b) in the

case of commercial paper or tax-exempt securities, if as a result of a credit downgrading or otherwise, the Investment no longer satisfies the investment criteria of all Portfolios participating in that Investment; or (c) in the case of a repurchase agreement, if the counterparty defaults. A Portfolio may, however, sell its fractional portion of an Investment in a Joint Account prior to the maturity of the Investment in such Joint Account if the cost of such transaction will be borne solely by the selling Portfolio and the transaction would not adversely affect the other Portfolios participating in that Joint Account. In no case would an early termination be less than all participating Portfolios be permitted if it would reduce the principal amount or yield received by other Portfolios participating in a particular Joint Account or otherwise adversely affect the other participating Portfolios. Each Portfolio participating in such Joint Account will be deemed to have consented to such sale and partition of the Investment in such Joint Account.

13. Any Investment held through a Joint Account with a remaining maturity of more than seven days will be considered illiquid and, for any Portfolio that is an open-end management investment company registered under the Act, subject to the restriction that the Portfolio may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Portfolio cannot sell its fractional interest in the Investment in such Joint Account pursuant to the requirements described in the preceding condition.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3574 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21740; International Series Release No. 933; File No. 812–9792]

Banco Santander, S.A.; Notice of Application

February 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Banco Santander, S.A. (the ''Bank'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit Banco Santander de Negocios Mexico, S.A. (''BSNM'') to act as custodian for investment company assets in Mexico, Banco Santander S.A. (''BSA'') to act as custodian for investment company assets in Argentina, and Banco Santander de Negocios Portugal, S.A. (''BSNP'') (collectively, the ''Foreign Subsidiaries'') to act as custodian for investment company assets in Portugal.

FILING DATE: The application was filed on October 3, 1995 and amended on January 19, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Paseo de la Castellana, 24, 28406 Madrid, Spain; c/o Nora M. Jordan, Davis Polk & Wardell, 450 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, 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.

Applicant's Representations

1. The Bank is a full-service commercial bank organized under the laws of Spain and regulated in that country by the Bank of Spain. The Bank, together with its subsidiaries and associated companies (the ''Group''), is engaged in a wide range of banking, financial, and related activities in Spain and has offices or subsidiaries in 30 other countries. The Group was, as of December 31, 1994, the largest commercial banking group in Spain in terms of total assets. As of December 31, 1994, the Bank had shareholders' equity of Ptas. 437.7 billion (U.S. $3.6 billion, based on the then current exchange rate), and the Group had shareholders' equity of Ptas. 519.9 billion (U.S. $4.0 billion, based on the then current exchange rate).

2. BSNM, BSA, and BSNP are wholly-owned indirect subsidiaries of the Bank. BSNM is incorporated and organized under the laws of Mexico and is regulated as a banking institution by Comisión Nacional Bancaria, which is the agency of the government of Mexico responsible for the regulation of banks. BSA is incorporated and organized under the laws of Argentina and is regulated as a banking institution by Banco Central de la Republica Argentina, which is the agency of the government of Argentina responsible for the regulation of banks. BSNP is incorporated and organized under the laws of Portugal and is regulated as a banking institution by Banco de Portugal, which is the agency of the government of Portugal responsible for the regulation of banks.

3. The Bank requests an order to permit the Bank, any investment company registered under the Act, other than those registered under section 7(d) of the Act (''U.S. Investment Companies''), and any custodian for a U.S. Investment Company, to maintain ''Foreign Securities,'' as defined below, cash, and cash equivalents (collectively, ''Securities'') in the custody of BSNM, BSA, and BSNP as delegates for the Bank in Mexico, Argentina, and Portugal, respectively. As used herein, ''Foreign Securities'' includes (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or any state thereof which have been issued and sold primarily outside the United States.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank

having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank,'' as that term is defined in section 2(a)(5) of the Act, includes: (a) A banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, and which is supervised or examined by state or federal authority having supervision over banks.

2. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of U.S. $200 million or its equivalent.

3. The Bank qualifies as an Eligible Foreign Custodian under rule 17f–5. BSNM, BSA, and BSNP each satisfy the requirements of rule 17f–5 insofar as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States and is regulated as such by such country's government or an agency thereof. The Foreign Subsidiaries, however, do not meet the minimum shareholders' equity requirement of the rule. Accordingly, the Foreign Subsidiaries are not Eligible Foreign Custodians under the rule and, absent exemptive relief, could not serve as custodians for the Securities of U.S. Investment Companies.

4. Section 6(c) provides, in relevant part, that the SEC, by order, may exempt any person from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. The Bank believes that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to BSNM, BSA, and BSNP will satisfy the requirements of rule 17f–5 in all respects, other than with regard to BSNM's, BSA's, or BSNP's level of shareholders' equity.

2. Securities of a U.S. Investment Company in Mexico, Argentina, or Portugal, as the case may be, will be maintained in the custody of BSNM, BSA, or BSNP, respectively, only in accordance with an agreement (the ''Agreement''), required to remain in effect at all times during which the Foreign Subsidiaries fail to satisfy the requirements of rule 17f–5 relating to minimum shareholders' equity. Each Agreement will be a three-party contract among the Bank, the Foreign Subsidiary, and the U.S. Investment Company or custodian for the U.S. Investment Company pursuant to which the Bank would undertake to provide specified custodial or sub-custodial services for the U.S. Investment Company or custodian for such company and would delegate to the Foreign Subsidiary such of the Bank's duties and obligations as would be necessary to permit BSNM, BSA, or BSNP, as the case may be, to hold in custody the securities of the U.S. Investment Company or custodian in Mexico, Argentina, and Portugal, respectively. The Agreement would further provide that the Bank's delegation of duties to the Foreign Subsidiary would not relieve the Bank of any responsibility to the U.S. Investment Company or custodian for such company for any loss due to such delegation except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostility) and (ii) other risks of loss (excluding bankruptcy or insolvency of the Foreign Subsidiary) for which neither the Bank nor the Foreign Subsidiary would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

3. The Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3572 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21743; 811–8040]

TCW/DW North American Intermediate Income Trust; Notice of Application

February 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: TCW/DW North American Intermediate Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 11, 1996 and amended on February 7, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, 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.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Massachusetts business trust. On September 22, 1993, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was declared effective, and an initial public offering of its shares commenced, on March 14, 1994.

2. At a meeting held on August 24, 1995, applicant's board of trustees unanimously approved a plan of liquidation and dissolution (the ''Plan''). At the meeting, the trustees considered a number of factors, including the amount of the Fund's total assets and the inefficiencies, higher costs and disadvantageous economies of scale attendant with the Fund's small asset base, and the likelihood of whether additional sales of the Fund's shares could increase the assets to a more viable level. Accordingly, the board of trustees determined that adoption of the Plan would be in the interests of the Fund and its shareholders.

3. Proxy materials were filed with the SEC on September 14, 1995 and mailed to securityholders on or about the same date. On November 21, 1995, applicant's securityholders approved the Plan. Accordingly, on December 12, 1995, securityholders were paid a final liquidation distribution at net asset value equal to their proportionate interest in the applicant's assets.

4. All expenses incurred in connection with applicant's liquidation were paid by TCW Funds Management, Inc., applicant's adviser, and Dean Witter InterCapital Inc., applicant's manager.

5. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3575 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21742; 811–3979]

Wood Island Growth Fund, Inc.; Notice of Application

February 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Wood Island Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1995, and amended on February 8, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Wood Island, Fourth Floor, 80 East Sir Francis Drake Boulevard, Larkspur, California 94939.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, 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.

Applicant's Representations

1. Applicant is an open-end, diversified management company organized as a California corporation. On January 17, 1984, applicant filed a Notification of Registration on Form N–8A, and on April 6, 1984, applicant filed a registration statement on Form N–1A registering an indefinite number of shares. The registration statement also related to 57,800 common shares already issued and outstanding as of April 6, 1984, as a result of a prior private placement to qualified investors pursuant to exemptions under the Act and the Securities Act of 1933. On April 17, 1984, applicant's registration statement was declared effective, and the public offering commenced soon thereafter.

2. On or about November 8, 1995, applicant mailed proxy statements to its shareholders seeking approval to wind up and dissolve its business. Applicant's board of directors solicited written consent in lieu of a special meeting of shareholders and received written consent from the majority of applicant's shareholders on or about November 20, 1995.

3. At a meeting held on October 18, 1995, applicant's board of directors determined that it was in the best interest of the shareholder to liquidate. The board's decision was based primarily on the small size of applicant and its resulting high ratio of expenses to average net assets. Additionally, the relatively small size of applicant made it difficult to achieve the diversification and investment objectives sought by applicant.

4. On December 1, 1995, all of applicant's then issued and outstanding shares were redeemed. All redemptions were made at net asset value on the date of redemption.

5. Liquidation expenses of $4,190 for transfer agency, accounting, custody, tax reporting and legal fees were borne by applicant. Liquidation expenses of $921 for proxy solicitation and mailing costs were borne by Wood Island Associates, Inc., applicant's adviser.

6. Applicant has no securityholders, debts or liabilities at the time of filing this application. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3576 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36826; International Series Release No. 931; File No. SR–CBOE–95–54]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Brazilian Real

February 9, 1996.

On September 13, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Brazilian Real (''Real warrants''). Notice of the proposal was published for comment and appeared in the Federal Register on November 16, 1995.[3] No comment letters were received on the proposal. On January 5, 1996, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the CBOE's proposal, as amended.

I. Description of the Proposal

CBOE Rule 31.5(e) permits the exchange to list and trade currency warrants. The listing and trading of Real warrants will comply in all respects with CBOE Rule 31.5(E).

A. Currency Warrant Trading

Real warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars.[5] The warrants will be either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, the holder of a Real warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the value of the Brazilian Real has declined in relation to the U.S. dollar below a pre-stated base price. Conversely, holders of a Real warrant structured as a ''call'' would, upon exercise, receive payment in U.S. dollars to the extent that the value of the Brazilian Real in relation to the U.S. dollar has increased above the pre-stated base price. Warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

B. Warrant Listing Standards and Customer Safeguards

The Exchange has established revised generic listing standards for currency warrants, which are contained in CBOE Rule 31.5(E).[6] Any issue of Real warrants will conform to the listing criteria under Rule 31.5(E) which provide that: (1) The issuer shall have minimum tangible net worth in excess of $150,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have a minimum aggregate market value of $4,000,000. In addition, where an issuer has a minimum tangible net worth in excess of $150,000,000 but less than $250,000,000, the Exchange shall not list Real warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer (and its affiliates) that are listed for trading on a national securities exchange or traded through the facilities of the National Association of Securities Dealers Automated Quotation System (''NASDAQ'') exceeds 25% of the issuer's net worth.

Moreover, pursuant to the generic warrant listing order, Real warrants may be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7. Moreover, the suitability standards of Exchange Rule 9.9, and the standards of Rule 9.10(a), regarding discretionary orders, will be applicable. Pursuant to CBOE Rule 30.53(d), the Exchange will require members and member organizations to report to the CBOE any positions of 100,000 or more Real warrants on the same side of the market.[7] Finally, prior to the commencement of trading of Real warrants, the Exchange will distribute a circular to its membership calling attention to certain of these compliance responsibilities when handling transactions in Real warrants.[8]

C. Margin Requirements

The new listing standards also set forth the applicable margin requirements for currency warrants. New Exchange Rule 30.53 requires minimum margin on any currency warrant carried ''short'' in a customer's account to be 100% of the current market value of each such warrant plus an ''add-on'' percentage of the product of the units of underlying currency per warrant and the spot price for such currency. The Exchange has calculated frequency distributions reflecting percentage price returns for all one (1) and five (5) day periods for the Brazilian Real for the period of September 1, 1992 through August 30, 1995. These distributions demonstrate that more than 97.5% of all five (5) day returns for the three (3) year period would have been covered by 10.0% of the underlying Real value.

Based upon these results, the Exchange is proposing to set the margin ''add-on'' percentage for Brazilian Real warrants at 10% for both initial and maintenance margin, with a minimum add-on for out-of-the money warrants of 7%.[9] Additionally, the Exchange will conduct periodic reviews of the volatility in the Brazilian Real. Pursuant to Rule 30.53(a), if the Exchange determines that a higher customer

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 36464 (November 8, 1995), 60 FR 57607 (November 16, 1995).

[4] In Amendment No. 1, the Exchange proposes to increase the minimum add-on margin for out-of-the-money Real warrants from 2% to 7%. Additionally, the Exchange clarifies that for purposes of determining the settlement value of the Real warrants, the Exchange will require the issuer or issuer's designee to use the Federal Reserve Board noon buying rate (''Fed noon buying rate'') which is published by the Federal Reserve Bank of New York. Alternatively, in the event the Federal Reserve Bank were to discontinue publishing this figure, the Exchange would require the issuer to use the exchange rate published by the Central Bank of Brazil. See Letter from Timothy Thompson, Senior Attorney, CBOE, to James McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated January 4, 1996 (''Amendment No. 1'').

[5] As stated in note 4 *supra*, the CBOE will require the issuer or issuer's designee to use the Fed noon buying rate for determining settlement value, but if the Fed noon buying rate is unavailable, the Exchange will require the use of the exchange rate published by the Central Bank of Brazil (''Brazil rate''). The Brazil rate is disseminated daily by the Central Bank of Brazil through the SISBACEN, which is a large foreign-currency-exchange computer network linking the Central Bank to the interbank market. See Memorandum from the Division of Economic Analysis, Commodity Futures Trading Commission (''CFTC''), to Commissioners, CFTC, dated October 10, 1995 (regarding the application of the Chicago Mercantile Exchange for designation as a contract market in Brazilian Real futures and futures options).

[6] See Securities Exchange Act Release No. 36169 (August 29, 1995), 60 FR 46644 (September 7, 1995) (''generic warrant listing order'').

[7] See generic warrant listing order, *supra* note 6.

[8] The circular should highlight: (1) That Real warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; (4) the reporting requirements for positions of 100,000 or more Real warrants on the same side of the market; and (5) the applicable customer margin requirements.

[9] See Amendment No. 1, *supra* note 4.

margin level would be appropriate, the CBOE will take immediate steps to implement the change. If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate, the Exchange must file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Real warrants. Should the customer margin levels for Real warrants be changed, the Exchange will promptly notify the Exchange's membership and the public.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[10] in that it will help remove impediments to a free and open securities market and facilitate transactions in securities by providing investors with a low-cost means to participate in the performance of the Brazilian economy or to hedge against the risk of investing in that economy. Specifically, the Commission believes that the trading of listed warrants on the Brazilian Real should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Brazilian Real in relation to the U.S. dollar. In this regard, Real warrants should provide investors with an efficient and effective means of managing risk associated with the Brazilian Real.

Moreover, Real warrants will conform to the listing standards in Rule 31.5(E), and the other provisions of the generic warrant listing order. These rules provide a regulatory framework for trading currency warrants, and should help to provide for fair and orderly markets in Real warrants. Under these rules, the Exchange will limit transactions in Real warrants to customers with options approved accounts and impose the CBOE's options suitability standards and discretionary accounts standards to transactions in Real warrants. Additionally, the requirements established by the Exchange for reporting positions of 100,000 or more Real warrants on the same side of the market should assist the CBOE in detecting and deterring attempts at manipulation.

Furthermore, the CBOE has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.* 10% with a minimum add-on for out-of-the-money warrants of 7%) provides sufficient coverage to account for historical and potential volatility in the Brazilian Real in relation to the U.S. dollar. The Exchange will conduct periodic reviews of the volatility in the Brazilian Real and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate. As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Real warrants listed by the CBOE, calling attention to certain compliance responsibilities when handling transactions in Real warrants.[11]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 1 increases the minimum add-on margin for out-of-the-money Real warrants from 2% to 7%, to protect against greater fluctuations in the value of the Real. In addition, Amendment No. 1 clarifies that the Exchange will require any issuer of Real warrants to use a reliable, widely disseminated, and unbiased source for determining settlement value of the Real warrants. The Exchange will require the issuer or issuer's designee to use the Fed noon buying rate, published by the Federal Reserve Bank of New York for settlement purposes. Alternatively, in the event the Fed noon buying rate is unavailable, the Exchange will require the issuer to use the exchange rate published by the Central Bank of Brazil.[12] Based on the above, the Commission finds good cause to accelerate approval of Amendment No. 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–54 and should be submitted by March 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–95–54), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3579 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 8.

[12] *See* notes 4 and 5 *supra.*

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–36827; File No. SR–MSRB–95–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases

February 9, 1996.

On December 13, 1995 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–17), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(2). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to Board rule G–14, concerning reports of sales or purchases, and associated transaction reporting procedures (hereafter collectively referred to as ''the proposed rule change''). The purpose of

the proposed rule change is to enhance the Board's transaction reporting pilot program (''The program'') to improve support for market surveillance and enforcement of Board rules. The proposed rule change would require brokers, dealers and municipal securities dealers (''dealers'') to include the time of trade execution when submitting information on inter-dealer transactions to the Board under rule G–14. This would make it possible to reconstruct the time sequence of the transactions. Such information would be made available, through the Board's automated transaction reporting system, to the Commission and to organizations charged with inspection for compliance with, and enforcement of, Board rules (''enforcement agencies''). The Board is requesting that the proposed rule change become effective July 1, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Background

On November 9, 1994, the Commission approved an amendment to Board rule G–14, on reports of sales or purchases of municipal securities, and associated transaction reporting procedures for inter-dealer transactions.[1] The amendment enabled implementation of the Board's transaction reporting program and operation of the supporting computer system. The program is an important first step to increase transparency in the municipal securities market.

The goals of the program are to help provide market participants and the public with more information about the value of securities, and to help enforcement agencies identify transaction patterns as they carry out dealer inspections and conduct market surveillance. The Board stated in 1994 its plans to implement the program (the ''1994 plan'').[2] The 1994 plan called for the Board to disseminate a daily public report summarizing market activity for those municipal securities that traded ''frequently'' [3] on the previous day (''T+1 reporting''). The plan also called for the construction of a comprehensive ''surveillance database,'' that would include details of each trade (the identity of the parties, the price, par value, etc.). The 1994 plan had four phases, of which the first three covered different types of municipal securities transactions: Inter-dealer transactions in Phase I, institutional customer transactions in Phase II,[4] and retail customer transactions in Phase III. The time-of-trade would be added to the surveillance database after initial implementation of Phase I and also would be included as transaction data in subsequent phases. Phase IV is the Board's plan ultimately to improve the public reporting of transaction data by capturing and reporting trade data intra-day, rather than reporting it on the following business day.

The 1994 plan called for data taken from the central confirmation/acknowledgment system to serve as the input stream for institutional customer transaction reporting in Phase II. Currently, dealers submit information on transactions with institutional customers to this system, pursuant to Board rule G–15(d), to facilitate automated clearance and settlement.[5] For Phase III, however, retail customer transaction data would be reported by dealers directly to the Board, since there is no central system to receive such information.

A study by the Board of sample data from the confirmation/acknowledgment system, conducted during the spring and summer of 1995, revealed that data submitted by dealers to this system is unsuitable for transaction reporting purposes, since the data available for T+1 reporting is not sufficiently reliable and complete to be usable as a source of published T+1 prices. The Board examined a number of possible measures to improve the data, but found no alternative to make confirmation/acknowledgment data sufficiently reliable and complete.[6] The Board consequently has revised the 1994 plan, and now plans to combine reporting of all dealer-customer transactions in one phase which will replace Phases II and III in a ''customer transaction'' phase. Under the revised plan, dealers, either directly or through intermediaries, would report selected information about institutional and retail customer trades to the Board by uploading the data from their own systems to the central system operated by the Board. A notice will be made available to the Commission and the industry, by the end of 1995, outlining the new plan and requesting comment from industry participants. Corresponding amendments to rule G–14 will be filed with the Commission in mid-1996. The planned starting date for the customer transaction phase is January 1998.[7]

Operation of Phase I System

Phase I of the transaction reporting system has been operational since January 23, 1995. Each day, the system has produced a report of price and volume of inter-dealer transactions in municipal securities that were executed the previous business day. In addition to the transparency component which produces these daily reports, the system has a second component, a surveillance database of detailed records about every inter-dealer transaction that has been successfully compared [8] by the automated comparison system. The surveillance database includes, among other things, the price and volume of each compared transaction, the trade date, identification of the security traded, and identification of all parties to each compared transaction.[9] This information is intended to enable the enforcement agencies to construct audit trails of inter-dealer transactions. The Board has provided on-line access to the surveillance database to the National Association of Securities Dealers, Inc. (''NASD'') and is making information

[1] *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810.

[2] *See* letter from Robert Drysdale, MSRB, to Arthur Levitt, SEC, dated November 3, 1994.

[3] Currently, the threshold for ''frequent'' trading is four or more trades in one day.

[4] ''Institutional'' transactions were defined for the purpose of Phase II as customer transactions settled on a delivery *versus* payment/receipt vs. payment (DVP/RVP) basis. These are transactions in which the customer requires that settlement occur with an exchange of money and securities at the time of settlement. Generally, institutional customers require DVP/RVP settlement and retail customers do not.

[5] This system, operated by Depository Trust Corporation (DTC), is known as the Institutional Delivery (ID) system.

[6] In its study, the Board found nothing to indicate any problem with the reliability of the information as it relates to settlements. The data sample seems satisfactory for its intended purpose of facilitating automated clearance and settlement.

[7] The Commission notes that it has not approved this change in schedule for the transparency pilot program.

[8] In general, a ''compared'' transaction is one for which salient information items, provided by both parties to a trade, are matched and found to agree by the automated comparison system.

[9] The Commission has recently approved the requirement to identify all dealers that are parties to a trade when submitting transaction information to the Board. *See* Securities Exchange Act Release No. 35988 (July 18, 1995), 60 FR 38069.

from the surveillance database available to all agencies responsible for enforcing Board rules.

The input stream for inter-dealer transaction reporting is transaction information reported by dealers, pursuant to rule G–14, to the Board through the automated comparison system. The Board has designated National Securities Clearing Corporation (''NSCC''), the central facilities provider of the automated comparison system, as its agent for receiving inter-dealer transaction information.

Need for Time-of-Trade Information

The Commission has noted the need to make an ''integrated audit trail'' of transaction information available to the enforcement agencies. The Commission has expressed its belief that an audit trail will ''provide valuable information for market surveillance and inspection purposes to the MSRB, the Commission, the NASD, and the relevant banking agencies.'' [10]

The proposed rule change will help to ensure that the audit trail information in the surveillance database includes the time of execution of each compared inter-dealer municipal securities transaction. Enforcement agencies are expected to utilize the time-of-trade information when examining a series of transactions in a given municipal security. The information currently available from the surveillance database enables one to determine the date on which a trade or group of trades was executed; the addition of time-of-trade will help determine the sequence of trades during the day.

The Requested Date of Effectiveness

Changes in the automated comparison system are underway to enable that system to incorporate time-of-trade information collected as part of the trade data submitted by dealers.'' [11] Dealers and providers of system services must make corresponding changes in dealer systems that provide input to the automated comparison systems, and some time will be needed to allow these changes to be made. Accordingly, the Board is requesting that the Commission make the proposed rule change effective on July 1, 1996, to provide market participants with sufficient time to make the necessary internal system changes.

Effect of Proposed Rule Change Upon Dealers

Requiring trade reports to the Board to contain the time-of-trade would involve relatively minor changes in current practice. Currently, under Board rule G–8 on books and records, dealers are required to make and keep a record of the time of execution of each trade, to the extent feasible,[12] for each agency order and each transaction effected by the dealer as principal. Under the proposed rule change, each dealer reporting inter-dealer transactions to the Board would include the time of execution in each transaction submitted to the automated comparison system.[13] The time-of-trade would be reported by both the buyer and seller, to ensure that a time-of-trade is available on all transactions even when one side does not report the trade on the night of trade date.[14]

(b) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which requires, in pertinent part, that the Board's rules: Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board published a notice in February 1995, which among other things, described the proposed rule change and requested comment from market participants.[15] Two letters were received commenting on the proposed rule change. One commentator [16] stated that time-of-trade reporting would involve ''major and possibly costly'' system changes to dealer systems. This commentator believed time-of-trade reporting should be delayed until retail customer transactions are added to the transaction reporting program, so that dealers and clearing agencies could make the needed changes in conjunction with more extensive changes foreseen for the later phases. Another commentator [17] stated that many firms would incur development costs to modify their trading systems to accommodate time-to-trade information.

The Board believes that the proposed rule change is essential to facilitating effective surveillance and enforcement activities regarding inter-dealer transactions and should not be delayed until later phases of the transaction reporting program. The Board does not believe that incorporating time-of-trade data into current trade reporting systems represents a major system change. The proposed rule change would merely add one item of information to an existing reporting requirement. That information item already is required, for recordkeeping purposes, to be recorded by the dealer. The Board is proposing more than six months' lead time to allow dealers sufficient time to schedule the necessary system changes. In many cases, it would be expected that this

[10] Securities Exchange Act Release No. 34955, *supra* note 1, at 19.

[11] The Board understands from conversations with NSCC representatives that the necessary changes to the automated comparison system will be complete and tested during the first quarter of 1996.

[12] The Board has clarified that the phrase ''to the extent feasible'' is intended to require municipal securities professional to note the time of execution for each agency and principal transaction ''* * * except in extraordinary circumstances when it is impossible to determine the exact time of execution. In such cases, the municipal securities professional should note the approximate time of execution and indicate that it is an approximation.'' (MSRB Interpretation of July 29, 1997 regarding rules G–8(a)(vi) and (vii), *MSRB Manual* (CCH), para. 3536 [emphasis added].)

[13] Rule G–14 Transaction Reporting Procedures stipulate that the broker, dealer or municipal securities dealer may employ an agent that is a member of NSCC or a registered clearing agency for the purpose of submitting transaction information; however, the primary responsibility for timely and accurate submission continues to rest with the broker, dealer or municipal securities dealer that executed the transaction.

[14] The time, accurate to the nearest minute, would be reported as Eastern time. The time-of-trade would not be used to match submissions during the comparison process nor would it be made public in the daily reports. Requiring both the buyer and seller to report time-of-trade will ensure its presence in the surveillance database for those transactions where advisories are ''stamped'' in the automated comparison system. In ''stamping'' an advisory of a transaction to achieve comparison, one party indicates agreement with the transaction information submitted by the other party. If time-of-trade information were to be required of the party on only one side of the trade, transactions ''stamped'' by that party would not include any time-of-trade information for reporting purposes. In certain limited cases, involving syndicate transactions, however, NSCC comparison procedures require a submission only from one dealer: the syndicate manager. Accordingly, only one dealer (*i.e.*, the syndicate manager) is required in such a case to report the trade to the Board, and only that dealer would report the time-of-trade.

[15] *See* ''Transaction Reporting Program for Municipal Securities: Phase II,'' *MSRB Reports*, Vol. 15, No. 1 (April 1995), at 11–15.

[16] The Public Securities Association provided this comment.

[17] Goldman, Sachs & Co. provided this comment.

change could be made in connection with other minor system adjustments that must be implemented in the ordinary course of business.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

As discussed above, the Board is requesting that the Commission make the proposed rule change effective on July 1, 1996, to provide market participants with sufficient time to make the necessary internal system changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–17 and should be submitted by March 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3578 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36831; File No. SR–NYSE–95–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Exchange Rules 27, 476(a)(11), and 477

February 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 5, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to New York Stock Exchange (the ''Exchange'') Rules 27, 476(a)(11) and 477, which require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations.

[1] 15 U.S.C. 78s(b)(1).

Currently, Rule 27 authorizes the Exchange to enter into information sharing agreements with domestic and foreign self-regulatory organizations and associations, but does not provide for such agreements with commodities regulatory organizations such as contract markets and registered futures associations.

Rule 476(a)(11) permits the Exchange to initiate a disciplinary proceeding against a member, member organization, allied member, approved person, registered or non-registered employee of a member organization or a person otherwise subject to the jurisdiction of the Exchange, for failure to furnish information to, or appear or testify before the Exchange or another domestic self-regulatory organization. The rule does not authorize the Exchange to initiate such a proceeding when someone under Exchange jurisdiction fails to cooperate with a commodities market or association or a foreign self-regulatory organization or association.

Rule 477 permits the Exchange to require a member, member organization, allied member, approved person or registered or non-registered employee of a member organization that is terminating his status as such to comply with a request to appear, testify, submit books, records, papers, or objects and to respond to written requests and attend hearings in the same manner and to the same extent as if such person had maintained his status, if, prior to such termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, the Exchange makes such a request in writing. The rule does not require the above parties to comply with such requests from commodities markets or associations or from foreign self-regulatory organizations or associations.

The Exchange is proposing to amend Rule 27 to add domestic contract markets and futures associations to the list of entities with which the Exchange is authorized to enter into information sharing agreements. The extent to which those under the Exchange's jurisdiction would be required to cooperate would be predicated on the subject matter or scope of the relevant information sharing agreement. Rule 476(a)(11) would be amended to require that those under its jurisdiction cooperate with information requests from domestic commodities markets and associations and foreign self-regulatory organizations and associations as well as from

domestic securities markets.[2] Rule 477 would be amended to require compliance with information requests submitted by the organizations specified in Rule 476(a)(11).[3]

The Exchange believes that it is appropriate to expand the scope of its disciplinary proceedings to include a failure to cooperate with contract markets, futures associations and foreign self-regulatory organizations and associations because of its continued commitment to the enhancement of its regulatory efforts and the regulatory efforts of other market centers with which the Exchange has agreed to share information.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[4] The proposed amendments are consistent with these objectives in that they enhance the regulatory efforts of the Exchange and of other domestic and foreign securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[2] NYSE Rule 476(a)(11) is part of NYSE's minor rule violation plan set forth in NYSE Rule 476A. *See* Securities Exchange Act Release No. 25862 (Jun. 28, 1988), 53 FR 25400 (Jul. 6, 1988) (order approving File No. SR–NYSE–4–284).

[3] The NYSE has stated that, in connection with Rules 27, 476(a)(11), and 477, it is its policy to afford NYSE members the same rights and procedural protections that such person or entities would have if the Exchange had initiated the request for information or testimony. In furtherance of this, the Exchange will always act as an intermediary between another SRO, a contract market or a registered futures association and the exchange member, member organization, or other designated person under Rule 476(a)(11) from whom information or testimony is being sought for any inquiry made pursuant to an agreement under Rule 27. Telephone conversation on February 2, 1996 between Donald Siemer, Director, Market Surveillance, NYSE and George A. Villasana, Attorney, Division of Market Regulation, SEC.

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 the Exchange. All submissions should refer to File No. SR–NYSE–95–43 and should be submitted by March 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3577 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36832; File No. SR–Phlx–96–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendment of Its By-Laws to Require That the Chairman of Each Standing Committee Must Be a Member of the Board of Governors

February 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend Article X, Section 10–1(a) of its By-Laws, to require that the Chairman of each Standing Committee must be a member of the Phlx Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendment mandates that the Chairman of each Standing Committee of the Board of Governors shall be a member of the Board of Governors. The proposed amendment is intended to update the structural composition of the Standing Committees and make them more directly responsive to the Board.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act [1] as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange solicited comment from its membership on the proposed rule change in Phlx Circular No. 242–95. No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–04 and should be submitted by March 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3580 Filed 2–15–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78f(b)(5).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The following form, to be used only in the event that inductions into the armed services are resumed, has been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–9

Title: Registrant Claim Form.

Purpose: Form is used to submit a claim for postponement of induction or reclassification.

Respondent: Registrants filing claims for either postponement or reclassification.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

Copies of the above identified form can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: February 7, 1996.

Gil Coronado,

Director.

[FR Doc. 96–3510– Filed 2–15–96; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Request for Ideas, Recommendations and Information on the Most Cost Efficient Method of Servicing Disaster Home Loans

AGENCY: Small Business Administration.

ACTION: Request for comments.

SUMMARY: The Small Business Administration requests ideas, suggestions and information as to the most efficient method of handling the servicing and collection functions of its Disaster Home Loan Program at a cost consistent with or below existing levels. This includes but is not limited to contracting with the private sector to perform all or part of this service. SBA also solicits comments on the public policy issue of how best to work with disaster loan borrowers to cure defaults in ways other than foreclosure and under what, if any, circumstances should disaster victims be permitted to remain in their home even if they cannot pay on the loan.

DATES: It is requested that comments be received by the SBA no later than April 16, 1996.

ADDRESSES: Comments should be addressed to Allan S. Mandel, Director, Office of Policy, Office of Borrower and Lender Servicing, SBA, Suite 8300, 409 Third Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Allan S. Mandel, Director, Office of Policy, Office of Borrower and Lender Servicing, SBA, 409 Third Street SW., Washington, DC 20416 (202/205–6488).

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration operates a Disaster Loan Program, under which direct government loans are made in Federally-declared disaster areas to eligible home and business owners to assist them in replacing, rebuilding and repairing their property damaged in the disaster. The Agency currently (10/31/95) has a portfolio of 198,000 Disaster Home Loans valued at $3.2 billion. Ninety-three percent of the loans are current on their payments. Most of this portfolio, 182,000 loans valued at $2.9 billion, are serviced by the SBA in four Disaster Home Loan Centers located in Birmingham, Alabama; New York City; El Paso, Texas; and Santa Ana, California. Most of the loans are in a second or lower lien position. Servicing functions may include approval of subordination of the SBA loan, approval of assumption of the SBA loan, approval of substitution of collateral, approval of partial release of collateral, making parcel map revisions due to boundary

changes, authorizing the issuance of insurance checks, responding to demands for payoff, approval of release of collateral documents and notes, responding to Freedom of Information Act requests, handling consumer disputes of credit bureau reports, and handling Congressional inquiries. Soon the servicing function will also include monitoring payment of flood insurance and flood plain maps to insure that any borrower required to purchase flood insurance or any borrower whose property becomes located in a flood plain actually purchases insurance. If they do not, the servicer will purchase it and add the cost to the loan balance. Collection functions include dealing with delinquent loans, deferral, reduction in payments or other loan restructuring, bankruptcy and probate, issuance of foreclosure and tax sale notices and other liquidation processes.

The SBA is hereby requesting ideas, suggestions and information as to the most efficient method of handling the servicing and collection functions at a cost consistent with or below existing levels. This includes but is not limited to contracting with the private sector to perform all or part of this service. (Such actions would require a change in law, as Section 5 (b) (7) of the Small Business Act currently prohibits SBA from contracting or delegating its responsibility for servicing direct loans to anyone other than SBA personnel.) SBA also solicits comments on the public policy issue of how best to work with disaster loan borrowers to cure defaults in ways other than foreclosure and under what, if any, circumstances should disaster victims be permitted to remain in their home even if they cannot pay on the loan.

Arnold S. Rosenthal,

Assistant Administrator for Borrower and Lender Servicing.

[FR Doc. 96–3538 Filed 2–15–96; 8:45 am]

BILLING CODE 8025–01–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 will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. The information collection listed below, which was published in the Federal Register on December 22, 1995 has been submitted to OMB.

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections)

SSA Reports Clearance Officer: Charlotte S. Whitenight Application for U.S. Benefits Under the Canada-U.S. International Agreement—0960–0371. The information collected on form SSA–1294 is used to determine entitlement to benefits. The respondents are individuals who live in Canada and file for U.S. Social Security Benefits.

Number of Respondents: 1000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding this information collection should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: February 8, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–3423 Filed 2–15–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Directives Management Branch, Bureau of Management; Paperwork Reduction Act, Revision of Information Collection Requirement

This is a request for comments on the revised information collection requirement contained in 22 CFR 123.27(b), published in today's Federal Register. This revision has already been approved by OMB; its OMB control number is 1405–0103. Comments will be accepted for sixty days from the date listed at the top of this page in the Federal Register. Comments should address one or more of the following points:

(1) Evaluate whether the proposed revision of information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility and clarity of the information to be collected;

(4) Ways to further minimize the burden of the collection of information on those who are to respond.

If you have additional comments, suggestions or need additional information, please contact Ms. Rose Biancaniello, Office of Defense Trade Controls, Bureau of Political-Military Affairs, ATTN: Regulatory Change, Personal Use Cryptographic Products, U.S. Department of State, Room 200, SA–6, Washington, DC 20520.

Overview of this revised information collection requirement:

(1) Type of information collection: Revision of current approved information collection.

(2) The title of the form/collection: Not applicable. Revision removes requirement to complete and submit a government form and replaces it with self-certification and minimized record-keeping.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: nonapplicable. Sponsored by the Bureau of Political-Military Affairs, United States Department of State.

(4) Who will be asked or required to respond, as well as a brief abstract: Primary: U.S. persons temporarily exporting cryptographic products. Others: None. Before this revision, U.S. persons temporarily exporting cryptographic products were required to obtain a temporary export license from the Office of Defense Trade Controls prior to departing the United States and to complete Form 7525–V and deliver it to the U.S. Customs Service on their return. The revision allows travellers, in most circumstances, to temporarily export cryptographic products without a license and requires them merely to keep a personal log of such temporary exports and a self-certification that the restrictions on such temporary exports have been complied with. The log needs to be keep by the exporter for five years from the date of each temporary export. This record-keeping requirement is required by the Department of State in order to promote compliance with, and facilitate enforcement of, remaining restrictions on the temporary export of

crytographic products for personal use. These include controls on the temporary export of such items to terrorism-supporting states and destinations subject to United Nations arms embargoes.

(5) An estimate of the total number of travellers and the annual amount of time estimated for an average traveller to record the relevant information: 10,000 travellers at 0.25 hours, or 15 minutes per year.

(6) An estimate of the total public burden (in hours) associated with the information collection: 2500 hours.

If additional information is required contact: Mr. Charles S. Cunningham, Forms Management Officer, United States Department of State, Directives Management Branch, Bureau of Management, Room B–264 M.S., 2201 'C' Street, NW., Washington DC 20520.

Public comment on this revised information collection is strongly encouraged.

Dated: February 8, 1996.

Charles S. Cunningham,

Forms Management Officer, United States Department of State.

[FR Doc. 96–3191 Filed 2–15–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–003]

Prevention Through People Report

AGENCY: Coast Guard, DOT.

ACTION: Notice; Quality Action Team report complete.

SUMMARY: The Coast Guard announces the completion and availability of the Prevention Through People (PTP) Quality Action Team (QAT) report.

ADDRESSES: Requests for the study should be sent to Commandant (G–MMS–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or by telephone at (202) 267–6827, or by fax at (202) 267–4816.

FOR FURTHER INFORMATION CONTACT: CDR Mark VanHaverbeke, Design and Engineering Standards Division, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or by phone at (202) 267–2997.

SUPPLEMENTARY INFORMATION:

Background

Analyses of marine casualties which have occurred over the past thirty years have prompted the safety regime of the maritime community to evolve from one based primarily upon the development of equipment requirements to one which recognizes the importance of the human element in the system.

Despite the myriad of design requirements in place, significant marine casualties continue to occur. In an effort to further reduce casualties, the role of ''human error'' in the maritime safety equation needs to be evaluated. This evaluation must encompass not only the man/machine interface and ergonomics aspects, but also the assessment of entire processes, including navigating the vessel, cargo loading/unloading, responding to emergencies, and the relationship between management and vessel crews.

The PTP–QAT was assembled to develop a study to assess how to improve safety and pollution prevention through improvements in areas where people are the major factor in accidents. The report examines the extent of human error in the maritime transportation system; identifies candidate, high risk industries where human error prevails; examines the reasons why human error persists; offers a strategy to refocus prevention efforts on human error and root causes of marine casualties; and recommends an implementation plan to create a participatory, systematic approach to reduce human error related loss of life, injury, and pollution. The QAT developed long-term strategies to implement the PTP program. The study has now been completed and is available to the public.

Dated: February 12, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–3603 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent To Rule on Application Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chico Municipal Airport, Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas J. Lando, City Manager of the city of Chico at the following address: P.O. Box 3420, Chico, CA. 95927. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Chico under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 7, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Chico was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 12, 1996.

The following is a brief overview of the use application number AWP–96–02–C–00–CIC.

Level of proposed PCF: $3.00.

Charge effective date: May 1, 1996.

Estimated charge expiration date: September 30, 1998.

Brief description of the impose and use project: Terminal Building Remodel.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER**

INFORMATION CONTACT and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA, 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Chico.

Issued in Hawthorne, California, on February 7, 1996

Robert C. Bloom,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 96–3600 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Modesto City-County Harry Sham Field Airport, Modesto, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and 14 CFR Part 158.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Howard Cook, Airport Manager of the Modesto City-County Airport at the following address: 617 Airport Way, Modesto, California 95354. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Modesto under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 6, 1996 the FAA determined that the application to use the revenue from a PFC submitted by the city of Modesto was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 10, 1996.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: August 1, 1994.

Proposed charge expiration date: August 1, 2000.

Total estimated PFC revenue to be used on this use project: $24,800.

Brief description of the use projects: Airports Perimeter Security Upgrade.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Operators.

This project was previously approved as impose only project contained within an overall PFC package which was approved on May 23, 1994. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Modesto, CA.

Issued in Hawthorne, California, on February 6, 1996.

Robert C. Bloom,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–3601 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Emergency Order No. 19, Notice No. 1]

Tonawanda Island Railroad; Emergency Order To Prevent Operation of Trains on Bridge 7708810

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Tonawanda Island Railroad (TIRL) of North Tonawanda, New York, to discontinue operation of trains or any railroad on-track equipment on a railroad bridge numbered 7708810 which spans the Little River between North Tonawanda and Tonawanda Island, New York, until necessary repairs have been made to the bridge.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR § 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. §§ 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. § 20104. These orders may impose such ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' (*Ibid.*)

Background

The Tonawanda Island Railroad (TIRL), a common carrier, is a part of the general system of railroads. Its owner is Mr. Corigan Sanoian, P.E., of Niagara Falls, New York.

The TIRL operates over about a 1.5 miles of track, extending from a junction with the Conrail Niagara Branch in North Tonawanda, New York, to Tonawanda Island. The single main track route includes two highway rail grade crossings. One crossing, at River Road in North Tonawanda, is equipped with automated warning devices. The other highway rail grade crossing is located at Main Street in North Tonawanda and is equipped with traffic control signals on each side of the crossing.

In addition to the main track, several auxiliary tracks are in service, both at the junction and on Tonawanda Island. To access Tonawanda Island, the TIRL crosses the Little River via a wood and metal bridge identified by a number affixed to its westernmost bent, 7708810. For the purposes of this Emergency Order, the bridge is hereinafter designated as ''Bridge 7708810.'' The bridge consists of two timber trestle approaches, one on each side of a steel through truss swing span. The swing span has been inoperative for many years.

The Little River is a navigable waterway formed by a channel of the Niagara River, Ellicott Creek and

Tonawanda Creek. It flows into the Niagara River approximately 10 miles above Niagara Falls. The Little River is the site of a significant concentration of pleasure boating during the summer. A marina is located adjacent to and downstream from the bridge. A highway bridge is located about 300 feet downstream.

The sole piece of rolling stock regularly used by the TIRL is a 50-ton industrial switcher type locomotive. The railroad's current customer base includes a consignee on Tonawanda Island which receives wood fibre in box cars. There are no consignors. Until approximately one year ago, the TIRL delivered building materials to another consignee on Tonawanda Island. However, that consignee discontinued service from the TIRL after Mr. Sanoian expressed an intent to shut down the railroad. Total traffic for TIRL in 1995 was about 51 cars.

FRA's history of inspecting the TIRL under Mr. Sanoian's ownership dates back to 1990. The following chronology highlights FRA activity with respect to the TIRL:

October 11, 1990: FRA Chief Inspector John Conklin conducted an operating practices inspection and issued inspection report No. 72, informing Mr. Sanoian that the TIRL was not in compliance with 49 CFR Part 225 (Accident/Incident Reporting), as well as 49 CFR Part 228 (Hours of Service Recordkeeping).

December 17, 1990: FRA Railroad Safety Inspector Daniel Feneziani inspected the TIRL locomotive and issued inspection report No. 171, informing Mr. Sanoian of 17 items not in compliance with the Federal railroad safety standards.

February 28, 1991: Chief Inspector Conklin conducted an operating practices inspection and issued inspection report No. 30, informing Mr. Sanoian that the TIRL still was not in compliance with 49 CFR Part 225.

December 10, 1992: Chief Inspector Conklin conducted an inspection of operating practices and issued inspection report No. 50, informing Mr. Sanoian that the TIRL was not in compliance with 49 CFR Parts 225, 228 and 240 (Qualification and Certification of Locomotive Engineers).

October 21, 1993: FRA Chief Inspectors Patrick Sullivan and William Robbins inspected the TIRL locomotive and issued inspection report No. 05, informing Mr. Sanoian of 22 items not in compliance with Federal railroad safety standards.

December 7, 1994: Chief Inspector Sullivan conducted an inspection of operating practices and issued inspection report No. 27, informing Mr. Sanoian that the TIRL was not in compliance with 49 CFR Parts 217 (Railroad Operating Rules), 225, 228, and 240.

August 9, 1995: FRA Principal Railroad Safety Inspector Bernard T. Lutz inspected the TIRL locomotive and issued inspection report No. 67, notifying Mr. Sanoian of 15 items of non-compliance with Federal railroad safety standards.

October 13, 1995: FRA Regional Administrator Mark McKeon mailed Mr. Sanoian a certified letter in which he enumerated the locomotive's conditions of non-compliance with the Federal railroad safety standards. The letter noted that some of the conditions have existed since December 17, 1990. The letter also acknowledged FRA's awareness that the TIRL is a small business with limited resources. Regional Administrator McKeon offered to discuss the defects with Mr. Sanoian in an effort to work with him to bring the railroad into compliance. United States Post Office records indicate that a notice of the certified letter was served on Mr. Sanoian on October 17, October 22, and November 2, before it was returned to the sender as ''unclaimed.''

January 2 and January 4, 1996: FRA Railroad Safety Inspector Ronald Anderson inspected bridge 7708810. His inspection was in response to concerns raised by a New York State Department of Transportation Railroad Safety Inspector. Inspector Anderson concluded that the bridge is unsafe. While inspecting the bridge on January 2, 1996, Inspector Anderson fell through the bridge due to the deteriorated condition of the bridge timbers.

January 12, 1996: Inspector Anderson and New York State Department of Transportation Inspector Keith McClain met with Mr. Sanoian to discuss the condition of the bridge. Mr. Sanoian disagreed with Inspector Anderson's assessment of the bridge and stated his belief that the bridge was safe for a load of 500,000 pounds.

January 15, 1996: Regional Administrator McKeon and Railroad Safety Inspector Michael Ziolkowski met with Mr. Sanoian to discuss both the locomotive and the bridge. Although he did not agree that the bridge was unsafe, Mr. Sanoian stated that he would not operate over it until it had been repaired and had been inspected by an FRA representative. He further stated that the locomotive would not be used until it was repaired.

Regional Administrator McKeon hand-delivered to Mr. Sanoian a copy of the letter of October 13, 1995, which previously had been returned to FRA unclaimed.

January 16, 1996: Regional Administrator McKeon prepared and signed a letter confirming the discussions of January 15. The letter, dated January 16, 1995, stated in part:

> The TIRL bridge is unsafe for the movement of trains, locomotives and other rolling stock. The bridge must not be operated over until it is repaired.

The letter noted Mr. Sanoian's verbal assurances that he had obtained the services of a contractor to repair the bridge and that he would provide FRA with an opportunity to inspect the bridge once the repairs were made. He also agreed to repair the locomotive before using it again.

The letter further stated that unless the TIRL took immediate steps to repair the bridge, Regional Administrator McKeon would recommend issuance of an Emergency Order prohibiting its use.

January 17, 1996: Inspector Ziolkowski hand-delivered the January 16 letter to Mr. Sanoian. Mr. Sanoian stated to Inspector Ziolkowski that the bridge did not have ''a structural problem'' but that it had a ''lateral problem.''

January 18, 1996: During a telephone conference with Regional Administrator McKeon and Deputy Regional Administrator Lawrence Hasvold, Mr. Sanoian requested permission to use the locomotive to move material to repair the bridge. Regional Administrator McKeon advised Mr. Sanoian that the locomotive could not be used until it was in compliance with the applicable Federal regulations.

January 19–22, 1996: The TIRL received loaded boxcar RBOX 40945 in interchange from Conrail, moved it across the bridge, and placed it at the consignee's facility on Tonawanda Island. This move presumably was made with the railroad's only locomotive.

January 25, 1996: Principal Inspector Lutz again inspected the TIRL locomotive and issued inspection report No. 1, informing Mr. Sanoian of 14 items not in compliance with Federal railroad safety standards. As a result of the inspection, Inspector Lutz removed the TIRL locomotive from service by issuing a Special Notice for Repairs, Form FRA 6180 (''Form 8''). A copy of the form was placed in the locomotive cab.

January 26, 1996: Inspector Ziolkowski hand-delivered a copy of the Form 8 to Mr. Sanoian. Despite the fact that the boxcar was placed on the trailing end of a stub track with the locomotive ahead of it, Mr. Sanoian

stated that he had not moved the locomotive and could not have done so because it ''had no air.''

January 29, 1996: FRA Inspector Ron Marx conducted a track inspection on the TIRL and identified five deficiencies, including a five-and-one-sixteenth-inch cross level deviation on Bridge 7708810. This serious track defect does not meet even the minimum track geometry standards contained in 49 CFR Part 213. In addition, the added load placed on one rail by a downward tilt of the track to the downstream side further overloads the already severely degraded bridge structural members supporting the bridge timbers to which that rail is attached. Inspector Marx also found combustible debris located against the southeast corner of the bridge.

January 29–31, 1996: Representatives of Parsons Brinckerhoff, Quade and Douglas, Inc. inspected Bridge 7708810. Parsons Brinckerhoff, an engineering consulting firm with nationally recognized expertise in bridges, including wooden structures, is under contract to DOT to inspect Bridge 7708810 and to advise FRA of the bridge's structural condition. Parsons Brinckerhoff evaluated the bridge in accordance with accepted principles of structural engineering as contained in the ''Manual for Railway Engineering'' published by the American Railway Engineering Association. Parsons Brinckerhoff determined, and reported to FRA, that the bridge is unsafe, even for the movement of TIRL's 50-ton locomotive.

Condition of the bridge

The investigation performed by Parsons Brinckerhoff on behalf of FRA disclosed that bridge 7708810 is in need of repair and should be closed to all rail traffic until adequate repairs have been made. A report of the investigation notes that severe deterioration and distress exist in the three northern stringers of the westernmost span of the bridge structure. The damage includes severe section loss caused by fungal attack, crushing of the bearing surfaces due to an inadequate bearing area, and horizontal shear cracks along most of the length of the stringers. The three stringers are so badly deteriorated that they are considered as failed. Because of the complete lack of support under one rail, the entire span is rated zero for live load capacity.

Failure of the bridge under load could have very serious consequences. In addition to killing or injuring railroad crew members, failure of the bridge also could kill or injure pleasure boaters on the river or at the marina. A catastrophic failure of the bridge causing any pollution of the Niagara River, whether from locomotive diesel fuel or from the contents of a boxcar, could have international impact. Furthermore, failure of the railroad bridge over the fast-moving current could damage the nearby highway bridge.

Finding and Order

The results of bridge engineers' inspection of Bridge 7708810 have led FRA to conclude that any future use of the bridge poses an imminent and unacceptable threat to public safety. A past pattern of failure by the TIRL to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the TIRL to repair the bridge to safe condition is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49) it is ordered that the Tonawanda Island Railroad shall discontinue, and shall not permit, the operation of trains or any railroad on-track equipment over Bridge 7708810 while this Emergency Order remains in effect.

Relief

The Tonawanda Island Railroad may obtain relief from this Emergency Order by providing the Federal Railroad Administrator with a report of inspection and evaluation of repairs, indicating to FRA's satisfaction that the Bridge 7708810 has been acceptably repaired. The report should be prepared by an engineer who is technically proficient and legally competent in the field of railroad bridge engineering, and it should state that the capacity of the bridge to carry safely railroad cars and locomotives has been restored. The configuration and weights of the loads for which the determination has been made should be stated in the report. Upon FRA's approval of the bridge engineer's assessment of the bridge restoration, and following an inspection by FRA if the agency deems it necessary, the Administrator will rescind this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $20,000. 49 U.S.C. § 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. § 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 12:01 a.m. (EST) on February 13, 1996, and apply to all operations of trains or railroad on-track equipment on Bridge 7708810 on or after that time. Notice of this Emergency Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to Mr. Corigan Sanoian of the Tonawanda Island Railroad, the Consolidated Rail Corporation, International Filler Corporation, the City of North Tonawanda, New York Department of Transportation, and the Association of American Railroads.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. § 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR §§ 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on February 12, 1996.

Jolene M. Molitoris,

Administrator.

[FR Doc. 96–3592 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–06–P

Petition for Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Burlington Northern Railroad

Union Pacific Railroad

(Waiver Petition Docket Number H–95–4)

The Burlington Northern Railroad (BN) and Union Pacific Railroad (UP) seek a waiver of compliance from certain sections of Title 49 Code of Federal Regulations Parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment, 217, Railroad Operating Rules, 218, Railroad Operating Practices, 220, Radio Standards and Procedures, 229, Railroad Locomotive Safety Standards, 233, Signal Systems

Reporting Requirements, 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements Of Part 236, Rules, standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances, and 240, Qualification and Certification Of Locomotive Engineers, under Part 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train collisions and overspeed violations and to protect track maintenance personnel from trains. The program will enable the industry to demonstrate and validate the technology, referred to as for Positive Train Separation (PTS), before it is implemented on a larger scale.

PTS is a non-vital safety overlay that works in conjunction with existing methods of operation and signal and control systems to protect against the consequences of human error. This approach provides a ''safety net'' for train operations while retaining the existing systems as the primary means of control.

The PTS safety enhancements are achieved through a centrally controlled, communication-based system that enforces movement authority and speed restrictions for PTS-equipped trains. Three PTS segments work together to provide this enforcement: the server segment, the locomotive segment, and the communications segment. The server segment determines the enforceable movement authority and speed limit for each train under PTS control. This information is sent through the communications segment to the locomotive segment, located on board the controlling locomotive of each train. The locomotive segment enforces a train's movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation.

The pilot program will focus on proving PTS concepts and technology and on laying the groundwork for a production system. While the purpose of PTS is to enhance safety, the pilot program itself is not expected to yield immediate safety benefits. The program will focus on testing the technology without adversely affecting the safety of operations under existing signal and control systems, operating rules, and procedures, all of which will remain in effect.

The PTS pilot program will be implemented on 863 miles of BN and UP track in the Pacific Northwest. The pilot territory includes portions of four BN operating divisions (Cascade, Pacific, Portland, and Pasco) and the Portland and Seattle subdivisions of UP's Boise Service Unit. Relief is sought for PTS test operations on all tracks of all types included in the pilot territory. The pilot territory includes single main track, two main tracks, sidings, and branch lines.

The following are the current waiver requests and their justifications.

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for PTS-equipped locomotives to the extent that non-operation of PTS equipment installed on board (whether through malfunction or deactivation) shall not be construed as an unsafe condition requiring special notice for repairs; waiver is sought for non-PTS-equipped locomotives operating in the PTS pilot territory to the extent that the absence of PTS equipment on board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without PTS equipment operating on board the controlling locomotive, a train remains subject to existing signal and control systems and to the railroad's operating rules. (PTS is an overlaid system enhancing current safety without affecting the operation of existing systems.) PTS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The PTS pilot will equip only a small subset of locomotives operating in the pilot territory.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of PTS equipment and procedures from the requirements for operational tests and inspections and associated recordkeeping.

Justification: The PTS pilot is a test program during which procedures for using PTS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules, timetables, and timetable special instructions to which this section applies.

Section 217.11

Program of instruction on operating rules; recordkeeping; electronic recordkeeping. Waiver is requested exempting operation of PTS equipment and procedures from the requirements for instruction and associated recordkeeping.

Justification: The PTS pilot is a test program during which procedures for using PTS equipment and functions will be refined and modified. Until such procedures are defined they cannot be addressed in the code of operating rules to which this section applies. In any case PTS is expected to have minimal impact on the code of operating rules.

Part 218

[Subpart D] Prohibition Against Tampering With Safety Devices. Waiver is requested exempting on-board PTS equipment from the requirements of all sections under Subpart D of Part 218 (sections 51, 53, 55, 57, 59, and 61) to the extent that PTS equipment on board a locomotive shall not be considered a ''safety device'' according to the provisions of this subpart at any time during the pilot program.

Justification: The PTS pilot is a test program. PTS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BN and UP also require the flexibility to permanently disable or remove PTS equipment in the event that a production system is not implemented.

Part 220

Radio Standards and Procedures. Clarification is requested establishing that digital radio communications are exempt from all requirements applicable to radio communications under Part 220.

Justification: Imposing the requirements of Part 220 would negate the efficiencies of digital data communications and, for some functions, violate the PTS concept of operations. Digital radio communications are expected to enhance safety by eliminating the sources of human error which Part 220 is designed to mitigate. Exemption of digital communications from Part 220 requirements is consistent with the statement of scope in Section 220.1, where the term ''radio communications'' is explicitly identified with voice communications.

Section 220.21

Railroad operating rules; radio communications; recordkeeping. Clarification is requested to establish that during the pilot program, neither railroad's operating rules with respect to radio communications shall be either construed or required to address procedures governing digital data communications.

Justification: The current operating rules were written to enhance the safety of voice radio communications. Whether new rules are needed to

accommodate digital communications is an open issue, on which the PTS pilot program can be expected to provide valuable input.

Section 220.23

Publication of radio information. Clarification is requested to establish that digital radio base stations and wayside interface units are exempt from the requirements for publication of radio information including locations, channels, and periods of operation.

Justification: The safety rationale for Section 220.21 does not apply to digital radio communications, especially for PTS, where communication management functions occur transparently to the user. Exemption of digital base stations and wayside interface units from Section 220.23 requirements is consistent with the statement of scope in Section 220.1, where the term ''radio communications'' is explicitly identified with voice communications.

Section 220.61

Transmission of train orders by radio. Clarification is requested establishing that both PTS enforceable authorities and digitally transmitted text authorities (including track warrants, track permits, track and time, authority to pass an absolute signal at stop, and authority to enter track at a location between block signals) are exempt from the requirements governing voice transmission of train orders, including the following requirements: voice exchange prior to transmission of a train order; limitations regarding when and to which crew member a train order may be sent; copying a train order in writing; repeating a train order back to the dispatcher; and requiring the conductor and engineer to have written copies of a train order before it is acted upon.

Justification: The safety rationale for Section 220.61 does not apply to digital transmission of either PTS enforceable authorities or displayed text authorities. PTS enforceable authorities remain unseen by the train crew and lie clearly outside the provisions of this section. Digitally transmitted track warrants are expected to enhance safety by eliminating the sources of communication error which the requirements of Section 220.61 are designed to mitigate. Exemption of digital communications from Part 220 requirements is also consistent with the statement of scope in Section 220.1, where the term ''radio communications'' is explicitly identified with voice communications. The PTS pilot program will give opportunity to test the efficacy of issuing digital track warrants and other text authorities apart from the procedural requirements of Section 220.61.

Section 229.7

Prohibited acts. Waiver is requested to the extent that PTS equipment on board a locomotive shall not be considered ''appurtenances'' rendering the locomotive subject to the constraints of this section.

Justification: The PTS pilot is a test program. PTS test require flexibility in installing, removing, turning on, and turning off the on-board equipment. BN and UP also require the flexibility to temporarily or permanently disable on-board PTS equipment. Whether or not PTS equipment on board a locomotive is functioning, the train remains subject to the safety provisions of the existing signal and control systems and to the railroad's operating rules.

Section 229.135

Event recorders. Waiver is requested to the extent that PTS equipment on board a locomotive shall not be considered an ''event recorder'' subject to the provisions of this section.

Justification: PTS equipment by design will operate intermittently during the pilot program. PTS test require flexibility in installing, removing, turning on, and turning off the on-board equipment. BN and UP also require the flexibility to temporarily or permanently disable on-board PTS equipment.

Section 233.9

Annual reports. Waiver is requested exempting PTS operations in the pilot program from the reporting requirement of this section.

Justification: While a PTS production system may belong to the category of ''other similar appliances, methods, and systems'' specified in Section 233.1, this requirement would impose an unnecessary paperwork burden for a test program.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the PTS pilot program from the filing requirements of this section.

Justification: The PTS pilot is a test program. PTS tests require flexibility in installing, removing, modifying, turning on, and turning off the on-board equipment. BN and UP also require the flexibility to permanently disable or remove PTS equipment in the event that a production system is not implemented.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that PTS equipment shall be excluded from this requirement during the pilot program.

Justification: The PTS pilot is a test program through which the ''normal functioning'' of PTS will be defined and refined. PTS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. With or without PTS equipment operating on board the controlling locomotive, the train remains subject to the safety provisions of existing signal and control systems and to the railroad's operating rules.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting PTS equipment from the closed circuit design requirement.

Justification: PTS is an overlay system using solid-state components. It will enhance railroad safety while in no way interfering with the operation of existing safety devices.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting PTS components on board a locomotive from the requirements of this section.

Justification: PTS is an overlay system designed to enhance safety while in no way affecting the operation of existing signal and control systems. Failure of a PTS component will not jeopardize the safety of train operations.

Section 236.15

Timetable instructions. Waiver is requested exempting the PTS pilot territory from the timetable designation requirement of this section.

Justification: Since the pilot program will consist of tests and demonstrations, identifying the test territory in the timetable as ''PTS'' (or some similar label) would be both premature and an unnecessary paperwork burden.

Section 236.23

Aspects and indications. Waiver is requested to the extent that the PTS display on board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications and shall therefore be exempt from the requirements of this section.

Justification: The PTS design excludes any visual display of signal aspects or indications. PTS enforceable authorities, which may or may not derive from signal indications, are not displayed on

board. Only text authorities, such as track warrants, track permits, and track and time, are displayed to the train crew. Since PTS is a safety overlay, trains remain subject to wayside signals. Information on the PTS display will in no way either represent or qualify the authority conveyed through wayside signals.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus. Waiver is requested exempting PTS equipment from the wire tagging requirement.

Justification: PTS hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting PTS equipment from the requirement for removal of failed equipment from service.

Justification: The PTS pilot is a test program. PTS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. With or without PTS equipment operating on board, a train remains subject to the safety provisions of existing signal and control systems and to the railroad's operating rules.

Section 236.107

Ground tests. Waiver is requested exempting PTS equipment in the pilot program from the requirement for ground testing.

Justification: PTS hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to this equipment.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting PTS equipment in the pilot program from the annual testing requirement.

Justification: The timing devices in PTS equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated.

Section 236.110

Results of tests. Waiver is requested exempting PTS tests from the recordkeeping requirements of this section.

Justification: The PTS pilot is a test program during which the types of tests needed to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting PTS from the requirement for medium-speed restriction in paragraph 2 under provision b.

Justification: PTS is not connected with the signal system and will not enforce speed restrictions indicated solely through signals. PTS will enforce speed restrictions reflected in the track database or issued through the CAD system.

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. Waiver is requested exempting PTS automatic brake applications from the requirement tying brake applications to restrictive block conditions.

Justification: As an overlay system, PTS applies enforcement braking with reference to PTS enforceable authorities, independently of signal indications. Since PTS enforceable authorities are generated to keep trains apart, not to enforce signal indications, the enforceable limits may or may not correspond to restrictive signal indications. PTS enforceable speed limits do not reflect signal indications requiring a reduction in speed because information from signal systems is not available to the PTS system.

Section 236.504

Operation interconnected with automatic block-signal system. Waiver is requested exempting PTS from the requirement of interconnection with an automatic block-signal system.

Justification: PTS is an overlay system having no direct connection with the signal system.

Section 236.507

Brake application; full service. UP desires the option for PTS to initiate a emergency brake application if after the activation of the P2A valve the location determination system ascertains that the train will not stop within the authority limit.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in 23 advance. Waiver is requested exempting any PTS on-board display from the cab-signal requirements in this section.

Justification: PTS is not an automatic cab signal system and will have no direct connection with the signal system.

Section 236.512

Cab signal indication when locomotive enters block where restrictive conditions obtain. Waiver is requested exempting any PTS on-board display from the cab-signal requirements in this section.

Justification: The PTS system will not incorporate information from or about intermediate signals. The information available to PTS from control points and interlockings does not include signal indications requiring a reduction in speed. PTS is not an automatic cab signal system. Since PTS is an overlay system the train crew remains responsible for adherence to wayside 24 signal indications.

Section 236.514

Interconnection of cab signal system with roadway signal system. Waiver is requested exempting PTS from the requirement of interconnection with the roadway signal system.

Justification: PTS is an overlay system having no direct connection with the signal system.

Section 236.515

Visibility of cab signals. Waiver is requested exempting any PTS display from the visibility requirement of this section.

Justification: PTS is not an automatic cab signal system. The PTS design excludes any visual representation of signal aspects or indications.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting the PTS pilot 25 program from the requirements of this section.

Justification: The PTS pilot is a test program. PTS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment.

Section 236.551

Power supply voltage; requirement. Waiver is requested exempting the on-board PTS power supply from the voltage requirement in this section.

Justification: PTS on-board equipment will function with more than a 50% variation in voltage.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting PTS equipment from the insulation resistance requirement in this section.

Justification: PTS on-board equipment consists of computers, computer peripherals, 26 and communications

equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting PTS equipment from the seal requirement in this section.

Justification: The PTS system will allow for manual disablement of on-board PTS functions and equipment both remotely from the dispatching office and through an on-board manual function. Use of the on-board cutout function will be electronically monitored and reported to the dispatcher as an alarm.

Section 236.563

Delay time. Waiver is requested exempting PTS from the delay time requirement in this section.

Justification: The PTS braking algorithm continuously computes braking distance to the next speed restriction or point where a stop is required. Information from the signal system is not used in this function.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipment requirements in this section shall not apply to PTS during the test period.

Justification: The PTS pilot is a test program. A small subset of locomotives operating in the test territory will be PTS-equipped; the majority of trains will not be equipped. PTS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. BN and UP also require the flexibility to permanently disable or remove PTS equipment.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting PTS operations from the restrictions associated with device failure or cutout.

Justification: The PTS pilot is a test program requiring flexibility in installing, removing, turning on and turning off the on-board equipment. Since PTS is a safety overlay, a failure or deactivation of PTS equipment has the effect only of suspending the safety enhancements associated with PTS, without compromising the underlying safety provisions of existing systems and operating rules. If a PTS device fails, operations will continue in a normal mode. Moreover, the dispatcher is immediately notified if PTS equipment fails or is cut out eliminating any need for a reduction in speed.

Section 236.586

Daily or after trip test. Waiver is requested exempting the PTS pilot program from the test requirements of this section. Justification: The PTS pilot is a test program during which requirements for a daily or after-trip test, if necessary, will be defined. PTS equipment is many times more reliable than the equipment for which this regulation was promulgated.

Section 236.587

Departure test. Waiver is requested exempting the PTS pilot program from the test requirements of this section.

Justification: The PTS pilot is itself a test program during which the requirements for a departure test will be defined. Further, it is likely the departure test will be made without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting the PTS pilot program from the test requirements of this section.

Justification: The PTS pilot is itself a test program during which the requirements for periodic testing will be defined.

Section 236.703

Aspect. Clarification is requested exempting the PTS display from this definition.

Justification: PTS is not an automatic cab signal system. The PTS design excludes any visual representation of signal aspects or indications.

Section 236.805

Signal, cab. Clarification is requested exempting the PTS display from this definition.

Justification: PTS is not an automatic cab signal system. The PTS design does not include any visual representation of signal aspects or indications.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting the PTS pilot 31 program from the testing procedures in this section.

Justification: The PTS pilot is itself a test program. Criteria and procedures for PTS performance evaluation do not yet exist; they will be determined during the program.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting the PTS pilot program from the performance monitoring procedures in this section.

Justification: The PTS pilot is itself a test program. Criteria and procedures for PTS performance evaluation do not yet exist; they will be determined during the program.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Communications received within 45 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on February 12, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–3556 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 30162 of Title 49 of the United States Code.

On December 27, 1995, Mr. John Chevedden of Redondo Beach, California, submitted a petition asking NHTSA to require all 1973 through 1978 Chevrolet and GMC C/K pickup trucks to be retrofitted with a low cost gas tank guard. The agency previously investigated alleged safety-related defects in the fuel tanks of these General Motors Corporation C/K pickup trucks. This investigation was among the most complex, costly, and comprehensive ever undertaken by NHTSA. On December 2, 1994, Secretary of Transportation Federico Peña announced the settlement of NHTSA's

investigation into alleged post-impact fuel-fed fires in these vehicles. Under the terms of the settlement, General Motors provided $51,355,000 to support safety programs that will prevent thousands of deaths and injuries. In return, the agency closed the investigation.

The petition did not provide any new information that reasonably could lead to reopening the settlement agreement. The central issue is whether the petition has presented new evidence that bears on the issue of whether a safety defect exists. No new information was presented on this issue. The only ''new'' information presented in the petition was the suggestion of a particular repair for these vehicles. However, even in vehicles found to be defective, NHTSA has no statutory authority to require a manufacturer to provide a particular repair. See 49 U.S.C. 30120.

For these reasons, and because there is no reasonable possibility that the action requested by the petition would be undertaken, the agency denied the petition.

Authority: Section 124, Pub. L. 93–492; 88 Stat. 1470 (49 U.S.C. 30162); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 12, 1996.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 96–3606 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–90; Notice 2]

Decision That Nonconforming 1992 Lincoln Mark VII Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Lincoln Mark VII passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Lincoln Mark VII passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1992 Lincoln Mark VII), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective February 16, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, 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) 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.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1992 Lincoln Mark VII passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 15, 1995 (60 FR 57479) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–144 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Lincoln Mark VII not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Lincoln Mark VII originally manufactured for sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

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: February 13, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–3561 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–89; Notice 2]

Decision That Nonconforming 1994 Mercedes-Benz SL280 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994 Mercedes-Benz SL280 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 Mercedes-Benz SL280 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1994 Mercedes-Benz SL320), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective February 16, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, 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) 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.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to decide whether 1994 Mercedes-Benz SL280 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 27, 1995 (59 FR 58432) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comment were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 145 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1994 Mercedes-Benz SL280 (Body Style 129) is substantially similar to a 1994 Mercedes-Benz SL320 originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

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: February 13, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–3560 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–59–M

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; BMW

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the Carline 5, from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 1997 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On November 29, 1995, BMW submitted to NHTSA a petition for exemption from the parts-marking requirements of the Federal motor vehicle theft prevention standard (49 CFR Part 541) for the Carline 5, beginning with MY 1997. The petition has been filed pursuant to 49 CFR Part 543, *Exemption From Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

BMW's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an electronic immobilizer system, consisting of a key with a transponder (a transmitter/receiver), which is a microchip that is integrated into the key. This transponder will allow the ignition to operate and fuel supply to be released when a correct signal has been received. The immobilizer device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated using the radio frequency remote control. The vehicle is equipped with a central door locking system, including the hood and trunk. There are no audible or visual alarms.

In order to ensure reliability and durability of the device, BMW stated that it conducted performance tests under BMW Standard 600 13.0 Parts 1 and 2, e.g., climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock test, and electromagnetic field compatibility.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is likely to be no less effective than the devices installed in the lines for which NHTSA has already granted exemptions from the parts-marking requirements.

Additionally, BMW states that the immobilizer system fulfills the requirements of the European vehicle insurance companies, which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), must become effective upon leaving the vehicle or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key. In addition, BMW states that the Carline 5 door and ignition locks conform to Swedish Regulation F42–1975, which requires a minimum of 5 minutes resistance to the application of commonly available tools.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the Carline 5 is likely to be as effective in reducing and

deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

The agency concludes that the device will provide the following aspects of performance listed in § 543.6(a)(3): Promoting activation, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii)).

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a) (4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its device.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for the Carline 5 from the parts-marking requirements of 49 CFR Part 541.

If BMW decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 542.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: February 13, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–3599 Filed 2–15–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–41]

Delegation of Authority Concerning Equal Employment Opportunity (EEO); Programs and Regional Complaint Centers

February 8, 1996.

1. *Delegation*. This Directive delegates authority to the Director, Office of Equal Opportunity Program, to:

a. Direct the Department of the Treasury's EEO Programs including all areas of affirmative action, the Hispanic Employment Program (including the Educational Excellence for Hispanic Americans Program), the Federal Women's Program, the Historically Black Colleges and Universities Program, the Federal Equal Opportunity Recruitment Program, and the Disability Program;

b. Direct the Department's Discrimination Complaint Processing System, including administering the Regional Complaint Centers in such a manner as to process EEO complaints in an efficient, timely, and cost-effective manner, including accepting or dismissing complaints of discrimination, conducting complete and fair investigations, rendering all final decisions on individual and class complaints of discrimination, making findings regarding discrimination, rendering decisions on allegations of breach of settlement agreements, making determinations on attorney's fees, and requiring appropriate remedial action whenever necessary;

c. Develop policies, plans and procedures for implementation of the EEO Programs;

d. Evaluate the sufficiency of the programs and recommend to the Assistant Secretary for Management & CFO appropriate solutions for upgrading the programs;

e. Promulgate rules and regulations to carry out the responsibilities delegated by this Directive;

f. Approve the use of any administrative dispute resolution process used in resolving EEO complaints;

g. Review and evaluate effectiveness of bureau EEO-related training programs; and

h. Administer such projects as the Assistant Secretary for Management & CFO shall establish.

2. *Redelegation*. The authority delegated above, or any parts thereof, may be redelegated by the Director, Office of Equal Opportunity Program.

3. *Authority*. Treasury Order 102–02, ''Delegation of Authority Concerning Equal Opportunity Programs.''

4. *Cancellation*. Treasury Directive 12–41, ''Delegation of Authority Concerning Equal Employment Opportunity Programs and Regional Complaint Centers,'' dated April 17, 1989, is superseded.

5. *Expiration Date*. This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

6. *Office of Primary Interest*. Office of Equal Opportunity Program, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary for Management & CFO.

George Muñoz,

Assistant Secretary for Management & CFO.

[FR Doc. 96–3525 Filed 2–15–96; 8:45 am]

BILLING CODE 4810–25–P

Internal Revenue Service

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form SS–8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

DATES: Written comments should be received on or before April 16, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax withholding.

OMB Number: 1545–0004.

Form Number: SS–8.

Abstract: Form SS–8 is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses the information on Form SS–8 to make the determination.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses, individuals, Federal Government, farms, state, local or tribal government, and not-for-profit institutions.

Estimated Number of Respondents: 9,730.

Estimated Time Per Respondent: 35 hrs., 41 min.

Estimated Total Annual Burden Hours: 347,264.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: February 5, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–3595 Filed 2–15–96; 8:45 am]

BILLING CODE 4830–01–U

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before April 16, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses, farms.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 12 hrs., 25 min.

Estimated Total Annual Burden Hours: 6,205,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: February 5, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–3594 Filed 2–15–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 21 in Room 600, 301 4th Street SW., Washington, DC from 10:00 a.m. to 12:00 noon.

At 10:00 a.m. the Commission will hold a panel discussion on the following: (1) how new technologies are changing approaches to understanding foreign publics; and (2) the kind of open source information needed to make rational judgments in U.S. public diplomacy. The panelists are Dr. Barry Fulton, Associate Director, Bureau of Information, USIA; Mr. Douglas Naquin, Chief, Global Services Group, Foreign Broadcast Information Service; Ambassador Robert Pringle, Dean, the Senior Seminar, Department of State; and Mr. Robert Steele, Open Source Systems, Inc.

FOR FURTHER INFORMATION: Please call Betty Hayes (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 13, 1996.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 96–3590 Filed 2–15–96; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 61, No. 33
Friday, February 16, 1996

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).

COMMODITY FUTURES TRADING COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 61 F.R. 5605.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, February 20, 1996.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has added to the open meeting:

—National Futures Association Status Report

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–3689 Filed 2–14–96; 1:34 pm]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, February 13, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: February 13, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–3688 Filed 2–14–96; 1:34 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 5442, February 12, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, February 15, 1996.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Review of a Federal Reserve Board program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–3647 Filed 2–13-96; 5:00 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 21, 1996.

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: February 14, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–3656 Filed 2–14–96; 10:40 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on February 23, 1996. The meeting will begin at 10:00 a.m. and continue until conclusion of the committee's agenda. Agenda item 4 will be jointly considered with the Provision for the Delivery of Legal Services Committee, which is to convene at 3 p.m. on February 23, 1996.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on proposed regulation restricting representation in certain eviction proceedings and public comments thereon.
3. Consider and act on guidelines and the development of a form for directors' annual disclosure, pursuant to § 3.05 of the Corporation's bylaws.
4. Consider and act on proposed regulation governing competitive bidding of grants and contracts and public comments thereon.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 14, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–3750 Filed 2–14–96; 3:40 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation's Board of Directors will meet on February 23, 1996. The meeting will begin at 3:00 p.m. and continue until conclusion of the committee's agenda. Agenda item 2 will be jointly considered with the Operations and Regulations Committee.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on proposed regulation governing competitive bidding of grants and contracts and public comments thereon.
3. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 14, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–3749 Filed 2–14–96; 3:40 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on February 24, 1996. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may be briefed by management on internal operational and personnel matters and by the Inspector General on activities of the Office of Inspector General.[1] In addition, the General Counsel will report to the Board on litigation to which the Corporation is or may become a party and the Board may act on the matters reported. Finally, the Board may be consulted and asked for direction on purely internal personnel policies.

The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. section 552b(c)(2) and (10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. section 1622.5(a) and (h)]. A copy of the General Counsel's certification that the closing is authorized by law will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE, Washington, DC 20002, in its 11th floor reception area, and will also be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of agenda.
2. Approval of minutes of December 18, 1995, meeting.
3. Chairman's and members' reports.
4. Election of chair and vice chair of the Board.
5. President's report, including an update on the status of appropriations and authorization processes for the Corporation.
6. Inspector General's report.
7. Consider and act on the report of the Operations & Regulations Committee.
   a. Consider and act on guidelines and form for directors' annual disclosure, pursuant to § 3.05 of the Corporation's bylaws.
   b. Consider and act on proposed regulation restricting representation in certain eviction proceedings.
   c. Consider and act on proposed regulation governing competitive bidding of grants and contracts.
8. Consider and act on a revised budget request for FY '97.
9. Consider and act on the adoption of a funding policy for the remainder of FY '96.

CLOSED SESSION:

10. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
11. Briefing by the Office of Inspector General on its activities.
12. Briefing by management on internal operations and personnel matters.
13. Consider and act on matters relating solely to the internal personnel rules and practices of the Corporation.

OPEN SESSION:

14. Public comment.
15. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante, at (202) 336–8800.

Dated: February 14, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–3748 Filed 2–14–96; 3:40 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Wednesday, February 21, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed:

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request from a Federal Credit Union to Convert to a Community Field of Membership. Closed pursuant to exemption (8).
3. Requests from Federal Credit Unions for Field of Membership Amendments. Closed pursuant to exemption (8).
4. Request by Credit Union for Waivers from Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
5. Administrative Action under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–3732 Filed 2–14–96; 2:13 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Wednesday, February 21, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, February 21

3:30 p.m.

Affirmation Session (Public Meeting)

a. Kerr-McGee Chemical Corporation—Motion to Dismiss Proceeding and Vacate Underlying Decisions

(Contact: Andrew Bates, (301) 415–1963)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

[1] Briefings do not constitute ''meetings'' as defined by the Government in the Sunshine Act. Notice of the briefing is here provided as a courtesy to the public.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 13, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–3686 Filed 2–14–96; 1:34 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on February 5, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 4, 1996, in Washington, DC. The members will consider: (1) the Postal Rate Commission Decision in Docket No. MC95–1, Mail Classification Reform; (2) a filing with the Postal Rate Commission for classification reform of nonprofit rates; and (3) overview of the international business unit and international rate setting process.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

As to the first and second items, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

As to the third item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information which is specifically exempted from disclosure by section 410(c)(2) of title 39, United States Code.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(2) and (4) of title 39, United States Code; and section 7.3(c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–3746 Filed 2–14–96; 3:18 pm]

BILLING CODE 7710–12–M

Federal Register

Friday
February 16, 1996

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 661

Buy America Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–95–471]

RIN 2132–AA42

Buy America Requirements

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which amends the Federal Transit Administration's (FTA) Buy America requirements, and makes other amendments intended to update and clarify FTA's Buy America regulation.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, Federal Transit Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–1936.

SUPPLEMENTARY INFORMATION:

I. The Notice of Proposed Rulemaking

On September 12, 1995, FTA issued a notice of proposed rulemaking (NPRM) seeking to implement section 1048 of the Intermodal Surface Transportation Efficiency Act (Pubic Law 102–240) (ISTEA), which amended its Buy America requirements. FTA requested comments on this proposal and on other proposed amendments intended to update and clarify its Buy America regulation, 49 CFR Part 661.

FTA received four comments: two from public transit agencies; one from a State department of transportation; and one from an organization representing mass transit systems, manufacturers and suppliers. All of the commenters supported the proposed amendments, although some suggested minor modifications, which are discussed below.

II. The ISTEA Amendments

A. Addition of ''Iron'' (§ 661.5(a)–(c))

In the NPRM, FTA explained that section 1048 of ISTEA amends 49 U.S.C. 5323(j) by adding ''iron'' to the products covered, and by inserting two new subsections concerning waivers of the Buy America requirements. By adding the word ''iron,'' Congress extended Buy America protection to iron and iron products, in addition to steel and manufactured products, which were previously protected. FTA proposed to amend 49 CFR 661.5 (a) and (b) to reflect this statutory amendment. FTA also proposed to amend 49 CFR 661.5(c) to specify that both the iron and steel requirements apply to items made primarily from those materials and used in construction and rail projects. The NPRM proposed that these items include, but not be limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. The requirements would not apply to iron used as components or subcomponents of other manufactured products or rolling stock.

Two commenters opined that the use of the qualifier ''primarily'' may lead to confusion in the absence of greater specificity. They suggested that ''primarily'' may mean close to one hundred percent, and stated that some additional discussion or guidance on this issue might be appropriate. They also stated that the phrase ''primarily steel and iron'' should read ''primarily steel or iron'' to avoid an unintended implication that only products made primarily of both steel and iron are covered.

FTA believes that it is not appropriate to attach a percentage to the definition of section 661.5(c), since the percentage of steel or iron in a particular item may vary according to an individual producer's refinement or manufacturing processes. Generally, the definition refers to construction or building materials made either principally or entirely from either steel or iron. All other manufactured products, even though they may contain some steel or iron elements, would not be covered. Therefore, steel girders would fall within the definition while buses with frames made partially from steel, would not be covered. To clarify this point, FTA will modify the proposed definition to specify that it is intended to apply to construction materials used in infrastructure projects, such as transit or maintenance facilities, rail lines, or bridges. FTA will also adopt the commenters' suggestion that these items be described as made of ''primarily steel or iron.''

B. Intentional Violations (§ 661.18)

Section 1048(b) amends 49 U.S.C. 5323(j) by inserting subsection (5), which states that any person determined by a Federal agency or court to have affixed a false ''Made in America'' label to or misrepresented the origin of a foreign product, shall be ineligible to receive contracts funded under ISTEA. In the NPRM, FTA proposed to add new section 661.18, which would bar such persons from Federal assistance under ISTEA ''pursuant to suspension and debarment proceedings under [49 CFR Part 29].''

Two commenters expressed the view that the wording of proposed section 661.18 could lead to a situation in which a person convicted of fraudulent misrepresentation under criminal statutes, but not processed through an administrative debarment/suspension proceeding, would remain eligible to receive ISTEA funds, contrary to Congressional intent. According to these commenters, the reference to debarment and suspension proceedings is unnecessary and should be removed. They stated that the remaining ineligibility under 49 CFR Part 29 is sufficient to implement Congress' intent without causing undue confusion.

FTA agrees that the use of the term ''proceeding'' in section 661.8 may create confusion since it could imply that only persons who have been suspended or debarred through a formal administrative process or hearing would be ineligible to receive ISTEA funds. In order to make it clear that any person suspended or debarred under 49 CFR Part 29, whether through a formal administrative hearing or under the general procedures of the regulation, will be so ineligible, FTA will delete its reference to ''proceedings.''

C. Limitation of the Applicability of Waivers (§ 661.7(h))

Section 1048(b) also amends 49 U.S.C. 5323(j) by adding subsection (4), which provides that if a foreign country is party to an agreement with the United States under which the Buy America requirements are waived, and the foreign country violates the agreement by discriminating against U.S. goods, products from that country shall not be eligible for waivers under 49 U.S.C. 5323(j). In the NPRM, FTA noted that there is currently no agreement between the United States and a foreign country which waives the Buy America requirements. FTA therefore stated that it considered this provision inoperative at the present time. FTA proposed to amend 49 CFR 661.7 to add a new subsection that will reflect this statutory change, and sought comment on whether its conclusion that 49 U.S.C. 5323(j)(4) is not applicable at this time requires further discussion or expansion.

Two commenters agreed that the provision should be adopted as proposed, but suggested that it be amended to provide clarification or guidance in the event that the type of international agreement contemplated in section 1048(b) should be concluded. Accordingly, FTA will adopt proposed subsection 661.7(h), subject to eventual

amendment, should the United States become party to such an agreement.

III. Amendments to Update and Clarify the Buy America Regulation

In the NPRM, FTA also sought to update the regulation by removing provisions that are no longer applicable, and to clarify certain other provisions.

A. Definition of ''Component'' (§ 661.3)

The FTA Buy America regulation, 49 CFR Part 661, consistent with the Surface Transportation Assistance Act of 1982 (STAA) and the Surface Transportation and Uniform Relocation Assistance Act (STURAA), establishes separate requirements for rolling stock. To be considered domestic, rolling stock must be assembled in the United States and 60 percent of its components, by cost, must be of U.S. origin. For a manufactured product to be considered domestic, all manufacturing processes must take place in the United States and all of its components must be of U.S. origin. In both cases, then, to determine compliance with the Buy America requirements, it is necessary to identify those parts of a product which may be considered components.

Section 661.11 which sets out the separate requirements for rolling stock, defines, at subsection (e), component as ''any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.'' However, many suppliers of manufactured products have pointed out to FTA that neither section 661.3 (general definitions) nor section 661.5 (requirements for manufactured products) contains a similar definition of component. They have therefore asked FTA for guidance in determining what constitutes a component of a manufactured product.

FTA notes that the definition of component of subsection 661.11(e) parallels that of the Federal Acquisition Regulations implementing the Buy American Act of 1933 (51 U.S.C. 10(a)–(d)), which applies to manufactured products generally. FTA therefore considers that it is appropriate to apply this definition to components of manufactured products as well as to components of rolling stock. Accordingly, FTA proposed in the NPRM to add it to the definitions provision of the regulation, section 661.3. All comments on this issue were favorable, and FTA is adopting the definition as proposed.

B. Component Requirement for Manufactured Products (§ 661.5(d)(2))

Section 165(b)(3) of the STAA, as amended by section 337 of STURAA, imposes domestic preference requirements on the subcomponents of components of rolling stock and associated equipment. No such similar statutory changes were made to section 165(a) for manufactured products. Therefore, the agency concluded that a manufactured product is of domestic origin if it is manufactured in the United States. In other words, in determining the origin of a component of a manufactured product governed by section 165(a), FTA will look only to where the product is manufactured, and will not look to the origin of the various materials included in the product during the manufacturing process. However, subsection 661.5(d)(2) of the regulation provides that for a manufactured product to be considered of U.S. origin, ''all items or material used in the product must be of United States origin.''

In FTA's experience, the language of this provision has often created the incorrect assumption that in determining the origin of a manufactured product, FTA will consider all of its material content, even at the subcomponent level and below. In order to correct this misunderstanding, FTA proposed to amend subsection 661.5(d)(2) to state that for a manufactured product to be considered of domestic origin, all of its components must be of United States origin. FTA also proposed to treat a component as being of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. All of the commenters agreed that the proposal would correct the confusion and misunderstanding created by the current language of subsection 661.5(d)(2). FTA is amending this subsection as proposed.

C. Determination of Grandfathered Companies (§ 661.10)

Section 337 of the STURAA provided for a gradual increase in the domestic content requirements for buses and other rolling stock from 50 percent to 60 percent. Section 337(a)(2)(B) of STURAA stated that these revised requirements would not apply to any contract entered into prior to April 1, 1992, with any supplier or contractor or any successor in interest or assignee which had complied with the previous domestic content requirements. Section 661.10 of the regulation sets out the criteria for determining whether a company could qualify for grandfather treatment. Since the April 1, 1992, deadline has elapsed, and since there is little likelihood that contracts for rolling stock executed prior to that date are still outstanding, FTA will delete this grandfather provision from its Buy America regulation.

D. Domestic Content Requirements for Rolling Stock (§§ 661.11(a)–(d))

As indicated above, section 337 of STURAA provided for a gradual increase in the domestic content for rolling stock from the previous 50 percent level to 55 percent for contracts entered into after October 1, 1989, and to 60 percent for contracts entered into after October 1, 1991, and after April 1, 1992, for grandfathered companies. Subsections 661.11 (b) and (c) of Part 49 implemented these statutory provisions. Since the 60 percent domestic content requirement is now in effect for all contracts executed after April 1, 1992, FTA will delete subsections 661.11(a) to reflect this change. Subsections (k) and (n) will also be revised to indicate that the 60 percent domestic content requirements also apply to components of rolling stock. The remaining subsections of 49 CFR 661.11 will be re-numbered accordingly.

IV. Regulatory Impacts

A. Executive Order 12866

FTA has determined that this action is not significant under Executive Order 12866 or Department of Transportation regulatory policies and procedures. Since this final rule makes only technical amendments to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities with the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

D. Executive Order 12612

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If

promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 661

Buy America, Domestic preference requirement, Government contracts, Grant programs—Transportation, Mass transportation.

Amendment of 49 CFR Part 661

Accordingly, for the reasons described in the preamble, Part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 661—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17 and sec. 1048, Pub. L. 102–240); 49 CFR 1.51.

2. By adding in alphabetical order a definition of ''Component'' to § 661.3 to read as follows:

§ 661.3 Definitions.

* * * * *

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

* * * * *

3. By revising § 661.5 to read as follows:

§ 661.5 General requirements.

(a) Except as provided in § 661.7 and § 661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

(b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

4. By adding new 661.7(h) to read as follows:

§ 661.7 Waivers.

* * * * *

(h) The provisions of this section shall not apply to products produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, determines that:

(1) That foreign country is party to an agreement with the United States pursuant to which the head of an agency of the United States has waived the requirements of this section; and

(2) That foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement.

* * * * *

5. By removing § 661.10.

§ 661.10 [Removed]

6. By revising § 661.11 to read as follows:

§ 661.11 Rolling stock procurements.

(a) The provisions of § 661.5 do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components produced in the United States is more than 60 percent of the cost of all components and final assembly takes place in the United States.

(b) The domestic content requirements in paragraph (a) of this section also apply to the domestic content requirements for components set forth in paragraphs (i), (j), and (l) of this section.

(c) A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location.

(d) A component may be manufactured at the final assembly location if the manufacturing process to produce the component is an activity separate and distinct from the final assembly of the end product.

(e) A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article.

(f) Except as provided in paragraph (k) of this section, a subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component (as defined in paragraph (c) of this section) in the manufacturing process and that is incorporated directly into a component.

(g) For a component to be of domestic origin, more that 60 percent of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.

(h) A subcomponent is of domestic origin if it is manufactured in the United States.

(i) If a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside the United States and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 60 percent of the cost of a particular component.

(j) If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.

(k) Raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purpose of calculating domestic content. The value of such raw materials is to be included in the cost of the foreign component.

(l) If a component is manufactured in the United States, but contains less than 60 percent domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product.

(m) For purposes of this section, except as provided in paragraph (o) of this section:

(1) The cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of foreign components and subcomponents.

(2) If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

(n) The cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the appropriate Buy America certificate.

(o) The cost of a subcomponent that retains its domestic identity consistent with paragraph (j) of this section shall be the cost of the subcomponent when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers or, if no purchase was made, the value of the subcomponent at the time of its shipment for exportation, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers.

(p) In accordance with 49 U.S.C. 5323(j), labor costs involved in final assembly shall not be included in calculating component costs.

(q) The actual cost, not the bid price, of a component is to be considered in calculating domestic content.

(r) Final assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

(s) An end product means any item subject to 49 U.S.C. 5323(j) that is to be acquired by a grantee, as specified in the overall project contract.

(t) Train control equipment includes, but is not limited to, the following equipment:

(1) Mimic board in central control
(2) Dispatcher's console
(3) Local control panels
(4) Station (way side) block control relay cabinets
(5) Terminal dispatcher machines
(6) Cable/cable trays
(7) Switch machines
(8) Way side signals
(9) Impedance bonds
(10) Relay rack bungalows
(11) Central computer control
(12) Brake equipment
(13) Brake systems

(u) Communication equipment includes, but is not limited to, the following equipment:

(1) Radios
(2) Space station transmitter and receivers
(3) Vehicular and hand-held radios
(4) PABX telephone switching equipment
(5) PABX telephone instruments
(6) Public address amplifiers
(7) Public address speakers
(8) Cable transmission system cable
(9) Cable transmission system multiplex equipment
(10) Communication console at central control
(11) Uninterruptible power supply inverters/rectifiers
(12) Uninterruptible power supply batteries
(13) Data transmission system central processors
(14) Data transmission system remote terminals
(15) Line printers for data transmission system
(16) Communication system monitor test panel
(17) Security console at central control

(v) Traction power equipment includes, but is not limited to the following:

(1) Primary AC switch gear
(2) Primary AC transformer rectifiers
(3) DC switch gear
(4) Traction power console and CRT display system at central control
(5) Bus ducts with buses (AC and DC)
(6) Batteries
(7) Traction power rectifier assemblies
(8) Distribution panels (AC and DC)
(9) Facility step-down transformers
(10) Motor control centers (facility use only)
(11) Battery chargers
(12) Supervisory control panel
(13) Annunciator panels
(14) Low voltage facility distribution switch board
(15) DC connect switches
(16) Negative bus boxes
(17) Power rail insulators
(18) Power cables (AC and DC)
(19) Cable trays
(20) Instrumentation for traction power equipment
(21) Connectors, tensioners, and insulators for overhead power wire systems
(22) Negative drainage boards
(23) Inverters
(24) Traction motors
(25) Propulsion gear boxes
(26) Third rail pick-up equipment
(27) Pantographs

(w) The power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of § 661.5.

(x) A bidder on a contract for an item covered by 49 U.S.C. 5323(j) who will comply with section 165(b)(3) and regulations in this section is not required to follow the application for waiver procedures set out in § 661.9. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12.

7. By adding § 661.18 to read as follows:

§ 661.18 Intentional violations.

A person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to part 29 of this title if it has been determined by a court or Federal agency that the person intentionally—

(a) Affixed a label bearing a ''Made in America'' inscription, or an inscription with the same meaning, to a product not made in the United States, but sold in or shipped to the United States and used in projects to which this section applies, or

(b) Otherwise represented that any such product was produced in the United States.

Issued on: February 9, 1996.

Gordon J. Linton,

Administrator.

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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